



VIRGINIA

REGISTER OF REGULATIONS

VOL. 34 ISS. 5

PUBLISHED EVERY OTHER WEEK BY THE VIRGINIA CODE COMMISSION

OCTOBER 30, 2017

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VIRGINIA REGISTER INFORMATION PAGE

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

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

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

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

FAST-TRACK RULEMAKING PROCESS

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

EMERGENCY REGULATIONS

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

STATEMENT

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

CITATION TO THE VIRGINIA REGISTER

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

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

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

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

PUBLICATION SCHEDULE AND DEADLINES

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

October 2017 through November 2018

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
34:5	October 11, 2017	October 30, 2017
34:6	October 25, 2017	November 13, 2017
34:7	November 8, 2017	November 27, 2017
34:8	November 21, 2017 (Tuesday)	December 11, 2017
34:9	December 6, 2017	December 25, 2017
34:10	December 19, 2017 (Tuesday)	January 8, 2018
34:11	January 3, 2018	January 22, 2018
34:12	January 17, 2018	February 5, 2018
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 (Tuesday)	July 23, 2018
34:25	July 18, 2018	August 6, 2018
34:26	August 1, 2018	August 20, 2018
35:1	August 15, 2018	September 3, 2018
35:2	August 29, 2018	September 17, 2018
35:3	September 12, 2018	October 1, 2018
35:4	September 26, 2018	October 15, 2018
35:5	October 10, 2018	October 29, 2018
35:6	October 24, 2018	November 12, 2018
35:7	November 7, 2018	November 26, 2018

*Filing deadlines are Wednesdays unless otherwise specified.

PETITIONS FOR RULEMAKING

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF PHARMACY

Initial Agency Notice

Title of Regulation: **18VAC110-20. Regulations Governing the Practice of Pharmacy.**

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

Name of Petitioner: Joseph Lavino for CVS Health.

Nature of Petitioner's Request: To amend 18VAC110-20-275 B 2 d to read:

d. The procedure for identifying on the prescription label a unique identifier for all pharmacies involved in filling and dispensing the prescription. This unique identifier is not required to identify a pharmacy solely involved in the holding of a prescription for pick-up or further delivery when that pharmacy has not shared in other filling or dispensing function;

Agency Plan for Disposition of Request: In accordance with Virginia law, the petition has been filed with the Registrar of Regulations and will be published on October 30, 2017. Comment on the petition may be sent by email or regular mail or posted on the Virginia Regulatory Town Hall at www.townhall.virginia.gov; comment will be requested until November 22, 2017.

Following receipt of all comments on the petition to amend regulations, the board will decide whether to make any changes to the regulatory language in Regulations Governing the Practice of Pharmacy. This matter will be on the board's agenda for its meeting scheduled for December 11, 2017.

Public Comment Deadline: November 22, 2017.

Agency Contact: Caroline Juran, RPh, Executive Director, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804)367-4456, or email caroline.juran@dhp.virginia.gov.

VA.R. Doc. No. R18-08; Filed September 28, 2017, 8:22 a.m.

NOTICES OF INTENDED REGULATORY ACTION

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Health intends to consider amending **12VAC5-590, Waterworks Regulations**. The purpose of the proposed action is to comprehensively update the Waterworks Regulations to ensure they are clear, concise, and technically correct, which will facilitate the permitting, design, construction, and operation of waterworks in Virginia. The goal of the regulatory action is to establish requirements for the basic design, construction, and operation of waterworks and to set enforceable standards for water quality to ensure waterworks provide safe and reliable drinking water that protects public health.

The Virginia Department of Health-Office of Drinking Water, the Waterworks Advisory Committee to the State Health Commissioner, and a regulatory advisory panel consisting of waterworks stakeholders collectively recommended that Parts I and III of the Waterworks Regulations be updated in the areas of waterworks permitting, design, and construction, and Part II be amended to clarify operating requirements and improve readability. The amendments to Part II will not change the requirements necessary for Virginia to retain primary enforcement responsibility for waterworks. This regulatory action will follow the recommendations and incorporate (i) current water treatment processes, (ii) current monitoring and control technologies, (iii) changes to water consumption patterns resulting from shifts in consumer use and water-saving plumbing fixtures, (iv) changes to source water quality and availability due to increased water demands, and (v) new state law and regulations governing source water supply planning and withdrawal.

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

Statutory Authority: §§ 32.1-12 and 32.1-170 of the Code of Virginia; 42 USC § 300f et seq.; 40 CFR Parts 141, 142, and 143.

Public Comment Deadline: November 29, 2017.

Agency Contact: Robert A. K. Payne, Compliance Manager, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7498, or email rob.payne@vdh.virginia.gov.

VA.R. Doc. No. R18-5204; Filed September 29, 2017, 3:59 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD FOR CONTRACTORS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board for Contractors intends to consider amending **18VAC50-22, Board for Contractors Regulations**. The purpose of the proposed action is to amend the specialty definitions to add a miscellaneous category for those contractors whose work, as determined by the Board for Contractors, is so specialized that it fails to fall under any specialty. The board will also review existing regulations for clarity and consistency and may make 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 of the Code of Virginia.

Public Comment Deadline: November 29, 2017.

Agency Contact: Eric L. Olson, Executive Director, Board for Contractors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-2785, FAX (866) 430-1033, or email contractors@dpor.virginia.gov.

VA.R. Doc. No. R18-5224; Filed October 2, 2017, 4:12 p.m.

TITLE 22. SOCIAL SERVICES

DEPARTMENT FOR AGING AND REHABILITATIVE SERVICES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Department for Aging and Rehabilitative Services intends to consider amending **22VAC30-120, Adult Services Approved Providers**. The purpose of the proposed action is to provide a general review. The regulation establishes standards for providers who are approved by local departments of social services to provide services, such as homemaker, chore, or companion services, to adults. This regulatory action seeks to review all current regulation content; clarify regulation content that may be unclear, inconsistent, or obsolete; and incorporate person-centered language throughout the regulation.

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

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

Public Comment Deadline: November 30, 2017.

Notices of Intended Regulatory Action

Announcement of Periodic Review and Small Business Impact Review: Pursuant to Executive Order 17 (2014) and § 2.2-4007.1 of the Code of Virginia, the agency is conducting a periodic review and small business impact review of this regulation to determine whether this regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Agency Contact: Paige L. McCleary, Adult Services Program Consultant, Department for Aging and Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, VA 23229, telephone (804) 662-7605, or email paige.mccleary@dars.virginia.gov.

VA.R. Doc. No. R18-5298; Filed September 29, 2017, 3:58 p.m.

STATE BOARD OF SOCIAL SERVICES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Social Services intends to consider amending **22VAC40-201, Permanency Services - Prevention, Foster Care, Adoption and Independent Living**. The permanency services regulation provides standards for local departments of social services for prevention, foster care, adoption, and independent living services. The purpose of the proposed action is to conform the regulation to the Code of Virginia and federal laws and to make any other changes the agency deems necessary after comments and review, including conforming to (i) Chapter 200 of the 2017 Acts of Assembly, which changes the name of the Putative Father Registry to Virginia Birth Father Registry and requires additional information be added to the registry so that putative fathers can be notified prior to court proceedings for termination of parental rights and adoption regarding a child who a registrant may have fathered and (ii) Chapter 187 of the 2017 Acts of Assembly, which requires youth who turn 18 years of age while in foster care be enrolled in Medicaid, provided they do not object, and makes those youth eligible to be given the opportunity to participate in a survey to provide feedback regarding the youth's experience while in foster care.

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

Statutory Authority: §§ 63.2-217, 63.2-319, and 63.2-900 of the Code of Virginia.

Public Comment Deadline: November 29, 2017.

Agency Contact: Em Parente, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7895, FAX (804) 726-7538, or email em.parente@dss.virginia.gov.

VA.R. Doc. No. R18-5305; Filed October 4, 2017, 10:03 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Social Services intends to consider amending **22VAC40-211, Resource, Foster and Adoptive Family Home Approval Standards**. The purpose of the proposed action is to conform the regulation to the Code of Virginia and to make other changes the agency deems necessary after comments and review, including conforming to (i) Chapter 194 of the 2017 Acts of Assembly, which stipulates that background checks conducted for youth over the age of 18 years in the Fostering Futures Program be used for the sole purpose of determining whether other children should be placed or remain in the same foster home as the Fostering Futures Program participant and not as a basis for terminating or suspending the approval of the foster home; (ii) Chapter 193 of the 2017 Acts of Assembly, which requires local agencies to use the Mutual Family Assessment (MFA) home study template and authorizes the department to amend the MFA template and any necessary addenda; and (iii) Chapter 631 of the 2017 Acts of Assembly, which requires the Normalcy for Youth in Foster Care training as part of the preservice training, so this action will update training requirements for current and prospective foster and adoptive providers.

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

Statutory Authority: §§ 63.2-217 and 63.2-319 Code of Virginia.

Public Comment Deadline: November 29, 2017.

Agency Contact: Keisha Williams, Program Consultant, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7550, FAX (804) 819-7173, or email k.williams@dss.virginia.gov.

VA.R. Doc. No. R18-5306; Filed October 4, 2017, 10:09 a.m.

REGULATIONS

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

Symbol Key

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

TITLE 5. CORPORATIONS

STATE CORPORATION COMMISSION

Proposed Regulation

<p><u>REGISTRAR'S NOTICE:</u> 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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Titles of Regulations: **5VAC5-30. Uniform Commercial Code Filing Rules (amending 5VAC5-30-20 through 5VAC5-30-70).**

5VAC5-40. Administration of the Office of the Clerk of the Commission (amending 5VAC5-40-10).

Statutory Authority: §§ 8.9A-526 and 12.1-13 of the Code of Virginia.

Public Hearing Information: A public hearing will be held up on request.

Public Comment Deadline: November 20, 2017.

Agency Contact: Joel Peck, Clerk of the Commission, State Corporation Commission, 1300 East Main Street, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9834, FAX (804) 371-9521, or email joel.peck@scc.virginia.gov.

Summary:

The proposed amendments (i) change fees charged by the Office of the Clerk for furnishing paper copies of State Corporation Commission records and the certification of those copies; (ii) allow the Office of the Clerk to charge and collect reasonable fees for providing records from a computer database, electronic data processing system, or any other structured collection of data or for abstracting or summarizing data or creating a record that does not already exist if the State Corporation Commission chooses to fulfill such a request; (iii) make numerous minor and technical changes; and (iv) change filing time for certain Uniform Commercial Code (UCC) records based on the type of delivery, payment methods, and the requirements for filing of UCC records previously refused by the filing office in error.

AT RICHMOND, OCTOBER 11, 2017

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. CLK-2017-00004

Ex Parte: In the matter of Adopting
Revisions to the Rules Governing Administration of
the Office of the Clerk of the Commission and
Uniform Commercial Code Filing Rules

ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia ("Code") provides that the State Corporation Commission ("Commission") shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction. Section 12.1-18 of the Code requires the Commission to appoint a clerk of the Commission ("Clerk"), whose duties are set forth in Title 12.1, Chapter 4 of the Code. These duties include charging and collecting certain fees as the Commission may fix by order or rule pursuant to §§ 12.1-20, 12.1-21.1, and 12.1-21.2 of the Code. Additionally, § 8.9A-526 of Virginia's Uniform Commercial Code – Secured Transactions, § 8.9A-101 et seq. of the Code, provides that the Commission shall promulgate and make available to the public such rules as it deems necessary to implement Title 8.9A of the Code and in accordance with applicable law.

The rules and regulations issued by the Commission regarding administration of the Office of the Clerk are set forth in Title 5, Chapter 40 of the Virginia Administrative Code ("VAC"). Additionally, the rules and regulations issued by the Commission pursuant to § 8.9A-526 of the Code are set forth in Title 5, Chapter 30 of the VAC. These rules and regulations also may be found on the Commission's website, respectively, at: www.scc.virginia.gov/clk/lawreg.aspx and www.scc.virginia.gov/clk/uccrules.aspx.

The Office of the Clerk has submitted to the Commission a number of proposed revisions to Chapter 40 and Chapter 30 of Title 5 of the VAC entitled, respectively, "Administration of the Office of the Clerk of the Commission" ("Clerk's Rules") and "Uniform Commercial Code Filing Rules" ("UCC Rules"). Effective July 1, 2017, § 12.1-21.2 of the Code provides that the Commission "may charge and collect the fees as are fixed by order or rule for furnishing and certifying a copy of any document or any information from its records and may charge and collect reasonable fees for

providing records from an electronic data processing system, computer database, or any other structured collection of data."

Proposed changes to Rule 5 VAC 5-40-10 ("Fees to be Charged by the Commission") revise the fees for furnishing paper copies of Commission records and the Clerk's certification of those copies. The Clerk currently charges \$.50 per page for paper copies and \$3 for certifying a paper copy. Pursuant to the revisions, the Clerk shall charge: (a) no fee for 25 or fewer pages of paper copies; (b) \$10 if the number of pages copied is between 26 and 50; (c) \$20 if the number of pages copied is 51 or more; and (d) \$6 for certifying a paper copy. The revisions also provide that the Commission may charge and collect reasonable fees for: (a) providing records from a computer database, electronic data processing system, or any other structured collection of data; or (b) for abstracting or summarizing data or creating a record that does not already exist, if the Commission chooses to fulfill such a request.

The Clerk also proposes revisions to the UCC Rules (Chapter 30). Most of the revisions are minor and provide technical amendments to the Rules. In addition, the Clerk requests changes regarding the filing time for certain UCC records based on the type of delivery, changes regarding payment methods, and the requirements regarding the filing of UCC records previously refused for acceptance by the filing office in error.

Proposed changes to Rule 5 VAC 5-30-20 ("Definitions") provide technical revisions to the current definitions of "Filing officer statement" and "Remitter".

Proposed changes to Rule 5 VAC 5-30-30 ("General filing and search requirements") provide technical amendments to subsection A, and revise subsection B regarding the filing time for a UCC record delivered to the filing office for filing by postal delivery, as well as clarifying the filing time for a UCC record delivered to the filing office for filing after regular business hours or on a day when the filing office is not open for business.

Proposed changes to Rule 5 VAC 5-30-40 ("Forms, fees, and payments") revise subsection B 3 regarding the fees for furnishing a copy of a UCC record and for certifying a copy of a UCC record. Additional proposed changes to this rule revise subsection C regarding the method of payment to: (1) allow payment by debit and credit card of a type approved by the filing office if paid in person at the filing office; and (2) allow payment by debit card of a type approved by the filing office for documents delivered to the filing office by authorized electronic delivery, while deleting electronic checks as a method of payment.

Proposed changes to Rule 5 VAC 5-30-50 ("Acceptance and refusal of records; continuation statements") provide technical amendments to subsections A, B and C. The proposals also revise subsection F by deleting the current language stating

that a secured party or remitter demonstrate that a UCC record should not have been refused for filing, and by revising the method for determining the filing date and time of such records. The revision proposes that, if it is determined that the filing office refused to accept a UCC record in error, the filing office shall file the UCC record with the filing date and time that were assigned, based on the method of delivery, by the filing office after the record was originally delivered to the filing office for filing.

Proposed changes to Rule 5 VAC 5-30-60 ("Filing and data entry procedures") include technical and clarifying amendments to subsections A and C. The proposal also removes the statement in subsection A that the filing office shall file a filing officer statement "[i]f the correction occurs after the filing office has issued a certification". The recommended changes further propose that a filing officer statement in subsection A shall include other action taken and an explanation of the corrective or other action taken.

Proposed changes to Rule 5-30-70 ("Search requests and reports") include technical amendments to subsections A and C to change "records" to "UCC records".

The Clerk has recommended to the Commission that the proposed revisions should be considered for adoption. The Clerk also has recommended to the Commission that a hearing should be held only if requested by those interested persons who specifically indicate that a hearing is necessary and the reasons therefore.

Upon consideration of the foregoing,

IT IS THEREFORE ORDERED THAT:

(1) The proposed revisions are appended hereto and made a part of the record herein.

(2) Comments or requests for hearing on the proposed revisions must be in writing, directed to Joel H. Peck, Clerk of the Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, and received on or before November 20, 2017. Any request for hearing shall state why a hearing is necessary and why the issues cannot be adequately addressed in written comments. All correspondence shall contain reference to Case No. CLK-2017-00004. Interested persons desiring to submit comments electronically may do so by following the instructions available at the Commission's website: <http://www.scc.virginia.gov/case>.

(3) The proposed revisions shall be posted on the Commission's website at <http://www.scc.virginia.gov/case>. Interested persons may also request a copy of the proposed revisions from the Clerk by telephone, mail or e-mail.

AN ATTESTED COPY HEREOF, together with a copy of the proposed revisions, shall be sent to the Registrar of Regulations for publication in the Virginia Register.

Regulations

AN ATTESTED COPY HEREOF shall be delivered to the Clerk of the Commission, who shall forthwith mail or e-mail a copy of this Order to any interested persons as he may designate, as well as provide a copy of the proposed revisions to any interested persons that may request a copy. A list of the foregoing persons that the Clerk may designate shall be filed in this case.

5VAC5-30-20. Definitions.

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

"Amendment" means a UCC record that amends the information contained in a financing statement. Amendments also include (i) assignments and (ii) continuation and termination statements.

"Assignment" means an amendment that assigns all or a part of a secured party's power to authorize an amendment to a financing statement.

"Continuation statement" shall have the meaning prescribed by § 8.9A-102(a)(27) of the Code of Virginia.

"File number" shall have the meaning prescribed by § 8.9A-102(a)(36) of the Code of Virginia.

"Filing office" means the Clerk's Office of the State Corporation Commission.

"Filing officer" means the Clerk of the State Corporation Commission.

"Filing officer statement" means a statement entered into the UCC information management system to ~~describe the correction of an error or inaccuracy made~~ explain an action by the filing office.

"Financing statement" shall have the meaning prescribed by § 8.9A-102(a)(39) of the Code of Virginia.

"Individual" means a natural person, living or deceased.

"Information statement" means a UCC record that indicates ~~that~~ a financing statement is inaccurate or wrongfully filed.

"Initial financing statement" means a UCC record containing the information required to be in an initial financing statement and that causes the filing office to establish the initial record of existence of a financing statement.

"Organization" means a legal person that is not an individual.

"Personal identifiable information" shall have the meaning prescribed by § 12.1-19 B of the Code of Virginia.

"Remitter" means a person who ~~tenders~~ delivers a UCC record to the filing office for filing, whether the person is a filer or an agent of a filer responsible for ~~tendering~~ delivering the UCC record for filing. "Remitter" does not include a

person responsible merely for the delivery of the UCC record to the filing office, such as the postal service or a courier service but does include a service provider who acts as a filer's representative in the filing process.

"Secured party of record" shall have the meaning prescribed by § 8.9A-511 of the Code of Virginia.

"Termination statement" shall have the meaning prescribed by § 8.9A-102(a)(80) of the Code of Virginia.

"Through date" means the most recent date that all submissions for a specified day have been indexed in the UCC information management system.

"UCC" means the Uniform Commercial Code - Secured Transactions (§ 8.9A-101 et seq. of the Code of Virginia).

"UCC information management system" means the information management system used by the filing office to store, index, and retrieve information relating to financing statements.

"UCC record" means an initial financing statement, an amendment, and an information or a filing officer statement, and shall not be deemed to refer exclusively to paper or paper-based writings.

5VAC5-30-30. General filing and search requirements.

A. UCC records may be ~~tendered for filing at~~ delivered to the filing office for filing as follows:

1. By personal delivery, at the filing office street address;
2. By courier delivery, at the filing office street address;
3. By postal delivery, to the filing office mailing address; or
4. By electronic delivery method provided and authorized by the filing office.

B. The filing time for a UCC record delivered to the filing office for filing by personal, ~~or courier, or postal~~ delivery is the time the UCC record is date-and-time stamped by the filing office even though the UCC record may not yet have been accepted for filing and may be subsequently rejected. The filing time for a UCC record delivered to the filing office for filing by postal delivery is the next close of business following the time of delivery (even though the UCC record may not yet have been accepted for filing and may be subsequently rejected). A UCC record delivered to the filing office for filing after regular business hours or on a day the filing office is not open for business will have a filing time of the close of business on the next day the filing office is open for business. The filing time for a UCC record delivered to the filing office for filing by authorized electronic delivery method is the date and time the UCC information management system receives the UCC record and determines that all the required elements of the transmission have been received in the required format.

C. UCC search requests may be delivered to the filing office by personal, courier, or postal delivery, or by electronic delivery method provided and authorized by the filing office.

5VAC5-30-40. Forms, fees, and payments.

A. Forms.

1. The filing office shall only accept forms for UCC records that conform to the requirements of this chapter.
2. The forms approved by the International Association of Commercial Administrators as they appear on the filing office's website (<http://www.scc.virginia.gov/clk/uccfile.aspx>) shall be accepted.
3. The filing office may approve other forms for acceptance, including additional forms approved by the International Association of Commercial Administrators.

B. Fees.

1. The fee for filing and indexing a UCC record is \$20.
2. The fee for submitting a UCC search request is \$7.00.
3. ~~The fee for furnishing UCC search copies is \$.50 for each page. The fee for affixing the seal of the commission to a certificate is \$3.00. There is no fee for furnishing a copy of a UCC record of 25 or fewer pages. The fee for furnishing a copy of a UCC record that exceeds 25 pages is \$10.00. For certifying a copy, the fee for the certificate and affixing thereto the seal of the commission or a facsimile thereof is \$6.00.~~

C. Methods of payment. Filing fees and fees for services provided under this chapter may be paid by the following methods:

1. Payment ~~in~~ by debit or credit card of a type approved by the filing office and cash shall be accepted if paid in person at the filing office.
2. Personal ~~checks~~ check, cashier's ~~checks~~ check and money ~~orders~~ order made payable to the State Corporation Commission or Treasurer of Virginia shall be accepted for payment if drawn on a bank acceptable to the filing office or if the drawer is acceptable to the filing office.
3. Payment by debit or credit card acceptable to of a type approved by the filing office ~~or electronic check may~~ shall be accepted for the filing or submission of ~~documents a document~~ delivered to the filing office for filing by authorized electronic delivery method.
4. The filing office may accept payment via electronic funds under National Automated Clearing House Association (NACHA) rules from remitters who have entered into appropriate NACHA-approved arrangements for such transfers and who authorize the relevant transfer pursuant to such arrangements and rules.

D. Overpayment and underpayment policies.

1. The filing office shall notify the remitter of the amount of any overpayment exceeding \$24.99 and send the remitter the appropriate procedure and form for requesting a refund. The filing office shall refund an overpayment of \$24.99 or less only upon the written request of the remitter. A request for a refund shall be delivered to the filing office within 12 months from the date of payment.
2. Upon receipt of a UCC record with an insufficient filing fee, the filing office shall return the UCC record to the remitter with a notice stating the deficiency and may retain the filing fee.

E. Uncollected filing fee payment. A filing may be voided by the filing office if the filing fee payment that is submitted by the remitter is dishonored, declined, refused, reversed, charged back to the commission, returned to the commission unpaid, or otherwise rejected for any reason by a financial institution or other third party, and after notice from the filing office, the remitter fails to submit a valid payment for the filing fee and any penalties.

F. Federal liens. A notice of lien, certificate and other notice affecting a federal tax lien or other federal lien presented to the filing office pursuant to the provisions of the Uniform Federal Lien Registration Act (§ 55-142.1 et seq. of the Code of Virginia) shall be treated as the most analogous UCC record unless the Uniform Federal Lien Registration Act or federal law provides otherwise.

Part II
UCC Record Requirements

5VAC5-30-50. Acceptance and refusal of UCC records; continuation statements.

A. The duties and responsibilities of the filing office with respect to the administration of the UCC are ministerial. In accepting for filing or refusing to file a UCC record pursuant to this chapter, the filing office does none of the following:

1. Determine the legal sufficiency or insufficiency of a UCC record;
2. Determine that a security interest in collateral exists or does not exist;
3. Determine that information in the UCC record is correct or incorrect, in whole or in part; or
4. Create a presumption that information in the UCC record is correct or incorrect, in whole or in part.

B. The first day on which a continuation statement may be filed is the day of the month corresponding to the date upon which the related financing statement would lapse in the sixth month preceding the month in which the financing statement would lapse. If there is no such corresponding date, the first day on which a continuation statement may be filed is the last

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day of the sixth month preceding the month in which the financing statement would lapse. The last day on which a continuation statement may be filed is the date upon which the financing statement lapses. If the lapse date falls on a Saturday, Sunday, or other day on which the filing office is not open, then the last day on which a continuation statement may be filed, if ~~tendered~~ delivered to the filing office for filing by personal, courier, or postal delivery, is the last day the filing office is open prior to the lapse date. An authorized electronic delivery method may be available to file a continuation statement on a Saturday, Sunday, or other day on which the filing office is not open. The relevant anniversary for a February 29 filing date shall be March 1 in the fifth or 30th year following the date of filing.

C. Except as provided in 5VAC5-30-40 D, if the filing office finds grounds to refuse a UCC record for filing, including those set forth in § 8.9A-516 (b) of the Code of Virginia, the filing office shall return the UCC record to the remitter and may retain the filing fee.

D. Nothing in this chapter shall prevent the filing office from communicating to a filer or a remitter that the filing office noticed apparent potential defects in a UCC record, whether or not it was filed or refused for filing. However, the filing office is under no obligation to do so and may not, in fact, have the resources to identify potential defects. The responsibility for the legal effectiveness of filing rests with filers and remitters and the filing office bears no responsibility for such effectiveness.

E. The filing office may act in accordance with § 12.1-19 B of the Code of Virginia with respect to submissions that contain personal identifiable information.

F. ~~If a secured party or a remitter demonstrates to the satisfaction of the filing office that a UCC record that was refused for filing should not have been refused, the filing office shall file the UCC record as provided in this chapter with a filing date and time assigned when the record was originally tendered for filing. If it is determined that the filing office refused to accept the record in error, the filing office shall file the UCC record with the filing date and time that were assigned, based on the method of delivery, by the filing office after the record was originally delivered to the filing office for filing.~~ The filing office shall also file a filing officer statement that states the effective date and time of filing, which shall be the date and time the UCC record was originally ~~tendered~~ delivered to the filing office for filing.

Part III

UCC Record Filing and Searches

5VAC5-30-60. Filing and data entry procedures.

A. The filing office may correct errors made by its personnel in the UCC information management system at any time. ~~If the correction occurs after the filing office has issued a certification, the~~ The filing office shall file a filing officer

statement in the UCC information management system identifying the UCC record to which it relates, the date of the correction or other action taken, and ~~explaining the nature an~~ explanation of the corrective or other action taken. The ~~record~~ filing officer statement shall be preserved as long as the UCC record of the initial financing statement is preserved in the UCC information management system.

B. An error by a filer or remitter is the responsibility of that person. It can be corrected by filing an amendment or it can be disclosed by filing an information statement pursuant to § 8.9A-518 of the Code of Virginia.

C. 1. A UCC record ~~tendered~~ delivered to the filing office for filing shall designate whether a name is a name of an individual or an organization. If the name is that of an individual, the surname, first personal name, additional name or names, and any suffix shall be given.

2. Organization names are entered into the UCC information management system exactly as set forth in the UCC record, even if it appears that multiple names are set forth in the UCC record or if it appears that the name of an individual has been included in the field designated for an organization name.

3. The filing office will only accept forms that designate separate fields for individual and organization names and separate fields for the surname, first personal name, additional name or names, and any suffix. Such forms diminish the possibility of filing office error and help assure that filers' expectations are met. However, the inclusion of names in an incorrect field or the failure to transmit names accurately to the filing office may cause a financing statement to be ineffective.

D. The filing office shall take no action upon receipt of a notification, formal or informal, of a bankruptcy proceeding involving a debtor included in the UCC information management system.

5VAC5-30-70. Search requests and reports.

A. The filing office maintains for public inspection a searchable index for all UCC records. The index shall provide for the retrieval of all filed UCC records by the name of the debtor and by the file number of the initial financing statement.

B. Search requests shall be made only on the Information Request form (Form UCC11) and shall include:

1. The name of the debtor to be searched, specifying whether the debtor is an individual or organization. A search request will be processed using the exact name provided by the requestor.

2. The name and address of the person to whom the search report is to be sent.

3. Payment of the appropriate fee, which shall be made by a method set forth in this chapter.

C. Search requests may include:

1. A request that copies of UCC records found in the search be included with the search report, and
2. Instructions on the mode of delivery desired, if other than by postal delivery, which shall be followed if the desired mode is acceptable to the filing office.

D. Search results are produced by the application of standardized search logic to the name presented to the filing office. The following criteria apply to searches:

1. There is no limit to the number of matches that may be returned in response to the search request.
2. No distinction is made between upper and lower case letters.
3. Punctuation marks and accents are disregarded.
4. "Noise words" are limited to "an," "and," "for," "of," and "the." The word "the" is disregarded. Other noise words appearing anywhere except at the beginning of an organization name are disregarded. Certain business words are modified to a standard abbreviation: company to "co," corporation to "corp," limited to "Ltd," incorporated to "inc."
5. All spaces are disregarded.
6. After using the preceding criteria to modify the name to be searched, the search will reveal names of debtors that are contained in unexpired or all initial financing statements in an alphabetical list.

E. Reports created in response to a search request shall include the following:

1. The date and time the report was generated.
2. Identification of the name searched.
3. The through date as of the date and time the report was generated.
4. For an organization, the name as it appears after application of the standardized search logic.
5. Identification of each unexpired initial financing statement or all initial financing statements filed on or prior to the report date and time corresponding to the search criteria, by name of debtor, by file number, and by file date and file time.
6. For each initial financing statement on the report, a listing of all related UCC records filed by the filing office on or prior to the report date.
7. Copies of all UCC records revealed by the search and requested by the requestor.

F. The filing office may provide access to the searchable index via the Internet that produces search results beyond exact name matches. Search results obtained via the Internet shall not constitute an official search and will not be certified by the filing office.

5VAC5-40-10. Fees to be charged by the commission.

A. The Office of the Clerk shall charge and collect a fee of \$6.00 for each certificate of fact provided pursuant to § 12.1-20 of the Code of Virginia.

B. The commission shall charge and collect for furnishing ~~and certifying a paper copy of any document, instrument, or paper or any information from its records \$.50 per page and \$3.00 for the certificate and affixing thereto the seal of the commission or a facsimile thereof~~ a fee as set forth in this subsection.

1. If the number of pages is 25 or fewer, no charge.
2. If the number of pages is between 26 and 50, \$10.
3. If the number of pages is 51 or more, \$20.

If the commission receives two or more requests for copies of documents or information that it reasonably believes are intended to evade the payment of the charge for furnishing a copy, the requests may be aggregated and treated as a single request.

C. For certifying a paper copy, the commission shall charge and collect \$6.00 for the certificate and affixing thereto the seal of the commission or a facsimile thereof.

D. The commission may charge and collect reasonable fees:

1. For providing records from a computer database, an electronic data processing system, or any other structured collection of data; or
2. For abstracting or summarizing data or creating a record that does not already exist, if the commission chooses to fulfill a request for same.

VA.R. Doc. No. R18-5272; Filed October 11, 2017, 11:26 a.m.

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

CRIMINAL JUSTICE SERVICES BOARD

Final Regulation

Titles of Regulations: 6VAC20-172. Regulations Relating to Private Security Services Businesses (amending 6VAC20-172-10, 6VAC20-172-40, 6VAC20-172-50, 6VAC20-172-80).

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6VAC20-174. Regulations Relating to Private Security Services Registered Personnel (amending 6VAC20-174-10, 6VAC20-174-150).

Statutory Authority: § 9.1-141 of the Code of Virginia.

Effective Date: December 1, 2017.

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

Summary:

The amendments (i) allow private security services businesses licensed by the Department of Criminal Justice Services (DCJS) to independently contract with private investigators and personal protection specialists registered with DCJS, (ii) require that every registered personal protection specialist and private investigator hired as an independent contractor maintain \$1 million in general aggregate liability insurance and provide evidence of such insurance to the private security services business with which they contract, and (iii) require that all private security businesses secure a surety bond in the amount of \$1 million or maintain \$1 million in general aggregate liability insurance.

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

Part I Definitions

6VAC20-172-10. Definitions.

In addition to the words and terms defined in § 9.1-138 of the Code of Virginia, the following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

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

"Board" means the Criminal Justice Services Board or any successor board or agency.

"Date of hire" means the date any employee of a private security services business or training school performs services regulated or required to be regulated by the department.

"Department" or "DCJS" means the Department of Criminal Justice Services or any successor agency.

"Director" means the chief administrative officer of the department.

"Electronic images" means an acceptable method of maintaining required documentation through the scanning, storage, and maintenance of verifiable electronic copies of original documentation.

"Employee" means a natural person employed by a licensee to perform private security services that are regulated by the department.

"Firearms endorsement" means a method of regulation that identifies an individual registered as a private security registrant and has successfully completed the annual firearms training and has met the requirements as set forth in 6VAC20-174.

"Firm" means a business entity, regardless of method of organization, applying for an initial or renewal private security services business license or private security services training school certification.

"Incident" means an event that exceeds the normal extent of one's duties.

"Independent contractor" means a self-employed personal protection specialist or a private investigator who (i) maintains comprehensive liability insurance in an amount fixed by the department, (ii) has been issued a registration by the department, and (iii) enters into a contract to perform work for a private security business licensed to provide services within the Commonwealth.

"Intermediate weapon" means a tool not fundamentally designed to cause deadly force with conventional use. This would exclude all metal ammunition firearms or edged weapons. These weapons include ~~but are not limited to~~ baton/collapsible baton, chemical irritants, electronic restraining devices, projectiles, and other less lethal weapons as defined by the department.

"Licensed firm" means a business entity, regardless of method of organization, that holds a valid private security services business license issued by the department.

"Licensee" means a licensed private security services business.

"Official documentation" means personnel records; Certificate of Release or Discharge from Active Duty (DD214); copies of business licenses indicating ownership; law-enforcement transcripts; certificates of training completion; a signed letter provided directly by a current or previous employer detailing dates of employment and job duties; college transcripts; letters of commendation; private security services registrations, certifications or licenses from other states; and other employment, training, or experience verification documents. A resume is not considered official documentation.

"On duty" means the time during which private security services business personnel receive or are entitled to receive

compensation for employment for which a registration or certification is required.

"Performance of his duties" means on duty in the context of this chapter.

"Person" means any individual, group of individuals, firm, company, corporation, partnership, business, trust, association, or other legal entity.

"Physical address" means the location of the building that houses a private security services business or training school or the location where the individual principals of a business reside. A post office box is not a physical address.

"Principal" means any sole proprietor, individual listed as an officer or director with the Virginia State Corporation Commission, board member of the association, or partner of a licensed firm or applicant for licensure.

"Private security services business personnel" means each employee of a private security services business who is employed as an unarmed security officer, armed security officer/courier, armored car personnel, security canine handler, detector canine handler, private investigator, personal protection specialist, alarm respondent, a locksmith, central station dispatcher, electronic security employee, an electronic security sales representative, electronic security technician, or electronic security technician's assistant.

"Reciprocity" means the relation existing between Virginia and any other state, commonwealth, or province as established by agreements approved by the board.

"Recognition" means the relation of accepting various application requirements between Virginia and any other state, commonwealth, or province as established by agreements approved by the board.

"Related field" means any field with training requirements, job duties, and experience similar to those of the private security services field in which the applicant wishes to be licensed, certified, or registered. This term includes law enforcement and certain categories of the military.

"This chapter" means the Regulations Relating to Private Security Services Businesses (6VAC20-172).

Part IV

Business License Application Procedures; Administrative Requirements; Standards of Conduct

6VAC20-172-40. Initial business license application.

A. Prior to the issuance of a private security services business license, the applicant shall meet or exceed the requirements of licensing and application submittal to the department as set forth in this section.

B. Each person seeking a license shall file a completed application provided by the department including:

1. For each principal and supervisor of the applying business and for each electronic security employee of an electronic security services business, his fingerprints pursuant to this chapter;

2. Documentation verifying that the applicant has secured a surety bond in the amount of ~~\$100,000~~ \$1 million executed by a surety company authorized to do business in Virginia, or a certificate of insurance reflecting the department as a certificate holder, and showing a policy of comprehensive general liability insurance ~~with a in the~~ in the minimum coverage amount of ~~\$100,000 per individual occurrence and \$300,000~~ \$1 million of general aggregate liability insurance issued by an insurance company authorized to do business in Virginia.

a. Every personal protection specialist and private investigator who has been issued a registration by the department and is hired as an independent contractor by a licensed private security services business shall maintain comprehensive general liability insurance in the minimum coverage amount of \$1 million of general aggregate liability insurance; and

b. Documentation verifying the personal protection specialist or private investigator has obtained the required insurance shall be provided to the private security services business prior to the hiring of such independent contractor;

3. For each nonresident applicant for a license, on a form provided by the department, a completed irrevocable consent for the department to serve as service agent for all actions filed in any court in this Commonwealth;

4. For each applicant for a license except sole proprietor or partnership, the identification number issued by the Virginia State Corporation Commission for verification that the entity is authorized to conduct business in the Commonwealth;

5. A physical address in Virginia where records required to be maintained by the Code of Virginia and this chapter are kept and available for inspection by the department. A post office box is not a physical address;

6. On the license application, designation of at least one individual as compliance agent who is certified or eligible for certification;

7. The applicable, nonrefundable license application fee; and

8. Designation on the license application of the type of private security business license the applicant is seeking. The initial business license fee includes one category. A separate fee will be charged for each additional category. The separate categories are identified as follows: (i) security officers/couriers (armed and unarmed), (ii) private investigators, (iii) electronic security personnel, (iv)

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armored car personnel, (v) personal protection specialists, (vi) locksmiths, and (vii) detector canine handlers and security canine handlers. Alarm respondents crossover into both the security officer and electronic security category; therefore, if an applicant is licensed in either of these categories, he can provide these services without an additional category fee.

C. Upon completion of the initial license application requirements, the department may issue an initial license for a period not to exceed 24 months.

D. The department may issue a letter of temporary licensure to businesses seeking licensure under § 9.1-139 of the Code of Virginia for not more than 120 days while awaiting the results of the state and national fingerprint search conducted on the principals and compliance agent of the business, provided the applicant has met the necessary conditions and requirements.

E. A new license is required whenever there is any change in the ownership or type of organization of the licensed entity that results in the creation of a new legal entity. Such changes include ~~but are not limited to:~~

1. Death of a sole proprietor;
2. Death or withdrawal of a general partner in a general partnership or the managing partner in a limited partnership; and
3. Formation or dissolution of a corporation, a limited liability company, or an association or any other business entity recognized under the laws of the Commonwealth of Virginia.

F. Each license shall be issued to the legal business entity named on the application, whether it is a sole proprietorship, partnership, corporation, or other legal entity, and shall be valid only for the legal entity named on the license. No license shall be assigned or otherwise transferred to another legal entity.

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

H. Each licensee shall be a United States citizen or legal resident alien of the United States.

6VAC20-172-50. Renewal business license application.

A. Applications for license renewal should be received by the department at least 30 days prior to expiration. The department will provide a renewal notification to the last known mailing address of the licensee. However, if a renewal notification is not received by the licensee, it is the responsibility of the licensee to ensure renewal requirements are filed with the department. License renewal applications must be received by the department and all license

requirements must be completed prior to the expiration date or shall be subject to all applicable, nonrefundable renewal fees plus reinstatement fees. Outstanding fees or monetary penalties owed to DCJS must be paid prior to issuance of said renewal.

B. Licenses will be renewed for a period not to exceed 24 months.

C. The department may renew a license when the following are received by the department:

1. A properly completed renewal application;
2. Documentation verifying that the applicant has secured and maintained a surety bond in the amount of ~~\$100,000~~ \$1 million executed by a surety company authorized to do business in Virginia; or a certificate of insurance reflecting the department as a certificate holder; and showing a policy of comprehensive general liability insurance with a in the minimum coverage amount of \$100,000 per individual occurrence and \$300,000 \$1 million general aggregate issued by an insurance company authorized to do business in Virginia.

a. Every personal protection specialist and private investigator who has been issued a registration by the department and is hired as an independent contractor by a licensed private security services business shall maintain comprehensive general liability insurance in the minimum coverage amount of \$1 million of general aggregate liability insurance; and

b. Documentation verifying the personal protection specialist or private investigator has obtained the required insurance shall be provided to the private security services business prior to the hiring of such independent contractor;

3. Fingerprint records for any new or additional principals submitted to the department within 30 days of their hire date provided, however, that any change in the ownership or type of organization of the licensed entity has not resulted in the creation of a new legal entity;

4. On the application, designation of at least one compliance agent who has satisfactorily completed all applicable training requirements;

5. The applicable, nonrefundable license renewal fee and applicable category of service fees; and

6. On the first day of employment, each new and additional supervisor's fingerprints submitted to the department pursuant to § 9.1-139 I of the Code of Virginia.

D. Each business applying for a license renewal shall be in good standing in every jurisdiction where licensed, registered, or certified in a private security services or related field. This subsection shall not apply to any probationary periods during

which the individual is eligible to operate under the license, registration, or certification.

E. Any renewal application received after the expiration date of a license shall be subject to the requirements set forth by the reinstatement provisions of this chapter.

F. On the renewal application the licensee must designate the type of private security business license he wishes to renew. The fee will be based upon the category or categories selected on the renewal application.

6VAC20-172-80. Business standards of conduct.

A licensee shall:

1. Conform to all requirements pursuant to the Code of Virginia and this chapter.
2. Ensure that all employees regulated or required to be regulated by the board conform to all application requirements, administrative requirements, and standards of conduct pursuant to the Code of Virginia, 6VAC20-174, and this chapter.
3. Not direct any employee regulated or required to be regulated by the board to engage in any acts prohibited by the Code of Virginia, 6VAC20-174, and this chapter.
4. Employ individuals regulated or required to be regulated as follows:
 - a. A licensee shall employ or otherwise utilize individuals possessing a valid registration issued by the department showing the registration categories required to perform duties requiring registration pursuant to the Code of Virginia;
 - b. A licensee shall not allow individuals requiring registration as armored car personnel, armed security officers/couriers, armed alarm respondents with firearm endorsement, private investigators, personal protection specialists, detector canine handlers, or security canine handlers to perform private security services until such time as the individual has been issued a registration by the department;
 - c. A licensee may employ individuals requiring registration as an unarmed alarm respondent, a locksmith, a central station dispatcher, an electronic security sales representative, an electronic security technician, an unarmed armored car driver, an unarmed security officer, or an electronic security technician's assistant for a period not to exceed 90 consecutive days in any registered category listed in this subdivision 4 c while completing the compulsory minimum training standards as set forth in 6VAC20-174 provided:

(1) The individual's fingerprint card has been submitted;

(2) The individual is not employed in excess of 120 days without having been issued a registration from the department; and

(3) The individual did not fail to timely complete the required training with a previous employer;

d. A licensee shall not employ any individual carrying or having access to a firearm in the performance of his duties who has not obtained a valid registration and firearms endorsement from the department; and

e. A licensee shall maintain appropriate documentation to verify compliance with these requirements. A licensee shall maintain these documents after employment is terminated for a period of not less than three years.

5. Not contract or subcontract any private security services in the Commonwealth of Virginia to a person not licensed by the department. Verification of a contractor's or subcontractor's license issued by the department shall be maintained for a period of not less than three years.

6. Enter into contracts with self-employed personal protection specialists and private investigators to work as independent contractors in accordance with § 9.1-144 of the Code of Virginia and require documentation verifying the personal protection specialist or private investigator has obtained the required insurance in accordance with 6VAC20-172-40 and 6VAC20-172-50 prior to the hiring of such independent contractor.

~~6.~~ 7. Ensure that the compliance agent conforms to all applicable application requirements, administrative requirements, and standards of conduct pursuant to the Code of Virginia and this chapter.

~~7.~~ 8. Permit the department during regular business hours to inspect, review, or copy those documents, electronic images, business records, or training records that are required to be maintained by the Code of Virginia and this chapter.

~~8.~~ 9. Not violate or aid and abet others in violating the provisions of Article 4 (§ 9.1-138 et seq.) of Chapter 1 of Title 9.1 of the Code of Virginia, 6VAC20-173, 6VAC20-174, or this chapter.

~~9.~~ 10. Not commit any act or omission that results in a private security license or registration being suspended, revoked, or not renewed, or the licensee or registrant otherwise being disciplined in any jurisdiction.

~~10.~~ 11. Not have been convicted or found guilty in any jurisdiction of the United States of any felony or a misdemeanor involving moral turpitude, assault and battery, damage to real or personal property, controlled substances or imitation controlled substances as defined in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 of the Code of Virginia, prohibited sexual behavior as

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described in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 of the Code of Virginia, or firearms. Any plea of nolo contendere shall be considered a conviction for the purpose of this chapter. The record of conviction certified or authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be prima facie evidence of such guilt.

~~11.~~ 12. Not obtain or aid and abet others to obtain a license, license renewal, registration, registration renewal, certification, certification renewal, or firearms endorsement through any fraud or misrepresentation.

~~12.~~ 13. Include the business license number issued by the department on all business advertising materials pursuant to the Code of Virginia. Business advertising materials containing information regarding more than one licensee must contain the business license numbers of each licensee identified.

~~13.~~ 14. Not conduct a private security services business in such a manner as to endanger the public health, safety, and welfare.

~~14.~~ 15. Not falsify or aid and abet others in falsifying training records for the purpose of obtaining a license, registration, or certification.

~~15.~~ 16. Not represent as one's own a license issued to another private security services business.

~~16.~~ 17. When providing central station monitoring services, attempt to verify the legitimacy of a burglar alarm activation by calling the site of the alarm. If unable to make contact, call one additional number provided by the alarm user who has the authority to cancel the dispatch. This shall not apply if the alarm user has provided written authorization requesting immediate or one-call dispatch to both his local police department and his dealer of record. This shall not apply to duress or hold-up alarms.

~~17.~~ 18. Not perform any unlawful or negligent act resulting in loss, injury, or death to any person.

~~18.~~ 19. Utilize vehicles for private security services using or displaying an amber flashing light only as specifically authorized by § 46.2-1025 A 9 of the Code of Virginia.

~~19.~~ 20. Not use or display the state seal of Virginia or the seal of the Department of Criminal Justice Services, or any portion thereof, or the seal of any political subdivision of the Commonwealth, or any portion thereof, as a part of any logo, stationery, letter, training document, business card, badge, patch, insignia, or other form of identification or advertisement.

~~20.~~ 21. Not provide information obtained by the firm or its employees to any person other than the client who secured the services of the licensee without the client's prior written consent. Provision of information in response to official

requests from law-enforcement agencies, the courts, or the department shall not constitute a violation of this chapter. Provision of information to law-enforcement agencies pertinent to criminal activity or to planned criminal activity shall not constitute a violation of this chapter.

~~21.~~ 22. Not engage in acts of unprofessional conduct in the practice of private security services.

~~22.~~ 23. Not engage in acts of negligent or incompetent private security services.

~~23.~~ 24. Not make any misrepresentation or false promise to a private security services business client or potential private security services business client.

~~24.~~ 25. Not violate any state or local ordinance.

~~25.~~ 26. Satisfy all judgments to include binding arbitrations related to private security services not provided.

~~26.~~ 27. Not publish or cause to be published any material relating to private security services that contains an assertion, representation, or statement of fact that is false, deceptive, or misleading.

~~27.~~ 28. Not conduct private security business under a fictitious or assumed name unless the name is on file with the Department of Criminal Justice Services. This does not apply to a private investigator conducting a "pretext," provided that the private investigator does not state that he is representing a private security business that does not exist or otherwise prohibited under federal law.

~~28.~~ 29. Not act as or be an ostensible licensee for undisclosed persons who do or will control directly or indirectly the operations of the licensee's business.

~~29.~~ 30. Not provide false or misleading information to representatives of the department.

~~30.~~ 31. Not provide materially incorrect, misleading, incomplete, or untrue information on any email, application, or other document filed with the department.

Part I Definitions

6VAC20-174-10. Definitions.

In addition to the words and terms defined in § 9.1-138 of the Code of Virginia, the following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

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

"Board" means the Criminal Justice Services Board or any successor board or agency.

"Business advertising material" means display advertisements in telephone directories, on letterhead, on

business cards, in local newspaper advertising, and in contracts.

"Certified training school" means a training school that is certified by the department for the specific purpose of training private security services business personnel in at least one category of the compulsory minimum training standards as set forth by the board.

"Class" means a block of instruction no less than 50 minutes in length on a particular subject.

"Classroom training" means instruction conducted in person by an instructor to students in an organized manner utilizing a lesson plan.

"Date of hire" means the date any employee of a private security services business or training school performs services regulated or required to be regulated by the department.

"Department" or "DCJS" means the Department of Criminal Justice Services or any successor agency.

"Director" means the chief administrative officer of the department.

"Electronic images" means an acceptable method of maintaining required documentation through the scanning, storage, and maintenance of verifiable electronic copies of original documentation.

"Employee" means a natural person employed by a licensee to perform private security services that are regulated by the department.

"End user" means any person who purchases or leases electronic security equipment for use in that person's home or business.

"Entry-level training" means the compulsory initial training for regulated categories and basic or intermediate firearms training standards adopted by the board for private security services business personnel who are either new registrants or failed to timely complete in-service training or firearms retraining within the prescribed time period.

"Firearms endorsement" means a method of regulation that identifies an individual registered as a private security registrant and has successfully completed the annual firearms training and has met the requirements as set forth in this chapter.

"Independent contractor" means a self-employed personal protection specialist or a private investigator who (i) maintains comprehensive liability insurance in an amount fixed by the department, (ii) has been issued a registration by the department, and (iii) enters into a contract to perform work for a private security business licensed to provide services within the Commonwealth.

"In-service training requirement" means the compulsory in-service training standards adopted by the Criminal Justice Services Board for private security services business personnel.

"Intermediate weapon" means a tool not fundamentally designed to cause deadly force with conventional use. This would exclude all metal ammunition firearms or edged weapons. These weapons include ~~but are not limited to~~ baton/collapsible baton, chemical irritants, electronic restraining devices, projectiles, and other less lethal weapons as defined by the department.

"Job-related training" means training specifically related to the daily job functions of a given category of registration or certification as defined in this chapter.

"Official documentation" means personnel records; Certificate of Release or Discharge from Active Duty (DD214); copies of business licenses indicating ownership; law-enforcement transcripts; certificates of training completion; a signed letter provided directly by a current or previous employer detailing dates of employment and job duties; college transcripts; letters of commendation; private security services registrations, certifications, or licenses from other states; and other employment, training, or experience verification documents. A resume is not considered official documentation.

"On duty" means the time during which private security services business personnel receive or are entitled to receive compensation for employment for which a registration or certification is required.

"Online training" means training approved by the department and offered via the Internet or an Intranet for the purpose of remote access on-demand or distance training that meets all requirements for compulsory minimum training standards.

"Performance of his duties" means on duty in the context of this chapter.

"Person" means any individual, group of individuals, firm, company, corporation, partnership, business, trust, association, or other legal entity.

"Private security services business personnel" means each employee of a private security services business who is employed as an unarmed security officer, armed security officer/courier, armored car personnel, security canine handler, detector canine handler, private investigator, personal protection specialist, alarm respondent, locksmith, central station dispatcher, electronic security employee, electronic security sales representative, electronic security technician, or electronic security technician's assistant.

"Reciprocity" means the relation existing between Virginia and any other state, commonwealth, or province as established by agreements approved by the board.

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"Recognition" means the relation of accepting various application requirements between Virginia and any other state, commonwealth, or province as established by agreements approved by the board.

"Related field" means any field with training requirements, job duties, and experience similar to those of the private security services field in which the applicant wishes to be licensed, certified, or registered. This term includes law enforcement and certain categories of the military.

"Session" means a group of classes comprising the total hours of mandated compulsory minimum training standards in any of the categories of licensure, registration, or certification in accordance with this part and in accordance with §§ 9.1-150.2, 9.1-185.2 and 9.1-186.2 of the Code of Virginia.

"This chapter" means the Regulations Relating to Private Security Services Registered Personnel (6VAC20-174).

"Training certification" means verification of the successful completion of any training requirement established in this chapter.

"Training requirement" means any entry-level, in-service, or firearms training or retraining standard established in this chapter.

"Training school director" means a natural person designated by a principal of a certified private security services training school to assure the compliance of the private security services training school with all applicable requirements as provided in the Code of Virginia and this chapter.

"Uniform" means any clothing with a badge, patch, or lettering that clearly identifies persons to any observer as private security services business personnel, not law-enforcement officers.

6VAC20-174-150. Standards of conduct.

A registrant shall:

1. Conform to all requirements pursuant to the Code of Virginia and this chapter.
2. Not violate or aid and abet others in violating the provisions of Article 4 (§ 9.1-138 et seq.) of Chapter 1 of Title 9.1 of the Code of Virginia or this chapter.
3. Not commit any act or omission that results in a private security license, registration, or certification being suspended, revoked, or not renewed or the licensee, registrant, or certificate holder otherwise being disciplined in any jurisdiction.
4. Not have been convicted or found guilty in any jurisdiction of the United States of any felony or a misdemeanor involving moral turpitude, assault and battery, damage to real or personal property, controlled

substances or imitation controlled substances as defined in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 of the Code of Virginia, prohibited sexual behavior as described in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 of the Code of Virginia, or firearms. Any plea of nolo contendere shall be considered a conviction for the purpose of this chapter. The record of conviction certified or authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be prima facie evidence of such guilt.

5. Not obtain a license, license renewal, registration, registration renewal, certification, or certification renewal through any fraud or misrepresentation.

6. Not solicit or contract to provide any private security services without first having obtained a private security services business license with the department.

7. Maintain comprehensive general liability insurance in the minimum amount of \$1 million in general aggregate liability insurance when the registrant:

a. Is self employed;

b. Is a personal protection specialist or private investigator; and

c. Has entered into a contract with a licensed private security business to work as an independent contractor.

7- 8. Carry a valid registration card or valid temporary registration letter at all times while on duty. Individuals requiring registration as an unarmed security officer, an alarm respondent, a locksmith, a central station dispatcher, an electronic security sales representative, or an electronic security technician may be employed for not more than 90 consecutive days in any category listed in this subdivision while completing the compulsory minimum training standards and may not be employed in excess of 120 days without having been issued a registration or an exception from the department and must carry a photo identification and authorization from their employer on a form provided by the department at all times while on duty.

8- 9. Carry the private security state-issued registration card at all times while on duty once the authorization has been approved from the department, except those individuals operating outside the Commonwealth of Virginia who shall obtain the state-issued registration card prior to providing services when physically located in the Commonwealth.

9- 10. Perform those duties authorized by his registration only while employed by a licensed private security services business and only for the clients of the licensee. This shall not be construed to prohibit an individual who is registered as an armed security officer from being employed by a nonlicensee as provided for in § 9.1-140 of the Code of Virginia.

~~10.~~ 11. Possess a valid firearms training endorsement if he carries or has access to firearms while on duty and then only those firearms by type of action and caliber to which he has been trained on and is qualified to carry. Carry or have access to a patrol rifle while on duty only with the expressed written authorization of the licensed private security services business employing the registrant.

~~11.~~ 12. Carry a firearm concealed while on duty only with the expressed written authorization of the licensed private security services business employing the registrant and only in compliance with Article 6.1 (§ 18.2-307.1 et seq.) of Chapter 7 of Title 18.2 of the Code of Virginia.

~~12.~~ 13. Transport, carry, and utilize firearms while on duty only in a manner that does not endanger the public health, safety, and welfare.

~~13.~~ 14. If authorized to make arrests, make arrests in full compliance with the law and using only the minimum force necessary to effect an arrest.

~~14.~~ 15. Engage in no conduct that shall mislead or misrepresent through word, deed, or appearance that a registrant is a law-enforcement officer or other government official.

~~15.~~ 16. Display one's registration or temporary registration along with a photo identification while on duty in response to the request of a law-enforcement officer, department personnel, or client. Individuals providing private security services as authorized pursuant to subdivision ~~7~~ 8 of this section who have not received their registration must display a state-issued photo identification and authorization while on duty in response to the request of a law-enforcement officer, department personnel, or a client.

~~16.~~ 17. Not perform any unlawful or negligent act resulting in a loss, injury, or death to any person.

~~17.~~ 18. If a uniform is required, wear the uniform required by his employer. If wearing a uniform while employed as an armed security officer, unarmed security officer, alarm respondent, or armored car personnel, that uniform must:

a. Include at least one insignia clearly identifying the name of the licensed firm employing the individual and, except armored car personnel, a nameplate or tape bearing, at a minimum, the individual's last name attached on the outermost garment, except rainwear worn only to protect from inclement weather; and

b. Include no patch or other writing (i) containing the word "police" or any other word suggesting a law-enforcement officer; (ii) containing the word "officer" unless used in conjunction with the word "security"; or (iii) resembling any uniform patch or insignia of any duly constituted law-enforcement agency of this Commonwealth, its political subdivisions, or the federal government.

~~18.~~ 19. When providing central station monitoring services, attempt to verify the legitimacy of a burglar alarm activation by calling the site of the alarm. If unable to make contact, call one additional number provided by the alarm user who has the authority to cancel the dispatch. This shall not apply if the alarm user has provided written authorization requesting immediate dispatch or one-call dispatch to both his local police department and his dealer of record. This shall not apply to duress or hold-up alarms.

~~19.~~ 20. Act only in such a manner that does not endanger the public health, safety, and welfare.

~~20.~~ 21. Not represent as one's own a registration issued to another individual.

~~21.~~ 22. Not falsify, or aid and abet others in falsifying, training records for the purpose of obtaining a license, registration, certification, or certification as a compliance agent, training school, school director, or instructor.

~~22.~~ 23. Not provide information obtained by the registrant or his employing firm to any person other than the client who secured the services of the licensee without the client's prior written consent. Provision of information in response to official requests from law-enforcement agencies, the courts, or the department shall not constitute a violation of this chapter. Provision of information to law-enforcement agencies pertinent to criminal activity or to planned criminal activity shall not constitute a violation of this chapter.

~~23.~~ 24. Not engage in acts of unprofessional conduct in the practice of private security services.

~~24.~~ 25. Not engage in acts of negligent or incompetent private security services.

~~25.~~ 26. Not make any misrepresentation or make a false promise to a private security services business client or potential private security services business client.

~~26.~~ 27. Satisfy all judgments to include binding arbitrations related to private security services not provided.

~~27.~~ 28. Not provide false or misleading information to representatives of the department.

~~28.~~ 29. Not provide materially incorrect, misleading, incomplete, or untrue information on a registration application, renewal application, or any other document filed with the department.

VA.R. Doc. No. R16-4548; Filed October 4, 2017, 2:41 p.m.



Regulations

TITLE 8. EDUCATION

STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

Final Regulation

REGISTRAR'S NOTICE: The State Council of Higher Education for Virginia is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 B 4 of the Code of Virginia, which exempts regulations relating to grants of state or federal funds or property.

Titles of Regulations: **8VAC40-131. Virginia Student Financial Assistance Program Regulations (repealing 8VAC40-131-10 through 8VAC40-131-230).**

8VAC40-132. Virginia Student Financial Assistance Program Regulations (adding 8VAC40-132-10 through 8VAC40-132-230).

Statutory Authority: § 23.1-636 of the Code of Virginia.

Effective Date: November 1, 2017.

Agency Contact: Melissa Wyatt, Senior Associate for Financial Aid, State Council of Higher Education for Virginia, 101 North 14th Street, James Monroe Building, Richmond, VA 23219, telephone (804) 225-4113, FAX (804) 225-2604, TTY (804) 371-8017, or email melissacollumwyatt@schev.edu.

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

Summary:

The regulatory action repeals the existing Virginia Student Financial Assistance Program Regulations, 8VAC40-131, and replaces it with a new regulation, 8VAC40-132. The new regulation incorporates changes in law, updates terminology, and reorganizes provisions for clarity.

CHAPTER 132 VIRGINIA STUDENT FINANCIAL ASSISTANCE PROGRAM REGULATIONS

Part I Definitions

8VAC40-132-10. Definitions.

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

"Academic period" or "semester" means a division of an academic year approximately 15 to 16 weeks in length from the first day of classes through the last day of exams for the fall or spring enrollment periods.

"Academic year" or "regular session" means a division of an award year that normally extends from late August to mid May, consists of the institution's fall and spring semesters, and is exclusive of the institution's summer session.

"Award" means a grant from state funds appropriated within the item for student financial assistance in the annual Appropriation Act under the Virginia Guaranteed Assistance Program or Commonwealth grant eligibility criteria.

"Award schedule" means the table or formula used by the institution to award program funds to full-time students for the academic year; awards for less than full-time students for the academic year shall be reviewed and adjusted according to the institution's awarding policies.

"Award year" means the 12-month enrollment period during which an institution holds classes, comprised of the regular session and the summer session.

"Book allowance" means the cost of attendance allowance for education-related book and supply expenses as determined by an institution.

"Census date" means the point at which a student's credit hour enrollment is locked for financial aid purposes. At this point in the term, credit hours are locked and financial aid for the term is adjusted to reflect the official number of attempted credit hours.

"Certificate of undergraduate study program" means a formal award certifying the satisfactory completion of a post-secondary education program that has fewer credits than an associate degree.

"Class level" means the institutionally determined undergraduate freshman (first year), sophomore (second year), junior (third year), and senior (fourth year) classifications, which typically, but not always, transition at 30-credit-hour intervals per class level.

"Commonwealth Award" means a grant from state funds appropriated within the item for student financial assistance in the annual Appropriation Act under Commonwealth grant eligibility criteria.

"Cost of attendance" means the sum of tuition, required fees, room, board, books, supplies, and other education related expenses, as determined by an institution for purposes of calculating a student's financial need and awarding federal student aid funds.

"Council" means the State Council of Higher Education for Virginia or its designated staff.

"Diploma program" means a formal award certifying the satisfactory completion of a post-secondary education program that has fewer credits than an associate degree but normally more than a certificate.

"Domicile Guidelines" means the Domicile Guidelines and associated addenda of the State Council of Higher Education dated October 25, 2016.

"Domiciliary resident of Virginia" means a student determined by an institution to meet the domicile eligibility requirements specified by §§ 23.1-502 and 23.1-505 of the Code of Virginia and augmented by the Domicile Guidelines.

"Eligible program" means a Title IV-eligible curriculum of courses in a certificate of undergraduate study, diploma, or degree program at the undergraduate, graduate, or first professional level.

"Equivalent need" means a level or range of remaining need, as defined by the institution in its award schedule for purposes of awarding program funds.

"Expected family contribution" or "EFC" is a measure of a student's family's financial strength and is calculated according to federal aid methodology and used to determine eligibility for need-based Title IV aid. The institution may exercise professional judgment to adjust the student's EFC, as permitted under federal law, based on factors that affect the family's ability to pay. For students eligible for a state award but the federal processor has not calculated the student's EFC, the institution shall calculate the student's EFC using the appropriate federal EFC worksheet.

"Financial need" means any positive difference between a student's cost of attendance and the student's expected family contribution. (See also definition of "remaining need".)

"Full-time" means enrollment for at least 12 credit hours per term or its equivalent at the undergraduate level and enrollment for at least nine credit hours per term or its equivalent at the graduate or first professional level. The total hours counted will not include courses taken for audit, but may include required developmental or remedial courses. For students enrolled in a dual or concurrent undergraduate and graduate program, full-time enrollment may be met through a combination of total credit hours, providing that the combination totals at least the minimum credit hours for full-time status for the student's institutionally recognized student level. Exceptions to the full-time requirement due to documented disability or other documented medical reasons, as applicable under the federal Americans with Disabilities Act, 42 USC § 12101 et seq., (ADA) will be considered on a case-by-case basis by the institution; supporting documentation must include health professional verification that a disability exists and a professional assessment that the condition requires limits on the student's credit load.

"Gift assistance" means financial aid in the form of scholarships and grants but does not include work-study or student loans.

"Graduate student" means a student enrolled in an eligible master's, doctoral, or first professional degree program.

"Half-time" means enrollment for at least six credit hours per term or its equivalent at the undergraduate level. The total hours counted will not include courses taken for audit, but may include required developmental or remedial courses. For undergraduate students enrolled in a dual or concurrent undergraduate and graduate program, half-time may be met through a combination of total credit hours, providing that the combination totals at least the minimum credit hours for half-time status for the student's institutionally recognized student level.

"Institution" or "home institution" means any public institution of higher education in Virginia participating in the Virginia Student Financial Assistance Program.

"Program" or "VSFAP" means the Virginia Student Financial Assistance Program, a financial aid program authorized within the item for student financial assistance in the annual Appropriation Act.

"Remaining need" means any positive difference between a student's financial need and the sum of federal, state, and institutionally-controlled gift assistance known at the time of awarding.

"Satisfactory academic progress" means:

1. Acceptable progress toward completion of an eligible program, as defined by the institution for the purposes of eligibility for federal student financial aid under the Code of Federal Regulations (Subpart C, 34 CFR Part 668 - Student Assistance General Provisions); and
2. For a student receiving a Virginia Guaranteed Assistance Program award, acceptable progress toward completion of an eligible program in which a student earns not less than 24 credit hours, which is the minimum number required for full-time standing in each award year.

"Summer session" means a division of an award year that normally extends from late May to mid August and consists of one or more summer enrollment periods, exclusive of the institution's fall and spring semesters.

"Term" means an academic period or summer session.

"Undergraduate student" means a student enrolled in an eligible program leading to a certificate of undergraduate study, diploma, associate's degree, or bachelor's degree.

"VGAP" means a grant from state funds appropriated for the Virginia Guaranteed Assistance Program, as authorized by the laws of the Commonwealth of Virginia including §§ 23.1-636, 23.1-637, and 23.1-638 of the Code of Virginia.

Part II Use of Funds

8VAC40-132-20. Use of funds.

An institution shall establish and maintain financial records that accurately reflect all program transactions as they occur.

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The institution shall establish and maintain general ledger control accounts and related subsidiary accounts that identify each program transaction and separate those transactions from all other institutional financial activity. Funds appropriated for undergraduate awards may not be used for graduate awards, and funds appropriated for graduate awards may not be used for undergraduate awards.

8VAC40-132-30. Types of assistance.

A. Funds allocated to institutions within the item for student financial assistance in the annual Appropriation Act may be used for:

1. Awards to undergraduate students enrolled at least half-time;
2. Awards to graduate students enrolled full-time. No more than 50% of the institution's graduate grants shall be awarded to students not classified as a domiciliary resident of Virginia;
3. Awards to students enrolled full-time in a dual or concurrent undergraduate and graduate program;
4. Assistantships to graduate students, funds for which must be transferred to the education and general account;
5. Providing the required matching contribution to federal or private student grant aid programs, except for programs requiring work; and
6. Supporting institutional work-study programs, funds for which must be transferred to the education and general account.

B. A student may receive either a VGAP award, an undergraduate Commonwealth Award, or a graduate Commonwealth Award during any one term (i.e., a student may not receive a combination of two or more different types of awards during the same term).

C. The provisions of this chapter shall not apply to:

1. Soil scientist scholarships authorized by § 23.1-615 of the Code of Virginia;
2. Foster children grants authorized by § 23.1-601 of the Code of Virginia;
3. Need-based financial assistance programs for industry-based certification and related programs not qualifying for other sources of student financial assistance that are subject to the Financial Assistance for Industry-Based Certification and Related Programs, as the same are now constituted or hereafter amended;
4. Nongeneral funds allocated to institutions within the item for student financial assistance in the annual Appropriation Act, except for the satisfactory academic progress requirement; or

5. General funds allocated to institutions within the item for student financial assistance in the annual Appropriation Act that are used to support a work-study program, except for the financial need requirement.

Part III

Undergraduate Financial Assistance

Article 1

General Information

8VAC40-132-40. Priority for awards.

A. Priority for awards will be given to those students who file an application as required by the institution for need-based financial aid by the institutional priority filing date or deadline and completing the verification process, if applicable. Those students who file an application after the institutional priority filing date or deadline may be considered for an award; however, the award will be based on the funds available at the time the award is made and may be based on a new award schedule.

B. Awards shall not be made to students seeking a second or additional baccalaureate degree until the financial aid needs of first degree-seeking students are fully met.

8VAC40-132-50. Award schedule and award amount restrictions.

A. Institutions shall construct award schedules to determine priority for and amount of awards, ensuring that the schedule conforms to the conditions and restrictions listed in this subsection.

1. The institution:

- a. Must define its neediest students;
- b. Must use the same award schedule for all students whose awards are packaged at the same time;
- c. Shall not include the assessed tuition and fee surcharge at four-year institutions when calculating the remaining need and financial need of students exceeding 125% of their program length, pursuant to § 23.1-509 of the Code of Virginia;
- d. For students enrolled at multiple institutions or in study abroad programs, shall include as the tuition and required fee component of the cost of attendance the lesser of the amount that would be charged by the home institution for the student's combined enrollment level and the sum of actual tuition and required fees assessed by each institution;
- e. May include minimum award amounts for VGAP and Commonwealth Awards;
- f. May construct a new award schedule based on the time of packaging and available funds; however, for students

whose awards are packaged at the same time, the same schedule shall be used; and

g. Shall define equivalent need between Commonwealth Award and VGAP students.

2. Award amounts must be:

a. Based on remaining need, and

b. Proportional to remaining need (i.e., students with greater remaining need receive larger award amounts than students with lesser remaining need).

3. VGAP-eligible students:

a. Must receive an award before Commonwealth Award-eligible students with equivalent need.

(1) Administratively, all VGAP and Commonwealth Award students are packaged according to the institution's award schedule in use at the time of the packaging run. The award schedule should provide for larger VGAP awards than Commonwealth Awards at equivalent need and should ensure that the neediest students are prioritized over less needy students.

(2) The practical effect is that at the point at which funds are exhausted, the VGAP students at that last level of need to be funded are awarded before Commonwealth Award students at the equivalent level of need. This process ensures that VGAP students are prioritized over Commonwealth Award students with equivalent need;

b. Must receive award amounts greater than Commonwealth Award-eligible students with equivalent remaining need;

c. Who fall into the neediest category must receive an award amount of at least the tuition charged to the individual student;

d. Who fall into the neediest category may receive an award amount of up to tuition, required fees, and book allowance; and

e. If approved for enrollment of less than 12 hours under an ADA exception, should receive an adjusted award amount, calculated in accordance with institution's awarding policies.

4. Two-year colleges electing to use a modified award schedule must:

a. Define "remaining need" as (i) any positive difference between a student's cost of attendance and the student's EFC or (ii) the financial need determined by the U.S. Department of Education and reflected in its payment schedule of EFC ranges for the Federal Pell Grant program;

b. Construct an award schedule that is based on remaining need and the combination of federal and state grant aid; and

c. Include a minimum award amount for the neediest VGAP-eligible student.

B. The following award amount restrictions apply to awards:

1. Financial need over awards are prohibited.

a. An award under the program, when combined with other gift assistance applied to the student's institutional account, shall not exceed the student's financial need.

b. For purposes of the over financial need calculation, only the tuition and fee portion of veterans education benefits and national service education awards or post-service benefits (e.g., AmeriCorps) shall be included.

2. Tuition over awards are prohibited.

a. An undergraduate Commonwealth Award, when combined with tuition-only assistance such as a tuition waiver, tuition scholarship or grant, or employer tuition reimbursement, shall not exceed the student's actual charges for tuition and required fees;

b. A VGAP award, when combined with tuition-only assistance such as a tuition waiver, tuition scholarship or grant, or employer tuition reimbursement, shall not exceed the student's actual charges for tuition, required fees, and standard book allowance.

8VAC40-132-60. Summer session awards.

Institutions may elect to award during summer sessions; however, an award made to assist a student in attending an institution's summer session shall be prorated according to the size of comparable awards for students with similar financial needs made in that institution's regular session.

8VAC40-132-70. Refund of awards.

A student who receives an award and who, during a term, withdraws from the institution that made the award must surrender the balance of the award. In determining the earned portion of the award that the student may retain, the institution shall apply the percentage of earned aid resulting from the federal Return to Title IV formula to the student's award amount.

Article 2
Commonwealth Awards

8VAC40-132-80. Undergraduate eligibility criteria for an initial award.

In order to participate, an undergraduate student shall:

1. Be enrolled at least half-time into an eligible program on or after the term's census date;

2. Be a domiciliary resident of Virginia;

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3. Demonstrate financial need; and
4. Have complied with federal selective service registration requirements, unless the following apply:
 - a. The requirement to register has terminated or become inapplicable to the student; and
 - b. The student shows by preponderance of the evidence that failure to register was not a knowing and willful failure to register.

8VAC40-132-90. Renewability of awards.

Awards may be renewed provided that the student:

1. Maintains satisfactory academic progress; and
2. Continues to meet all of the requirements of 8VAC40-132-80.

8VAC40-132-100. Enrollment at multiple institutions and in study abroad programs.

A. A student enrolled concurrently at multiple institutions may receive an award if:

1. The home institution is a VSFAP participating institution;
2. A formal consortium agreement is in place; and
3. The student's combined enrollment is at least half-time.

B. A student enrolled in a study abroad program may receive an award if:

1. The student is enrolled at least half-time;
2. The student remains on record as a student in an eligible program at the home institution for the term in which the award is received;
3. The program funds are disbursed through the home institution; and
4. The study abroad program is a formal agreement arranged by the institution.

Article 3

Virginia Guaranteed Assistance Program Awards

8VAC40-132-110. VGAP eligibility criteria for an initial award.

In order to participate, an undergraduate student shall:

1. Be enrolled full-time into an eligible program on or after the term's census date;
2. Be a domiciliary resident of Virginia;
3. Demonstrate financial need;
4. Be a graduate from a Virginia high school.

a. Students obtaining a General Educational Development (GED) certificate are not eligible.

b. Exceptions to graduating from a Virginia high school are granted for students who:

(1) Are dependent children of active-duty military personnel residing outside the Commonwealth of Virginia pursuant to military orders and claiming Virginia on their State of Legal Residence Certificate and satisfying the domicile requirements for such active duty military personnel pursuant § 23.1-502 of the Code of Virginia;

(2) Have completed a program of home school instruction in accordance with § 22.1-254.1 of the Code of Virginia; or

(3) Have been excused from school attendance pursuant to subsection B of § 22.1-254 of the Code of Virginia;

5. For a high school graduate, have at least a cumulative 2.5 grade point average (GPA) on a 4.0 scale, or its equivalent, at the time of admission to the institution or according to the latest available high school transcript. In the absence of a high school transcript indicating the grade point average, the institution must have on file a letter from the student's high school certifying the student's high school GPA;

6. For a student meeting the high school graduate exception in subdivision 4 b (1) or 4 b (2) of this section, have earned a math and verbal combined scores of at least 900 for SATs taken prior to March 1, 2016, or at least 980 for SATs taken on or after March 1, 2016; or have earned ACT composite scores of 19 or above; and

7. Have complied with federal selective service registration requirements, unless the following apply:

a. The requirement to register has terminated or become inapplicable to the student; and

b. The student shows by preponderance of the evidence that failure to register was not a knowing and willful failure to register.

8VAC40-132-120. Renewability of awards.

A. Awards for students attending two-year colleges may be renewed for one year while awards for students attending four-year colleges may be renewed for up to three years. Students shall be limited to a cumulative total of four years of eligibility.

Awards may be renewed provided that the undergraduate student, for the term in which an award is provided:

1. Is enrolled full-time in an eligible program on or after the term's census date;

2. Is a domiciliary resident of Virginia;

3. Demonstrates continued financial need;

4. Maintains continuous full-time enrollment unless granted an exception for cause by the council.

a. Continuous enrollment shall be recognized as full-time enrollment in each academic period; lack of enrollment or less than full-time enrollment in the summer session or other special sessions offered by the institution does not disqualify the student.

b. A student participating in a cooperative education program or internship that is part of his academic program and a student whose college education is interrupted by a call to military service shall be deemed to have maintained continuous enrollment if he reenrolls no later than the following fall semester after completion of such employment or military service.

c. If an exception is granted by council, council staff will also determine the student's remaining VGAP eligibility within his current class level as well as toward the student's maximum VGAP usage;

5. Annually, prior to the start of the award year,

a. Maintains at least a 2.0 grade point average on a 4.0 scale, or its equivalent; and

b. Maintains satisfactory academic progress;

6. Has complied with federal selective service registration requirements, unless the following apply:

a. The requirement to register has terminated or become inapplicable to the student; and

b. The student shows by preponderance of the evidence that failure to register was not a knowing and willful failure to register.

B. VGAP renewal awards are subject to the following special considerations:

1. Students who transfer to an institution shall be considered renewal students if they received or were eligible for an award during the prior academic period provided they meet renewal criteria in subsection A of this section.

2. Students who do not initially receive a VGAP award may be considered for an award provided that they meet initial eligibility criteria and continue to meet renewal criteria in subsection A of this section.

3. If a student fails to meet one of the renewal criteria found in subsection A of this section, the student cannot reestablish such eligibility. However, the student may be considered for a Commonwealth Award.

C. Conditions and requirements for renewal awards.

1. Beginning with the 2017–2018 award year, a student may not receive more than one year of support before satisfying the requirements to move to the next class level.

a. For purposes of this section, one year shall mean a 12-month timeframe from the beginning of the first term a VGAP award was received at a specific class level.

(1) Students receiving their first term of VGAP at a class level in the fall term must advance class levels by the beginning of the following fall term.

(2) Students receiving their first term of VGAP at a class level in the spring term must advance class levels by the beginning of the following spring term.

(3) Students receiving their first term of VGAP at a class level in the summer term must advance class levels by the beginning of the following summer term.

(4) If an institution determines that the student did not advance class level at the completion of the one year, the student is not eligible for a VGAP award the next term; however, the institution may reconsider providing VGAP for that next term, if:

(a) The student subsequently demonstrates that additional credits were earned prior to the beginning of the term (whether by transfer, adjusted grades, or other); and

(b) The additional credits are accepted by the institution and are sufficient for the student to advance class level.

(c) Example: The student falls three hours short of advancing class level upon completion of the 2017–2018 award year and therefore is not packaged VGAP entering the fall 2018 term. However, if during the fall term the student successfully transfers or secures a grade change for courses that were completed prior to the fall 2018 term, and as a result secures the additional hours needed to advance class level, the institution may award VGAP for fall 2018.

b. The hours required to advance class level may be completed in any combination of terms, transfer of credits, or testing out of courses. Examples include completing:

(1) The minimum hours necessary to advance class level (typically 30) in the combined fall, spring, and summer terms within the one-year timeframe; or

(2) The minimum hours necessary to advance class level (typically 30) by combining credits earned in academic terms during the one year and any other credits earned via transfer or an approved examination, such as a test of The College Board's College Level Examination Program (CLEP), by no later than the completion of the one-year timeframe.

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c. Students failing to advance class levels after one year of support:

(1) May be considered for a Commonwealth Award for the next term of enrollment; and

(2) May then be reconsidered for a VGAP award for the term in which they enter at a higher class level if they continue to meet all renewal criteria in subsection A of this section.

d. Students advancing class levels in less than one year are not granted extra terms of support.

2. Beginning with first-time students enrolled in the fall semester in 2018, each eligible student shall receive a grant in an amount greater than the grant of each eligible student with equivalent remaining need in the next lowest class level.

a. The annual award differential between the class levels is determined by the institution. When determining the differential, institutions should weigh the available funding and the needs of the overall student enrollment with the amount of the differential necessary to incentivize students to progress.

b. The award differential between the class levels can vary from year to year.

c. The award differential is not based upon the prior year awards for the individual student or other class levels. Annual awards are based upon the unique circumstances for the individual year, including available funding, student remaining need, and changes in total financial need across all eligible students.

3. Grandfathering:

a. For students enrolled prior to fall 2018, there is no requirement that the awards be differentiated by class level.

b. For students enrolled prior to fall 2017, those students completing full-time equivalent courses per academic year remain eligible for consideration of a VGAP award entering the 2017–2018 award year. The requirement of one year of award per class level is reviewed upon completion of the 2017–2018 award year and then evaluated each term thereafter, as appropriate.

8VAC40-132-130. Enrollment at multiple institutions and in study abroad programs.

A. A student enrolled concurrently at multiple institutions may receive an award if:

1. The home institution is a VSFAP participating institution;

2. A formal consortium agreement is in place; and

3. The student's combined enrollment meets full-time requirements.

B. A student enrolled in a study abroad program may receive an award if:

1. The student is enrolled full-time;

2. The student remains on record as a student in an eligible program at the home institution for the term in which the award is received;

3. The program funds are disbursed through the home institution; and

4. The study abroad program is a formal agreement arranged by the institution.

Part IV

Graduate Financial Assistance

8VAC40-132-140. Graduate eligibility criteria for an initial award.

A. In order to receive a Commonwealth Award, the graduate student must be enrolled full-time into an eligible program on or after the term's census date.

B. An individual award may be based on financial need but may, in addition to or instead of, be based on other criteria determined by the institution making the award.

8VAC40-132-150. Amount of awards.

The amount of an award shall be determined by the institution making the award; however, the institution shall annually notify the council of the maximum size of a graduate award that is paid from funds in the appropriation.

8VAC40-132-160. Renewability of awards.

Awards may be renewed provided that the graduate student:

1. Maintains satisfactory academic progress; and

2. Continues to be enrolled full-time.

8VAC40-132-170. Enrollment at multiple institutions and in study abroad programs.

A. A student enrolled concurrently at multiple institutions may receive an award if:

1. The home institution is a VSFAP participating institution;

2. A formal consortium agreement is in place; and

3. The student's combined enrollment meets full-time requirements.

B. A student enrolled in a study abroad program may receive an award if:

1. The student is enrolled full-time;

2. The student remains on record as a student in an eligible program at the home institution for the term in which the award is received;

3. The program funds are disbursed through the home institution; and

4. The study abroad program is a formal agreement arranged by the institution.

Part V Administration

8VAC40-132-180. Responsibility of the council.

The council shall collect such student specific information for both graduate and undergraduate students as is necessary for the operation of the program and other information deemed necessary by the council.

8VAC40-132-190. Responsibility of institutions.

Institutions shall:

1. Provide reports to the council that will include information describing the students served, the awards received, and the number and value of awards. Each institution shall annually report to the council its definition of "neediest" students;

2. Maintain documentation necessary to demonstrate that student awards calculated during the same packaging cycle used the same award schedule;

3. Provide the council with the initial award schedule or formula that will be used to package on-time applications when submitting an annual report; and

4. Upon request by a student transferring to another institution, send to the other institution information about the student's VGAP eligibility.

8VAC40-132-200. Program reviews.

The council periodically will review institutional administrative practices to determine institutional program compliance with the Appropriation Act, the Code of Virginia, and this chapter. If a review determines that an institution has failed to comply with the Appropriation Act, the Code of Virginia, and this chapter, the council may withhold approval of expenditure plans for the program until the end of the next session of the General Assembly. No attempt to determine compliance with the Appropriation Act, Code of Virginia, and this chapter should be solely based on information from the financial aid data file submitted annually by institutions.

Part VI Discontinued Student Loan Program

8VAC40-132-210. Terms and conditions of the loans.

An institution with a loan program established from previous general fund appropriations may continue the loan

program, under such terms and rules as the governing board of the institution may prescribe, but shall not expand the loan program with currently appropriated funds. The loan program shall meet the following requirements:

1. In any one award year no student shall receive a loan from the fund of an institution that would result in that student owing a net outstanding amount at the end of that award year in excess of the tuition and required fees charged by the institution;

2. The annual interest rate charged on loans to students from a fund shall be 3.0%;

3. An institution shall make every effort to collect each loan made from its student loan fund using the provisions of the Virginia Debt Collection Act (§ 2.2-4800 et seq. of the Code of Virginia); and

4. The Auditor of Public Accounts shall at least biennially audit and exhibit the account of student loan funds at each institution.

8VAC40-132-220. Eligibility criteria.

In order to be eligible for the student loan program, a student shall meet the criteria of 8VAC40-132-80, 8VAC40-132-90, 8VAC40-132-140, and 8VAC40-132-160.

8VAC40-132-230. Discontinuing student loan programs.

A. If any federal student loan program for which the institutional contribution was appropriated by the General Assembly is discontinued, the institutional share of the discontinued loan program shall be repaid to the fund from which the institutional share was derived unless other arrangements are recommended by the council and approved by the Department of Planning and Budget. Should the institution be permitted to retain the federal contributions to the program, the funds shall be used according to arrangements authorized by the council and approved by the Department of Planning and Budget.

B. An institution may discontinue its student loan program established pursuant to §§ 23.1-618 through 23.1-621 of the Code of Virginia. The full amount of cash in the discontinued loan fund shall be paid into the state treasury into a nonrevertible nongeneral fund account. Prior to such payment, the State Comptroller shall verify its accuracy, including the fact that the cash held by the institution in the loan fund will be fully depleted by such payment. The loan fund shall not be reestablished for that institution.

C. The cash paid into the state treasury shall be used only for awards to undergraduate students in the Virginia Student Financial Assistance Program according to arrangements authorized by the council and approved by the Department of Planning and Budget. Payments of any promissory notes held by the discontinued loan fund shall continue to be received by the institution and deposited to the nonrevertible nongeneral

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fund account and to be used for the VGAP awards and undergraduate Commonwealth Awards.

DOCUMENTS INCORPORATED BY REFERENCE
(8VAC40-132)

[Domicile Guidelines, State Council of Higher Education for Virginia, October 25, 2016](#)

VA.R. Doc. No. R18-5284; Filed October 11, 2017, 9:53 a.m.

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TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Fast-Track Regulation

Title of Regulation: **9VAC5-5. Public Participation Guidelines (Rev. D17) (amending 9VAC5-5-50).**

Statutory Authority: §§ 2.2-4007.02 and 10.1-1308 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: November 29, 2017.

Effective Date: December 14, 2017.

Agency Contact: Melissa Porterfield, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4238, FAX (804) 698-4019, or email melissa.porterfield@deq.virginia.gov.

Basis: Section 2.2-4007.02 of the Administrative Process Act requires agencies to develop and adopt public participation guidelines to solicit input from interested parties during the development of regulations. The State Air Pollution Control Board previously adopted regulations concerning public participation guidelines (PPGs) using the regulatory development process.

Purpose: State law requires the State Air Pollution Control Board to adopt public participation guidelines to solicit input during the development of regulations. Chapter 795 of the 2012 Acts of Assembly revised § 2.2-4007.02 B of the Code of Virginia to allow interested parties the right to be accompanied by or represented by counsel during the formulation of a regulation. As a result, the Department of Planning and Budget (DPB) revised their model PPGs, and the State Air Pollution Control Board is amending this regulation to be consistent with state statute and DPB's model PPGs. Participation by the public in the regulatory process is essential to assist DEQ in the promulgation of regulations that will protect the public health and safety.

Rationale for Using Fast-Track Rulemaking Process: The proposed amendments are expected to be noncontroversial, and therefore justify using the fast-track rulemaking process.

The amendments to this regulation make the regulations consistent with state statute and the model PPGs developed by DPB.

Substance: The Code of Virginia allows interested parties the right to be accompanied by or represented by counsel during the formulation of a regulation. This language has been added to the regulation.

Issues: This regulatory change will benefit the public and the agency. The regulatory change amends the regulation to be consistent with state statute and DPB's model PPGs. The regulatory change does not place any additional requirements on the public or the agency; therefore, there are no disadvantages to the public or the agency.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 795 of the 2012 Acts of Assembly,¹ the Air Pollution Control Board (Board) proposes to specify in this regulation that interested persons shall be afforded an opportunity to be accompanied by and represented by counsel or other representative when submitting data, views, and arguments, either orally or in writing, to the agency.

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

Estimated Economic Impact. The current Public Participation Guidelines state that: "In considering any nonemergency, nonexempt regulatory action, the agency shall afford interested persons an opportunity to submit data, views, and arguments, either orally or in writing, to the agency." The Board proposes to append "and (ii) be accompanied by and represented by counsel or other representative."

Chapter 795 of the 2012 Acts of Assembly added to the Code of Virginia § 2.2-4007.02. "Public participation guidelines" that interested persons also be afforded an opportunity to be accompanied by and represented by counsel or other representative. Since the Code of Virginia already specifies that interested persons shall be afforded an opportunity to be accompanied by and represented by counsel or other representative, the Board's proposal to add this language to the regulation will not change the law in effect, but will be beneficial in that it will inform interested parties who read this regulation but not the statute of their legal rights concerning representation.

Businesses and Entities Affected. The proposed amendment potentially affects all individuals who comment on pending regulatory changes.

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

Projected Impact on Employment. The proposed amendment does not significantly affect employment.

Effects on the Use and Value of Private Property. The proposed amendment does not affect the use and value of private property.

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

Small Businesses:

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

Costs and Other Effects. The proposed amendment does not affect costs for small businesses.

Alternative Method that Minimizes Adverse Impact. The proposed amendment does not adversely affect small businesses.

Adverse Impacts:

Businesses. The proposed amendment does not adversely affect businesses.

Localities. The proposed amendment does not adversely affect localities.

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

¹ See <http://leg1.state.va.us/cgi-bin/legp504.exe?121+ful+CHAP0795+hil>

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

Summary:

Pursuant to § 2.2-4007.02 of the Code of Virginia, the amendment allows interested parties submitting data, views, or arguments during the formulation of a regulation the right to be accompanied by or represented by counsel or another representative.

Part III
Public Participation Procedures

9VAC5-5-50. Public comment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

VA.R. Doc. No. R18-5108; Filed October 6, 2017, 8:31 a.m.

Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation. The State Air Pollution Control

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Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 9VAC5-140. Regulation for Emissions Trading Programs (Rev. B17) (amending 9VAC5-140-10 through 9VAC5-140-60, 9VAC5-140-100, 9VAC5-140-110, 9VAC5-140-130, 9VAC5-140-140, 9VAC5-140-200, 9VAC5-140-220, 9VAC5-140-230, 9VAC5-140-700, 9VAC5-140-710, 9VAC5-140-730, 9VAC5-140-740, 9VAC5-140-750; repealing 9VAC5-140-300 through 9VAC5-140-390, 9VAC5-140-400 through 9VAC5-140-490, 9VAC5-140-500 through 9VAC5-140-590, 9VAC5-140-600 through 9VAC5-140-690, 9VAC5-140-760, 9VAC5-140-800 through 9VAC5-140-890, 9VAC5-140-900 through 9VAC5-140-930).

Statutory Authority: §§ 10.1-1308 and 10.1-1322.3 of the Code of Virginia; Clean Air Act (42 USC § 7401 et seq.); 40 CFR Part 51.

Effective Date: November 29, 2017.

Agency Contact: 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.

Summary:

The transport of nitrogen oxides (NO_x) across state lines was first addressed by the U.S. Environmental Protection Agency's (EPA) NO_x Budget Trading Program as implemented via the NO_x State Implementation Plan (SIP) Call to control NO_x emissions primarily from electric generating units (EGUs) and certain types of non-EGUs. The State Air Pollution Control Board implemented these federal requirements in Part I of 9VAC5-140. Subsequently, EPA's SIP Call Rule was superseded by the Clean Air Interstate Rule, which in turn was superseded by the Cross-State Air Pollution Rule (CASPR). Virginia is required to conform its regulations to CASPR. The amendments remove certain federal requirements and retain those requirements necessary to control emissions from non-EGUs, which may continue to operate under the regulation but may not participate in a trading program.

Part I

NO_x Budget Trading Program for Nonelectric Generating Units

Article 1

NO_x Budget Trading Program General Provisions

9VAC5-140-10. Purpose.

This part establishes general provisions and the applicability, permitting, allowance, excess emissions, and monitoring, and opt-in provisions for the NO_x Budget Trading Program for nonelectric generating units (non-EGUs) as a

means of mitigating the interstate transport of ozone and nitrogen oxides. ~~The board authorizes the administrator to assist the board in implementing the NO_x Budget Trading Program by carrying out the functions set forth for the administrator in this part.~~

9VAC5-140-20. Definitions.

A. As used in this part, all words or terms not defined here shall have the meanings given them in ~~9VAC5 Chapter 10 (9VAC5-10)~~, unless otherwise required by context.

B. For the purpose of this part and any related use, the following words or terms shall have the following meanings unless the context clearly indicates otherwise:

"Account certificate of representation" means the completed and signed submission required by Article 2 (9VAC5-140-100 et seq.) of this part for certifying the designation of a NO_x authorized account representative for a NO_x Budget source or a group of identified NO_x Budget sources who is authorized to represent the owners and operators of such source or sources and of the NO_x Budget units at such source or sources with regard to matters under the NO_x Budget Trading Program.

~~"Account number" means the identification number given by the administrator to each NO_x Allowance Tracking System account.~~

~~"Acid rain emissions limitation" means, as defined in 40 CFR 72.2, a limitation on emissions of sulfur dioxide or nitrogen oxides under the Acid Rain Program under Title IV of the CAA.~~

~~"Adjusted trading program budget" means the total number of NO_x allowances equal to the state trading program budget set forth in 9VAC5 140 900, less the sum of the NO_x emission limitations (in tons) for each unit exempt under 9VAC5 140 40 B that is not allocated any NO_x allowances under 9VAC5 140 420 B or C for the control period and whose NO_x emission limitation (in tons of NO_x) is not included in the amount calculated under 9VAC5 140 420 D 5 b(2) for the control period.~~

"Administrator" means the Administrator of the United States U.S. Environmental Protection Agency or the administrator's duly authorized representative.

~~"Allocate" or "allocation" means the determination by the permitting authority or the administrator of the number of NO_x allowances to be initially credited to a NO_x Budget unit or an allocation set aside.~~

~~"Allocation set aside budget" means the sum of:~~

- ~~1. For NO_x Budget units under 9VAC5 140 40 A 1, the adjusted trading program budget for the control period to which the allocation set aside applies multiplied by the set-aside percentage, rounded to the nearest whole number of NO_x allowances as appropriate.~~

~~2. For NO_x Budget units under 9VAC5-140-40 A 2, 1,000 tons per control period.~~

"Automated data acquisition and handling system" or "DAHS" means that component of the CEMS, or other emissions monitoring system approved for use under Article 8 (9VAC5-140-700 et seq.) of this part, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors, and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required by Article 8 (9VAC5-140-700 et seq.) of this part.

"Boiler" means an enclosed fossil or other fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

"CAA" means the ~~CAA~~ Clean Air Act, 42 USC § 7401 et seq., as amended by ~~Pub.L.~~ P.L. No. 101-549 (November 15, 1990).

"Combined cycle system" means a system comprised of one or more combustion turbines, heat recovery steam generators, and steam turbines configured to improve overall efficiency of electricity generation or steam production.

"Combustion turbine" means an enclosed fossil or other fuel-fired device that is comprised of a compressor, a combustor, and a turbine, and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine.

"Commence commercial operation" means, with regard to a unit that serves a generator, to have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation. Except as provided in 9VAC5-140-50, for a unit that is a NO_x Budget unit under 9VAC5-140-40 on the date the unit commences commercial operation, such date shall remain the unit's date of commencement of commercial operation even if the unit is subsequently modified, reconstructed, or repowered. Except as provided in 9VAC5-140-50 ~~or Article 9 (9VAC5-140-800 et seq.) of this part~~, for a unit that is not a NO_x Budget unit under 9VAC5-140-40 on the date the unit commences commercial operation, the date the unit becomes a NO_x Budget unit under 9VAC5-140-40 shall be the unit's date of commencement of commercial operation.

"Commence operation" means to have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber. Except as provided in 9VAC5-140-50, for a unit that is a NO_x Budget unit under 9VAC5-140-40 on the date of commencement of operation, such date shall remain the unit's date of commencement of operation even if the unit is subsequently modified, reconstructed, or repowered. Except as provided in 9VAC5-140-50 ~~or Article 9 (9VAC5-140-800 et seq.) of this part~~, for a unit that is not a NO_x Budget unit

under 9VAC5-140-40 on the date of commencement of operation, the date the unit becomes a NO_x Budget unit under 9VAC5-140-40 shall be the unit's date of commencement of operation.

"Common stack" means a single flue through which emissions from two or more units are exhausted.

~~"Compliance account" means a NO_x Allowance Tracking System account, established by the administrator for a NO_x Budget unit under Article 6 (9VAC5-140-500 et seq.) of this part, in which the NO_x allowance allocations for the unit are initially recorded and in which are held NO_x allowances available for use by the unit for a control period for the purpose of meeting the unit's NO_x Budget emissions limitation.~~

~~"Compliance certification" means a submission to the permitting authority or the administrator, as appropriate, that is required under Article 4 (9VAC5-140-300 et seq.) of this part to report a NO_x Budget source's or a NO_x Budget unit's compliance or noncompliance with this part and that is signed by the NO_x authorized account representative in accordance with Article 2 (9VAC5-140-100 et seq.) of this part.~~

"Continuous emission monitoring system" or "CEMS" means the equipment required under Article 8 (9VAC5-140-700 et seq.) of this part to sample, analyze, measure, and provide, by readings taken at least once every 15 minutes of the measured parameters, a permanent record of nitrogen oxides emissions, expressed in tons per hour for nitrogen oxides. The following systems are component parts included, consistent with 40 CFR Part 75, in a continuous emission monitoring system:

1. Flow monitor;
2. Nitrogen oxides pollutant concentration monitors;
3. Diluent gas monitor (oxygen or carbon dioxide) when such monitoring is required by Article 8 (9VAC5-140-700 et seq.) of this part;
4. A continuous moisture monitor when such monitoring is required by Article 8 (9VAC5-140-700 et seq.) of this part; and
5. An automated data acquisition and handling system.

"Control period" means the period beginning May 1 of a year and ending on September 30 of the same year, inclusive, except for the calendar year 2004, the period shall begin May 31.

~~"Core trading program budget" means the adjusted trading program budget for the control period to which the allocation set aside applies minus the allocation set aside budget.~~

"Electricity for sale under firm contract to the grid" means electricity for sale where the capacity involved is intended to be available at all times during the period covered by a

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guaranteed commitment to deliver, even under adverse conditions.

"Emissions" means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the administrator by the NO_x authorized account representative and as determined by the administrator in accordance with Article 8 (9VAC5-140-700 et seq.) of this part.

~~"Energy Information Administration" means the Energy Information Administration of the United States Department of Energy.~~

~~"Excess emissions" means any tonnage of nitrogen oxides emitted by a NO_x Budget unit during a control period that exceeds the NO_x Budget emissions limitation for the unit.~~

"Fossil fuel" means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

"Fossil fuel-fired" means, with regard to a unit:

1. For units that commenced operation before January 1, 1996, the combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel actually combusted comprises more than 50% of the annual heat input on a Btu basis during 1995 or, if a unit had no heat input in 1995, during the last year of operation of the unit prior to 1995;
2. For units that commenced operation on or after January 1, 1996, and before January 1, 1997, the combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel actually combusted comprises more than 50% of the annual heat input on a Btu basis during 1996; or
3. For units that commence operation on or after January 1, 1997, (i) the combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel actually combusted comprises more than 50% of the annual heat input on a Btu basis during any year or (ii) the combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel is projected to comprise more than 50% of the annual heat input on a Btu basis during any year, provided that the unit shall be "fossil fuel-fired" as of the date, during such year, on which the unit begins combusting fossil fuel.

~~"General account" means a NO_x Allowance Tracking System account, established under Article 6 (9VAC5-140-500 et seq.) of this part, that is not a compliance account or an overdraft account.~~

"Generator" means a device that produces electricity.

"Heat input" means the product (in mmBtu/time) of the gross calorific value of the fuel (in Btu/lb) and the fuel feed rate into a combustion device (in mass of fuel/time), as measured, recorded, and reported to the administrator by the

NO_x authorized account representative and as determined by the administrator in accordance with Article 8 (9VAC5-140-700 et seq.) of this part, and does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

"Implementation plan" means the portion or portions of the state implementation plan, or the most recent revision thereof, that has been approved in Subpart VV of 40 CFR Part 52 by the administrator under § 110 of the CAA, or promulgated under § 110(c) of the CAA, or promulgated or approved pursuant to regulations promulgated under § 301(d) of the CAA and that implements the relevant requirements of the CAA.

"Life-of-the-unit, firm power contractual arrangement" means a unit participation power sales agreement under which a utility or industrial customer reserves, or is entitled to receive, a specified amount or percentage of nameplate capacity and associated energy from any specified unit and pays its proportional amount of such unit's total costs, pursuant to a contract:

1. For the life of the unit;
2. For a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or
3. For a period equal to or greater than 25 years or 70% of the economic useful life of the unit determined as of the time the unit is built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.

"Maximum design heat input" means the ability of a unit to combust a stated maximum amount of fuel per hour on a steady state basis, as determined by the physical design and physical characteristics of the unit.

"Maximum potential hourly heat input" means an hourly heat input used for reporting purposes when a unit lacks certified monitors to report heat input. If the unit intends to use Appendix D of 40 CFR Part 75 to report heat input, this value should be calculated, in accordance with 40 CFR Part 75, using the maximum fuel flow rate and the maximum gross calorific value. If the unit intends to use a flow monitor and a diluent gas monitor, this value should be reported, in accordance with 40 CFR Part 75, using the maximum potential ~~flow rate~~ flow rate and either the maximum carbon dioxide concentration (in percent CO₂) or the minimum oxygen concentration (in percent O₂).

"Maximum potential NO_x emission rate" means the emission rate of nitrogen oxides (in lb/mmBtu) calculated in accordance with section 3 of Appendix F of 40 CFR Part 75, using the maximum potential nitrogen oxides concentration as defined in section 2 of Appendix A of 40 CFR Part 75, and either the maximum oxygen concentration (in percent O₂) or

the minimum carbon dioxide concentration (in percent CO₂), under all operating conditions of the unit except for unit start up, shutdown, and upsets.

"Maximum rated hourly heat input" means a unit-specific maximum hourly heat input (mmBtu) that is the higher of the manufacturer's maximum rated hourly heat input or the highest observed hourly heat input.

"Monitoring system" means any monitoring system that meets the requirements of Article 8 (9VAC5-140-700 et seq.) of this part, including a continuous emissions monitoring system, an excepted monitoring system, or an alternative monitoring system.

~~"Most stringent state or federal NO_x emissions limitation" means the lowest NO_x emissions limitation (in lb/mmBtu) that is applicable to the unit under the Virginia Air Pollution Control Law or federal law, regardless of the averaging period to which the emissions limitation applies. In cases where a unit is subject to a permit that provides for the use of multiple fuels, the primary fuel shall be used as the basis to determine the most stringent state or federal NO_x emissions limitation. The primary fuel shall be the fuel designated in the permit as such or as having the greatest throughput.~~

"Nameplate capacity" means the maximum electrical generating output (in MWe) that a generator can sustain over a specified period of time when not restricted by seasonal or other deratings as measured in accordance with the United States U.S. Department of Energy standards.

~~"New source review program" means a program for the preconstruction review and permitting of new stationary sources or expansions to existing ones in accordance with regulations promulgated to implement the requirements of §§ 110(a)(2)(C), 112 (relating to permits for hazardous air pollutants), 165 (relating to permits in prevention of significant deterioration areas), and 173 (relating to permits in nonattainment areas) of the CAA.~~

~~"NO_x allowance" means a limited authorization by the permitting authority or the administrator under the NO_x Budget Trading Program to emit up to one ton of nitrogen oxides during the control period of the specified year or of any year thereafter, except as provided under 9VAC5 140-550 B. No provision of the NO_x Budget Trading Program, the NO_x Budget permit application, the NO_x Budget permit, or an exemption under 9VAC5 140 40 B or 9VAC5 140 50 and no provision of law shall be construed to limit the authority of the United States or the state to terminate or limit such authorization, which does not constitute a property right.~~

~~"NO_x allowance deduction" or "deduct NO_x allowances" means the permanent withdrawal of NO_x allowances by the administrator from a NO_x Allowance Tracking System compliance account or overdraft account to account for the number of tons of NO_x emissions from a NO_x Budget unit for a control period, determined in accordance with Article 8~~

~~(9VAC5 140 700 et seq.) of this part, or for any other allowance surrender obligation under this part.~~

~~"NO_x Allowance Tracking System" means the system by which the administrator records allocations, deductions, and transfers of NO_x allowances under the NO_x Budget Trading Program.~~

~~"NO_x Allowance Tracking System account" means an account in the NO_x Allowance Tracking System established by the administrator for purposes of recording the allocation, holding, transferring, or deducting of NO_x allowances.~~

~~"NO_x allowance transfer deadline" means midnight of November 30 or, if November 30 is not a business day, midnight of the first business day thereafter and is the deadline by which NO_x allowances may be submitted for recordation in a NO_x Budget unit's compliance account, or the overdraft account of the source where the unit is located, in order to meet the unit's NO_x Budget emissions limitation for the control period immediately preceding such deadline.~~

~~"NO_x allowances held" or "hold NO_x allowances" means the NO_x allowances recorded by the administrator, or submitted to the administrator for recordation, in accordance with Article 6 (9VAC5-140-500 et seq.) and Article 7 (9VAC5-140-600 et seq.) of this part, in a NO_x Allowance Tracking System account.~~

~~"NO_x authorized account representative" means, for a NO_x Budget source or NO_x Budget unit at the source, the natural person who is authorized by the owners and operators of the source and all NO_x Budget units at the source, in accordance with Article 2 (9VAC5-140-100 et seq.) of this part, to represent and legally bind each owner and operator in matters pertaining to the NO_x Budget Trading Program or, for a general account, the natural person who is authorized, in accordance with Article 6 (9VAC5 140 500 et seq.) of this part, to transfer or otherwise dispose of NO_x allowances held in the general account.~~

~~"NO_x Budget emissions limitation" means, for a NO_x Budget unit, the tonnage equivalent of the NO_x allowances available for compliance deduction for the unit under 9VAC5 140 540 A, B, E, and F in a control period, adjusted by any deductions of such NO_x allowances to account for actual utilization under 9VAC5 140 420 E for the control period or to account for excess emissions for a prior control period under 9VAC5-140 540 D or to account for withdrawal from the NO_x Budget Trading Program, or for a change in regulatory status, of a NO_x Budget opt in source under 9VAC5 140 860 or 9VAC5-140 870.~~

~~"NO_x Budget opt in permit" means a NO_x Budget permit covering a NO_x Budget opt in source.~~

~~"NO_x Budget opt in source" means a unit that has applied to become a NO_x Budget unit under the NO_x Budget Trading Program and whose NO_x Budget opt in permit has been~~

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~~issued and is in effect under Article 9 (9VAC5-140-800 et seq.) of this part.~~

"NO_x Budget permit" means the legally binding and federally enforceable written document, or portion of such document, issued by the permitting authority under this part, including any permit revisions, specifying the NO_x Budget Trading Program requirements applicable to a NO_x Budget source, to each NO_x Budget unit at the NO_x Budget source, and to the owners and operators and the NO_x authorized account representative of the NO_x Budget source and each NO_x Budget unit.

"NO_x Budget source" means a source that includes one or more NO_x Budget units.

"NO_x Budget Trading Program" means a ~~multi-state nitrogen oxides air pollution control and emission reduction program established in accordance with this part and approved and administered by the administrator pursuant to 40 CFR 51.121 or established by the administrator pursuant to 40 CFR 52.34 as a means of mitigating the interstate transport of ozone and nitrogen oxides, an ozone precursor.~~

"NO_x Budget unit" means a unit that is subject to the NO_x Budget ~~emissions limitation program~~ program under 9VAC5-140-40 ~~or 9VAC5-140-800.~~

~~"Operating" means, with regard to a unit under subdivision 4 b of 9VAC5-140-220 and 9VAC5-140-800, having documented heat input for more than 876 hours in the six months immediately preceding the submission of an application for an initial NO_x Budget permit under 9VAC5-140-830 A.~~

~~"Operator" means any person who operates, controls, or supervises a NO_x Budget unit; or a NO_x Budget source; or unit for which an application for a NO_x Budget opt in permit under 9VAC5-140-830 is submitted and not denied or withdrawn and shall include, but not be limited to, any holding company, utility system, or plant manager of such a unit or source.~~

~~"Opt in" means to be approved to become a NO_x Budget unit under the NO_x Budget Trading Program through a final, effective NO_x Budget opt in permit under Article 9 (9VAC5-140-800 et seq.) of this part.~~

~~"Overdraft account" means the NO_x Allowance Tracking System account, established by the administrator under Article 6 (9VAC5-140-500 et seq.) of this part, for each NO_x Budget source where there are two or more NO_x Budget units.~~

"Owner" means any of the following persons:

1. Any holder of any portion of the legal or equitable title in a NO_x Budget unit ~~or in a unit for which an application for a NO_x Budget opt in permit under 9VAC5-140-830 is submitted and not denied or withdrawn;~~ or

2. Any holder of a leasehold interest in a NO_x Budget unit ~~or in a unit for which an application for a NO_x Budget opt in permit under 9VAC5-140-830 is submitted and not denied or withdrawn;~~ or

3. Any purchaser of power from a NO_x Budget unit ~~or from a unit for which an application for a NO_x Budget opt in permit under 9VAC5-140-830 is submitted and not denied or withdrawn~~ under a life-of-the-unit, firm power contractual arrangement. However, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income from the NO_x Budget unit ~~or the unit for which an application for a NO_x Budget opt in permit under 9VAC5-140-830 is submitted and not denied or withdrawn;~~ or

4. ~~With respect to any general account, any person who has an ownership interest with respect to the NO_x allowances held in the general account and who is subject to the binding agreement for the NO_x authorized account representative to represent that person's ownership interest with respect to NO_x allowances.~~

"Permitting authority" means the State Air Pollution Control Board.

"Receive" or "receipt of" means, when referring to the permitting authority or the administrator, to come into possession of a document, information, or correspondence (whether sent in writing or by authorized electronic transmission), as indicated in an official correspondence log, or by a notation made on the document, information, or correspondence, by the permitting authority or the administrator in the regular course of business.

~~"Recordation," "record," or "recorded" means, with regard to NO_x allowances, the movement of NO_x allowances by the administrator from one NO_x Allowance Tracking System account to another, for purposes of allocation, transfer, or deduction.~~

"Reference method" means any direct test method of sampling and analyzing for an air pollutant as specified in Appendix A of 40 CFR Part 60.

~~"Serial number" means, when referring to NO_x allowances, the unique identification number assigned to each NO_x allowance by the administrator under 9VAC5-140-530 F.~~

~~"Set aside percentage" means 5.0% for each of the years 2004 through 2008 or 2.0% for the year 2009 and each year thereafter.~~

"Source" means any governmental, institutional, commercial, or industrial structure, installation, plant, building, or facility that emits or has the potential to emit any regulated air pollutant under the CAA. For purposes of

§ 502(c) of the CAA, a "source," including a "source" with multiple units, shall be considered a single "facility."

"State" means the Commonwealth of Virginia. The term "state" shall have its conventional meaning where such meaning is clear from the context.

"State operating permit" means a permit issued under Article 5 (9VAC5-80-800 et seq.) of Part II of 9VAC5 Chapter 80.

"State operating permit regulations" means the regulations codified in Article 5 (9VAC5-80-800 et seq.) of Part II of 9VAC5 Chapter 80.

~~"State trading program budget" means the total number of NO_x tons set forth in 9VAC5-140-900 and apportioned to all NO_x Budget units in accordance with the NO_x Budget Trading Program for use in a given control period.~~

"Submit" or "serve" means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:

1. In person;
2. By United States Postal Service; or
3. By other means of dispatch or transmission and delivery. Compliance with any "submission," "service," or "mailing" deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

"Title V operating permit" means a permit issued under Article 1 (9VAC5-80-50 et seq.) or Article 3 (9VAC5-80-360 et seq.) of Part II of 9VAC5 Chapter 80.

"Title V operating permit regulations" means the regulations codified in Article 1 (9VAC5-80-50 et seq.), Article 2 (9VAC5-80-310 et seq.), Article 3 (9VAC5-80-360 et seq.), and Article 4 (9VAC5-80-710 et seq.) of Part II of 9VAC5 Chapter 80.

"Ton" or "tonnage" means any "short ton" (i.e., 2,000 pounds). ~~For the purpose of determining compliance with the NO_x Budget emissions limitation, total~~ Total tons for a control period shall be calculated as the sum of all recorded hourly emissions (or the tonnage equivalent of the recorded hourly emissions rates) in accordance with Article 8 (9VAC5-140-700 et seq.) of this part, with any remaining fraction of a ton equal to or greater than 0.50 ton deemed to equal one ton and any fraction of a ton less than 0.50 ton deemed to equal zero tons.

"Unit" means a fossil fuel-fired stationary boiler, combustion turbine, or combined cycle system.

~~"Unit load" means the total (i.e., gross) output of a unit in any control period (or other specified time period) produced by combusting a given heat input of fuel, expressed in terms of:~~

~~1. The total electrical generation (MWe) produced by the unit, including generation for use within the plant; or~~

~~2. In the case of a unit that uses heat input for purposes other than electrical generation, the total steam pressure (psia) produced by the unit, including steam for use by the unit.~~

"Unit operating day" means a calendar day in which a unit combusts any fuel.

"Unit operating hour" or "hour of unit operation" means any hour (or fraction of an hour) during which a unit combusts any fuel.

~~"Utilization" means the heat input (expressed in mmBtu/time) for a unit. The unit's total heat input for the control period in each year shall be determined in accordance with 40 CFR Part 75 if the NO_x Budget unit was otherwise subject to the requirements of 40 CFR Part 75 for the year, or shall be based on the best available data reported to the administrator for the unit if the unit was not otherwise subject to the requirements of 40 CFR Part 75 for the year.~~

9VAC5-140-30. Measurements, abbreviations, and acronyms.

Measurements, abbreviations, and acronyms used in this part are defined as follows:

Btu-British thermal unit.

hr-hour.

~~Kwh kilowatt hour.~~

lb-pounds.

mmBtu-million Btu.

MWe-megawatt electrical.

~~psia pounds per square inch absolute.~~

ton-2000 pounds.

CO₂-carbon dioxide.

NO_x-nitrogen oxides.

O₂-oxygen.

9VAC5-140-35. Federal regulations incorporated by reference.

A. The U.S. Environmental Protection Agency regulations cited in this part are, unless indicated otherwise, incorporated by reference into this part as amended by the word or phrase substitutions given in subsection B of this section. The complete text of the federal regulations incorporated ~~herein in Part I of this chapter~~ by reference is contained in 40 CFR Part 75 ~~and 40 CFR Part 97~~. The 40 CFR part and section numbers appearing throughout this part identify the specific provisions of the federal regulations incorporated by reference. The specific version of the federal regulations

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adopted by reference shall be that contained in the CFR (~~2001~~) (2016) in effect July 1, ~~2001~~ 2016. Reference to the various provisions of the Code of Federal Regulations are structured as in the following example: 40 CFR Part 75 means Part 75 of Title 40 of the Code of Federal Regulations; 40 CFR 75.1 means Section 75.1 in Part 75 of Title 40 of the Code of Federal Regulations.

B. In all of the federal regulations incorporated by reference substitute:

1. "Board" for "administrator."
2. "Board" for "U.S. Environmental Protection Agency" (except in references).

9VAC5-140-40. Applicability.

~~A. The~~ Except as provided in subdivision 3 of this section, the following units shall be NO_x Budget units, and any source that includes one or more such units shall be a NO_x Budget source, subject to the requirements of this part:

1. a. For units that commenced operation before January 1, 1997, a unit serving during 1995 or 1996 a generator that had a nameplate capacity greater than 25 MWe and produced electricity for sale under a firm contract to the electric grid.

b. For units that commenced operation on or after January 1, 1997, and before January 1, 1999, a unit serving during 1997 or 1998 a generator that had a nameplate capacity greater than 25 MWe and produced electricity for sale under a firm contract to the electric grid.

c. For units that commence operation on or after January 1, 1999, a unit serving at any time a generator that has a nameplate capacity greater than 25 MWe and produces electricity for sale.

2. ~~a.~~ For units that commenced operation before January 1, 1997, a unit that has a maximum design heat input greater than 250 mmBtu/hr and that did not serve during 1995 or 1996 a generator producing electricity for sale under a firm contract to the electric grid.

3. For units covered by the Cross-State Air Pollution Rule (40 CFR Parts 52, 78, and 97), an exemption to this chapter shall apply.

~~b.~~ 4. For units that commenced operation on or after January 1, 1997, and before January 1, 1999, a unit that has a maximum design heat input greater than 250 mmBtu/hr and that did not serve during 1997 or 1998 a generator producing electricity for sale under a firm contract to the electric grid.

e. 5. For units that commence operation on or after January 1, 1999, a unit with a maximum design heat input greater

than 250 mmBtu/hr that: ~~(1) At~~ at no time serves a generator producing electricity for sale; ~~or~~

(2) At any time serves a generator producing electricity for sale, if any such generator has a nameplate capacity of 25 MWe or less and has the potential to use no more than 50% of the potential electrical output capacity of the unit.

~~B. 1. Notwithstanding subsection A of this section, a unit under subdivision A 1 or A 2 of this section that has a federally enforceable permit that restricts the unit to combusting only natural gas or fuel oil (as defined in 40 CFR 75.2) during a control period and includes a NO_x emission limitation restricting NO_x emissions during a control period to 25 tons or less and that includes the provisions in subdivision B 4 of this section shall be exempt from the requirements of the NO_x Budget Trading Program, except for the provisions of this subsection, 9VAC5 140 20, 9VAC5 140 30, subsection A of this section, 9VAC5 140 70, and Article 5 (9VAC5 140 400 et seq.), Article 6 (9VAC5 140 500 et seq.), and Article 7 (9VAC5 140 600 et seq.) of this part. The NO_x emission limitation under this subdivision shall restrict NO_x emissions during the control period by limiting unit operating hours. The restriction on unit operating hours shall be calculated by dividing 25 tons by the unit's maximum potential hourly NO_x mass emissions, which shall equal the unit's maximum rated hourly heat input multiplied by the highest default NO_x emission rate otherwise applicable to the unit under 40 CFR 75.19.~~

2. The exemption under subdivision 1 of this subsection shall become effective as follows:

a. ~~The exemption shall become effective on the date on which the NO_x emission limitation and the special provisions in the permit under subdivision 1 of this subsection become final; or~~

b. ~~If the NO_x emission limitation and the special provisions in the permit under subdivision 1 of this subsection become final during a control period and after the first date on which the unit operates during such control period, then the exemption shall become effective on May 1 of such control period, provided that such NO_x emission limitation and the special provisions apply to the unit as of such first date of operation. If such NO_x emission limitation and special provisions do not apply to the unit as of such first date of operation, then the exemption under subdivision 1 of this subsection shall become effective on October 1 of the year during which such NO_x emission limitation and the special provisions become final.~~

3. The permitting authority that issues a federally enforceable permit under subdivision 1 of this subsection for a unit under subdivision A 1 or A 2 of this section will

provide the administrator written notice of the issuance of such permit and, upon request, a copy of the permit.

4. a. A unit exempt under subdivision 1 of this subsection shall comply with the restriction on fuel use and unit operating hours described in subdivision 1 of this subsection during the control period in each year.

b. The permitting authority will allocate NO_x allowances to the unit under 9VAC5-140-410 A through C and 9VAC5-140-420 A through C. For each control period for which the unit is allocated NO_x allowances under 9VAC5-140-410 A through C and 9VAC5-140-420 A through C,

(1) The owners and operators of the unit shall specify a general account, in which the administrator will record the NO_x allowances; and

(2) After the administrator records NO_x allowance allocations under 9VAC5-140-410 A through C and 9VAC5-140-420 A through C, the administrator will deduct, from the general account under subdivision 4 b (1) of this subsection, NO_x allowances that are allocated for the same or a prior control period as the NO_x allowances allocated to the unit under 9VAC5-140-410 A through C and 9VAC5-140-420 A through C and that equal the NO_x emission limitation (in tons of NO_x) on which the unit's exemption under subdivision 1 of this subsection is based. The NO_x authorized account representative shall ensure that such general account contains the NO_x allowances necessary for completion of such deduction.

c. A unit exempt under this subsection shall report hours of unit operation during the control period in each year to the permitting authority by November 1 of that year.

d. For a period of five years from the date the records are created, the owners and operators of a unit exempt under subdivision 1 of this subsection shall retain, at the source that includes the unit, records demonstrating that the conditions of the federally enforceable permit under subdivision 1 of this subsection were met, including the restriction on fuel use and unit operating hours. The five-year period for keeping records may be extended for cause, at any time prior to the end of the period, in writing by the permitting authority or the administrator. The owners and operators bear the burden of proof that the unit met the restriction on fuel use and unit operating hours.

e. The owners and operators and, to the extent applicable, the NO_x authorized account representative of a unit exempt under subdivision 1 of this subsection shall comply with the requirements of the NO_x Budget Trading Program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

f. On the earlier of the following dates, a unit exempt under subdivision 1 of this subsection shall lose its exemption:

(1) The date on which the restriction on unit operating hours described in subdivision 1 of this subsection is removed from the unit's federally enforceable permit or otherwise becomes no longer applicable to any control period starting in 2004; or

(2) The first date on which the unit fails to comply, or with regard to which the owners and operators fail to meet their burden of proving that the unit is complying, with the restriction on fuel use or unit operating hours described in subdivision 1 of this subsection during any control period starting in 2004.

g. A unit that loses its exemption in accordance with subdivision 4 f of this subsection shall be subject to the requirements of this part. For the purpose of applying permitting requirements under Article 3 (9VAC5-140-200 et seq.) of this part, allocating allowances under Article 5 (9VAC5-140-400 et seq.) of this part, and applying monitoring requirements under Article 8 (9VAC5-140-700 et seq.) of this part, the unit shall be treated as commencing operation and, if the unit is covered by subdivision A 1 of this section, commencing commercial operation on the date the unit loses its exemption.

h. A unit that is exempt under subdivision 1 of this subsection shall not be eligible to be a NO_x Budget opt-in unit under Article 9 (9VAC5-140-800 et seq.) of this part.

9VAC5-140-50. Retired unit exemption.

A. This section applies to any NO_x Budget unit, other than a NO_x Budget opt-in source, that is permanently retired.

B. 1. Any NO_x Budget unit, other than a NO_x Budget opt-in source, that is permanently retired shall be exempt from the NO_x Budget Trading Program, except for the provisions of this section, 9VAC5-140-20, 9VAC5-140-30, 9VAC5-140-40, and 9VAC5-140-70 and Article 5 (9VAC5-140-400 et seq.), Article 6 (9VAC5-140-500 et seq.), and Article 7 (9VAC5-140-600 et seq.) of this part.

2. The exemption under subdivision 1 of this subsection shall become effective the day on which the unit is permanently retired. Within 30 days of permanent retirement, the NO_x authorized account representative (authorized in accordance with Article 2 (9VAC5-140-100 et seq.) of this part) shall submit a statement to the permitting authority otherwise responsible for administering any NO_x Budget permit for the unit. A copy of the statement shall be submitted to the administrator. The statement shall state (in a format prescribed by the permitting authority) that the unit is permanently retired

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and will comply with the requirements of subsection C of this section.

3. After receipt of the notice under subdivision 2 of this subsection, the permitting authority will amend any permit covering the source at which the unit is located to add the provisions and requirements of the exemption under subdivision 1 of this subsection and subsection C of this section.

C. 1. A unit exempt under this section shall not emit any nitrogen oxides, starting on the date that the exemption takes effect. ~~The owners and operators of the unit shall be allocated allowances in accordance with Article 5 (9VAC5-140-400 et seq.) of this part. For each control period for which the unit is allocated one or more NO_x allowances, the owners and operators of the unit shall specify a general account, in which the administrator will record such NO_x allowances.~~

2. a. A unit exempt under this section and located at a source that is required, or but for this exemption would be required, to have a Title V operating permit shall not resume operation unless the NO_x authorized account representative of the source submits a complete NO_x Budget permit application under 9VAC5-140-220 for the unit not less than 18 months (or such lesser time provided by the permitting authority) prior to ~~the later of May 31, 2004, or~~ the date on which the unit is to first resume operation.

b. A unit exempt under this section and located at a source that is required, or but for this exemption would be required, to have a state operating permit shall not resume operation unless the NO_x authorized account representative of the source submits a complete NO_x Budget permit application under 9VAC5-140-220 for the unit not less than 18 months (or such lesser time provided by the permitting authority) prior to ~~the later of May 31, 2004, or~~ the date on which the unit is to first resume operation.

3. The owners and operators and, to the extent applicable, the NO_x authorized account representative of a unit exempt under this section shall comply with the requirements of the NO_x Budget Trading Program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

~~4. A unit that is exempt under this section is not eligible to be a NO_x Budget opt in source under Article 9 (9VAC5-140-800 et seq.) of this part.~~

5. ~~4.~~ For a period of five years from the date the records are created, the owners and operators of a unit exempt under this section shall retain at the source that includes the unit, records demonstrating that the unit is permanently retired. The five-year period for keeping records may be extended for cause, at any time prior to the end of the

period, in writing by the permitting authority or the administrator. The owners and operators bear the burden of proof that the unit is permanently retired.

~~6.~~ a. On the earlier of the following dates, a unit exempt under subsection B of this section shall lose its exemption:

(1) The date on which the NO_x authorized account representative submits a NO_x Budget permit application under subdivision 2 of this subsection;

(2) The date on which the NO_x authorized account representative is required under subdivision 2 of this subsection to submit a NO_x Budget permit application; or

(3) The date on which the unit resumes operation, if the unit is not required to submit a NO_x Budget permit application.

b. For the purpose of applying monitoring requirements under Article 8 (9VAC5-140-700 et seq.) of this part, a unit that loses its exemption under this section shall be treated as a unit that commences operation or commercial operation on the first date on which the unit resumes operation.

9VAC5-140-60. Standard requirements.

A. The following requirements concerning permits shall apply:

1. The NO_x authorized account representative of each NO_x Budget source required to have a federally enforceable permit and each NO_x Budget unit required to have a federally enforceable permit at the source shall:

a. Submit to the permitting authority a complete NO_x Budget permit application under 9VAC5-140-220 in accordance with the deadlines specified in 9VAC5-140-210 B and C;

b. Submit in a timely manner any supplemental information that the permitting authority determines is necessary in order to review a NO_x Budget permit application and issue or deny a NO_x Budget permit.

2. The owners and operators of each NO_x Budget source required to have a federally enforceable permit and each NO_x Budget unit required to have a federally enforceable permit at the source shall have a NO_x Budget permit issued by the permitting authority and operate the unit in compliance with such NO_x Budget permit.

3. The owners and operators of a NO_x Budget source that is not otherwise required to have a federally enforceable permit are not required to submit a NO_x Budget permit application, and to have a NO_x Budget permit, under Article 3 (9VAC5-140-200 et seq.) of this part for such NO_x Budget source.

B. The following requirements concerning monitoring shall apply:

1. The owners and operators and, to the extent applicable, the NO_x authorized account representative of each NO_x Budget source and each NO_x Budget unit at the source, shall comply with the monitoring requirements of Article 8 (9VAC5-140-700 et seq.) of this part.
2. The emissions measurements recorded and reported in accordance with Article 8 (9VAC5-140-700 et seq.) of this part shall be used to determine compliance by the unit with the NO_x Budget emissions limitation under subsection C of this section.

C. The following requirements concerning nitrogen oxides shall apply:

1. The owners and operators of each NO_x Budget source and each NO_x Budget unit at the source shall hold NO_x allowances available for compliance deductions under 9VAC5-140-540 A, B, E, or F, as of the NO_x allowance transfer deadline, in the unit's compliance account and the source's overdraft account in an amount not less than the total NO_x emissions for the control period from the unit, as determined in accordance with Article 8 (9VAC5-140-700 et seq.) of this part, plus any amount necessary to account for actual utilization under 9VAC5-140-420 E for the control period or to account for excess emissions for a prior control period under 9VAC5-140-540 D or to account for withdrawal from the NO_x Budget Trading Program, or a change in regulatory status, of a NO_x Budget opt-in unit under 9VAC5-140-860 or 9VAC5-140-870.
2. Each ton of nitrogen oxides emitted in excess of the NO_x Budget emissions limitation shall constitute a separate violation of this part, the CAA, and the Virginia Air Pollution Control Law.
3. A NO_x Budget unit shall be subject to the requirements under subdivision 1 of this subsection starting on the later of May 31, 2004, or the date on which the unit commences operation.
4. NO_x allowances shall be held in, deducted from, or transferred among NO_x Allowance Tracking System accounts in accordance with Article 5 (9VAC5-140-400 et seq.), Article 6 (9VAC5-140-500 et seq.), Article 7 (9VAC5-140-600 et seq.), and Article 9 (9VAC5-140-800 et seq.) of this part.
5. A NO_x allowance shall not be deducted, in order to comply with the requirements under subdivision 1 of this subsection, for a control period in a year prior to the year for which the NO_x allowance was allocated.
6. A NO_x allowance allocated by the permitting authority or the administrator under the NO_x Budget Trading Program is a limited authorization to emit one ton of nitrogen oxides in accordance with the NO_x Budget

Trading Program. No provision of the NO_x Budget Trading Program, the NO_x Budget permit application, the NO_x Budget permit, or an exemption under 9VAC5-140-50 and no provision of law shall be construed to limit the authority of the United States or the state to terminate or limit such authorization.

7. A NO_x allowance allocated by the permitting authority or the administrator under the NO_x Budget Trading Program does not constitute a property right.

8. Upon recordation by the administrator under Article 6 (9VAC5-140-500 et seq.), Article 7 (9VAC5-140-600 et seq.), or Article 9 (9VAC5-140-800 et seq.) of this part, every allocation, transfer, or deduction of a NO_x allowance to or from a NO_x Budget unit's compliance account or the overdraft account of the source where the unit is located is deemed to amend automatically, and become a part of, any NO_x Budget permit of the NO_x Budget unit by operation of law without any further review.

D. The owners and operators of a NO_x Budget unit that has excess emissions in any control period shall:

1. Surrender the NO_x allowances required for deduction under 9VAC5-140-540 D 1; and
2. Pay any fine, penalty, or assessment or comply with any other remedy imposed under 9VAC5-140-540 D 3.

E. C. The following requirements concerning recordkeeping and reporting shall apply:

1. Unless otherwise provided, the owners and operators of the NO_x Budget source and each NO_x Budget unit at the source shall keep on site at the source each of the following documents for a period of five years from the date the document is created. This period may be extended for cause, at any time prior to the end of five years, in writing by the permitting authority or the administrator.

a. The account certificate of representation for the NO_x authorized account representative for the source and each NO_x Budget unit at the source and all documents that demonstrate the truth of the statements in the account certificate of representation, in accordance with 9VAC5-140-130; provided that the certificate and documents shall be retained on site at the source beyond such five-year period until such documents are superseded because of the submission of a new account certificate of representation changing the NO_x authorized account representative.

b. All emissions monitoring information, in accordance with Article 8 (9VAC5-140-700 et seq.) of this part; provided that to the extent that Article 8 (9VAC5-140-700 et seq.) of this part provides for a three-year period for recordkeeping, the three-year period shall apply.

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c. Copies of all reports, compliance certifications, and other submissions and all records made or required under the NO_x Budget ~~Trading~~ Program.

d. Copies of all documents used to complete a NO_x Budget permit application and any other submission under the NO_x Budget ~~Trading~~ Program or to demonstrate compliance with the requirements of the NO_x Budget ~~Trading~~ Program.

2. The NO_x authorized account representative of a NO_x Budget source and each NO_x Budget unit at the source shall submit the reports and compliance certifications required under the NO_x Budget ~~Trading~~ Program, including those under ~~Article 4 (9VAC5-140-300 et seq.), Article 8 (9VAC5-140-700 et seq.), or Article 9 (9VAC5-140-800 et seq.)~~ of this part.

~~F. D.~~ The following requirements concerning liability shall apply:

1. Any person who knowingly violates any requirement or prohibition of the NO_x Budget ~~Trading~~ Program, a NO_x Budget permit, or an exemption under 9VAC5-140-50 shall be subject to enforcement pursuant to the Air Pollution Control Law of Virginia or applicable federal law.

2. Any person who knowingly makes a false material statement in any record, submission, or report under the NO_x Budget ~~Trading~~ Program shall be subject to criminal enforcement pursuant to the Air Pollution Control Law of Virginia or applicable federal law.

3. No permit revision shall excuse any violation of the requirements of the NO_x Budget ~~Trading~~ Program that occurs prior to the date that the revision takes effect.

4. Each NO_x Budget source and each NO_x Budget unit shall meet the requirements of the NO_x Budget ~~Trading~~ Program.

5. Any provision of the NO_x Budget ~~Trading~~ Program that applies to a NO_x Budget source (including a provision applicable to the NO_x authorized account representative of a NO_x Budget source) shall also apply to the owners and operators of such source and of the NO_x Budget units at the source.

6. Any provision of the NO_x Budget ~~Trading~~ Program that applies to a NO_x Budget unit (including a provision applicable to the NO_x authorized account representative of a NO_x ~~budget~~ Budget unit) shall also apply to the owners and operators of such unit. Except with regard to the requirements applicable to units with a common stack under Article 8 (9VAC5-140-700 et seq.) of this part, the owners and operators and the NO_x authorized account representative of one NO_x Budget unit shall not be liable for any violation by any other NO_x Budget unit of which they are not owners or operators or the NO_x authorized

account representative and that is located at a source of which they are not owners or operators or the NO_x authorized account representative.

~~G. E.~~ No provision of the NO_x Budget ~~Trading~~ Program, a NO_x Budget permit application, a NO_x Budget permit, or an exemption under 9VAC5-140-50 shall be construed as exempting or excluding the owners and operators and, to the extent applicable, the NO_x authorized account representative of a NO_x Budget source or NO_x Budget unit from compliance with any other provision of the applicable implementation plan, a federally enforceable permit, or the CAA.

Article 2

NO_x Authorized Account Representative for NO_x Budget Sources

9VAC5-140-100. Authorization and responsibilities of the NO_x authorized account representative.

A. Except as provided under 9VAC5-140-110, each NO_x Budget source, including all NO_x Budget units at the source, shall have one and only one NO_x authorized account representative with regard to all matters under the NO_x Budget ~~Trading~~ Program concerning the source or any NO_x Budget unit at the source.

B. The NO_x authorized account representative of the NO_x Budget source shall be selected by an agreement binding on the owners and operators of the source and all NO_x Budget units at the source.

C. Upon receipt by the administrator of a complete account certificate of representation under 9VAC5-140-130, the NO_x authorized account representative of the source shall represent and, by his representations, actions, inactions, or submissions, legally bind each owner and operator of the NO_x Budget source represented and each NO_x Budget unit at the source in all matters pertaining to the NO_x Budget ~~Trading~~ Program, notwithstanding any agreement between the NO_x authorized account representative and such owners and operators. The owners and operators shall be bound by any decision or order issued to the NO_x authorized account representative by the permitting authority, the administrator, or a court regarding the source or unit.

~~D. No NO_x Budget permit shall be issued, and no NO_x Allowance Tracking System account shall be established for a NO_x Budget unit at a source, until the administrator has received a complete account certificate of representation under 9VAC5-140-130 for a NO_x authorized account representative of the source and the NO_x Budget units at the source.~~

E. 1. Each submission under the NO_x Budget ~~Trading~~ Program shall be submitted, signed, and certified by the NO_x authorized account representative for each NO_x Budget source on behalf of which the submission is made. Each such submission shall include the following certification statement

by the NO_x authorized account representative: "I am authorized to make this submission on behalf of the owners and operators of the NO_x Budget sources or NO_x Budget units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

2. The permitting authority and the administrator will accept or act on a submission made on behalf of owner or operators of a NO_x Budget source or a NO_x Budget unit only if the submission has been made, signed, and certified in accordance with subdivision 1 of this subsection.

9VAC5-140-110. Alternate NO_x authorized account representative.

A. An account certificate of representation may designate one and only one alternate NO_x authorized account representative who may act on behalf of the NO_x authorized account representative. The agreement by which the alternate NO_x authorized account representative is selected shall include a procedure for authorizing the alternate NO_x authorized account representative to act in lieu of the NO_x authorized account representative.

B. Upon receipt by the administrator of a complete account certificate of representation under 9VAC5-140-130, any representation, action, inaction, or submission by the alternate NO_x authorized account representative shall be deemed to be a representation, action, inaction, or submission by the NO_x authorized account representative.

C. Except in this section and 9VAC5-140-100 A, 9VAC5-140-120, and 9VAC5-140-130, ~~and 9VAC5-140-510~~, whenever the term "NO_x authorized account representative" is used in this part, the term shall be construed to include the alternate NO_x authorized account representative.

9VAC5-140-130. Account certificate of representation.

A. A complete account certificate of representation for a NO_x authorized account representative or an alternate NO_x authorized account representative shall include the following elements in a format prescribed by the administrator:

1. Identification of the NO_x Budget source and each NO_x Budget unit at the source for which the account certificate of representation is submitted.
2. The name, address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the

NO_x authorized account representative and any alternate NO_x authorized account representative.

3. A list of the owners and operators of the NO_x Budget source and of each NO_x Budget unit at the source.

4. The following certification statement by the NO_x authorized account representative and any alternate NO_x authorized account representative: "I certify that I was selected as the NO_x authorized account representative or alternate NO_x authorized account representative, as applicable, by an agreement binding on the owners and operators of the NO_x Budget source and each NO_x Budget unit at the source. I certify that I have all the necessary authority to carry out my duties and responsibilities under the NO_x Budget ~~Trading~~ Program on behalf of the owners and operators of the NO_x Budget source and of each NO_x Budget unit at the source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions and by any decision or order issued to me by the permitting authority, the administrator, or a court regarding the source or unit."

5. The signature of the NO_x authorized account representative and any alternate NO_x authorized account representative and the dates signed.

B. Unless otherwise required by the permitting authority or the administrator, documents of agreement referred to in the account certificate of representation shall not be submitted to the permitting authority or the administrator. Neither the permitting authority nor the administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

9VAC5-140-140. Objections concerning the NO_x authorized account representative.

A. Once a complete account certificate of representation under 9VAC5-140-130 has been submitted and received, the permitting authority and the administrator shall rely on the account certificate of representation unless and until a superseding complete account certificate of representation under 9VAC5-140-130 is received by the administrator.

B. Except as provided in 9VAC5-140-120 A or B, no objection or other communication submitted to the permitting authority or the administrator concerning the authorization, or any representation, action, inaction, or submission of the NO_x authorized account representative shall affect any representation, action, inaction, or submission of the NO_x authorized account representative or the finality of any decision or order by the permitting authority or the administrator under the NO_x Budget ~~Trading~~ Program.

C. Neither the permitting authority nor the administrator shall adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any NO_x authorized account representative,

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including private legal disputes concerning the proceeds of NO_x allowance transfers.

Article 3
Permits

9VAC5-140-200. General NO_x Budget trading program permit requirements.

A. For each NO_x Budget source required to have a federally enforceable permit, such permit shall include a NO_x Budget permit administered by the permitting authority.

1. For NO_x Budget sources required to have a Title V operating permit, the NO_x Budget portion of the Title V permit shall be administered in accordance with the permitting authority's Title V operating permits regulations, ~~except as provided otherwise by this article or Article 9 (9VAC5-140-800 et seq.) of this part.~~

2. For NO_x Budget sources required to have a state operating permit, the NO_x Budget portion of the state operating permit shall be administered in accordance with the permitting authority's regulations promulgated to administer state operating permits, ~~except as provided otherwise by this article or Article 9 (9VAC5-140-800 et seq.) of this part.~~

B. Each NO_x Budget permit (including a draft or proposed NO_x Budget permit, if applicable) shall contain all applicable NO_x Budget Trading Program requirements and shall be a complete and segregable portion of the permit under subsection A of this section.

9VAC5-140-220. Information requirements for NO_x Budget permit applications.

A complete NO_x Budget permit application shall include the following elements concerning the NO_x Budget source for which the application is submitted, in a format prescribed by the permitting authority:

1. Identification of the NO_x Budget source, including plant name and the ORIS (Office of Regulatory Information Systems) or facility code assigned to the source by the Energy Information Administration, if applicable;

2. Identification of each NO_x Budget unit at the NO_x Budget source ~~and whether it is a NO_x Budget unit under 9VAC5-140-40 or under Article 9 (9VAC5-140-800 et seq.) of this part; and~~

3. The standard requirements under 9VAC5-140-60; ~~and,~~

4. ~~For each NO_x Budget opt-in unit at the NO_x Budget source, the following certification statements by the NO_x authorized account representative:~~

a. ~~"I certify that each unit for which this permit application is submitted under Article 9 (9VAC5-140-800 et seq.) of 9VAC5 Chapter 140 is not a NO_x Budget unit under 9VAC5-140-40 and is not covered by an~~

~~exemption under 9VAC5-140-40 B or 9VAC5-140-50 that is in effect."~~

b. ~~If the application is for an initial NO_x Budget opt-in permit, "I certify that each unit for which this permit application is submitted under Article 9 (9VAC5-140-800 et seq.) of 9VAC5 Chapter 140 is currently operating, as that term is defined under 9VAC5-140-20."~~

9VAC5-140-230. NO_x Budget permit contents.

A. Each NO_x Budget permit (including any draft or proposed NO_x Budget permit, if applicable) will contain all elements required for a complete NO_x Budget permit application under 9VAC5-140-220.

B. Each NO_x Budget permit is deemed to incorporate automatically the definitions of terms under 9VAC5-140-20 and, ~~upon recordation by the administrator under Article 6 (9VAC5-140-500 et seq.), Article 7 (9VAC5-140-600 et seq.), or Article 9 (9VAC5-140-800 et seq.) of this part, every allocation, transfer, or deduction of a NO_x allowance to or from the compliance accounts of the NO_x Budget units covered by the permit or the overdraft account of the NO_x Budget source covered by the permit.~~

Article 4
Compliance Certification ~~(Repealed)~~

9VAC5-140-300. ~~Compliance certification report. (Repealed.)~~

A. ~~For each control period in which one or more NO_x Budget units at a source are subject to the NO_x Budget emissions limitation, the NO_x authorized account representative of the source shall submit to the permitting authority and the administrator by November 30 of that year a compliance certification report for each source covering all such units.~~

B. ~~The NO_x authorized account representative shall include in the compliance certification report under subsection A of this section the following elements, in a format prescribed by the administrator, concerning each unit at the source and subject to the NO_x Budget emissions limitation for the control period covered by the report:~~

~~1. Identification of each NO_x Budget unit;~~

~~2. At the NO_x authorized account representative's option, the serial numbers of the NO_x allowances that are to be deducted from each unit's compliance account under 9VAC5-140-540 for the control period;~~

~~3. At the NO_x authorized account representative's option, For units sharing a common stack and having NO_x emissions that are not monitored separately or apportioned in accordance with Article 8 (9VAC5-140-700 et seq.) of this part, the percentage of allowances that is to be deducted from each unit's compliance account under 9VAC5-140-540 E; and~~

4. The compliance certification under subsection C of this section.

C. In the compliance certification report under subsection A of this section, the NO_x authorized account representative shall certify, based on reasonable inquiry of those persons with primary responsibility for operating the source and the NO_x Budget units at the source in compliance with the NO_x Budget Trading Program, whether each NO_x Budget unit for which the compliance certification is submitted was operated during the calendar year covered by the report in compliance with the requirements of the NO_x Budget Trading Program applicable to the unit, including:

1. Whether the unit was operated in compliance with the NO_x Budget emissions limitation;
2. Whether the monitoring plan that governs the unit has been maintained to reflect the actual operation and monitoring of the unit, and contains all information necessary to attribute NO_x emissions to the unit, in accordance with Article 8 (9VAC5-140-700 et seq.) of this part;
3. Whether all the NO_x emissions from the unit, or a group of units (including the unit) using a common stack, were monitored or accounted for through the missing data procedures and reported in the quarterly monitoring reports, including whether conditional data were reported in the quarterly reports in accordance with Article 8 (9VAC5-140-700 et seq.) of this part. If conditional data were reported, the owner or operator shall indicate whether the status of all conditional data has been resolved and all necessary quarterly report resubmissions have been made;
4. Whether the facts that form the basis for certification under Article 8 (9VAC5-140-700 et seq.) of this part of each monitor at the unit or a group of units (including the unit) using a common stack, or for using an excepted monitoring method or alternative monitoring method approved under Article 8 (9VAC5-140-700 et seq.) of this part, if any, has changed; and
5. If a change is required to be reported under subdivision 4 of this subsection, specify the nature of the change, the reason for the change, when the change occurred, and how the unit's compliance status was determined subsequent to the change, including what method was used to determine emissions when a change mandated the need for monitor recertification.

9VAC5-140-310. ~~Permitting authority's and administrator's action on compliance certifications.~~ (Repealed.)

A. The permitting authority or the administrator may review and conduct independent audits concerning any compliance certification or any other submission under the NO_x Budget Trading Program and make appropriate adjustments of the

~~information in the compliance certifications or other submissions.~~

~~B. The administrator may deduct NO_x allowances from or transfer NO_x allowances to a unit's compliance account or a source's overdraft account based on the information in the compliance certifications or other submissions, as adjusted under subsection A of this section.~~

9VAC5-140-320 through 9VAC5-140-390. [Reserved] (Repealed.)

Article 5
NO_x Allowance Allocations (Repealed)

9VAC5-140-400. ~~State trading program budget.~~ (Repealed.)

~~In accordance with 9VAC5-140-410 and 9VAC5-140-420, the permitting authority will allocate to the NO_x Budget units under 9VAC5-140-40 A, for each control period specified in 9VAC5-140-410, a total number of NO_x allowances equal to the trading program budget covering such units.~~

9VAC5-140-410. ~~Timing requirements for NO_x allowance allocations.~~ (Repealed.)

~~A. By July 1, 2002, the permitting authority will submit to the administrator the NO_x allowance allocations, determined in accordance with 9VAC5-140-420 A through C, for the control periods in 2004 through 2008.~~

~~B. By April 1, 2006, the permitting authority will submit to the administrator the NO_x allowance allocations, determined in accordance with 9VAC5-140-420 A through C, for the control periods in 2009 through 2013. If the permitting authority fails to submit to the administrator the NO_x allowance allocations in accordance with this subsection, the administrator will allocate, for the applicable control period, the same number of NO_x allowances as were allocated for the preceding control period.~~

~~C. By April 1, 2011, by April 1, 2016, and thereafter by April 1 of the year that is five years after the last year for which NO_x allowances allocations are determined, the permitting authority will submit to the administrator the NO_x allowance allocations, determined in accordance with 9VAC5-140-420 A through C, for the control periods in the years that are three, four, five, six, and seven years after the applicable deadline under this subsection. If the permitting authority fails to submit to the administrator the NO_x allowance allocations in accordance with this subsection, the administrator will allocate, for the applicable control period, the same number of NO_x allowances as were allocated for the preceding control period.~~

~~D. By April 1, 2004, and April 1 of each year thereafter, the permitting authority will submit to the administrator the NO_x allowance allocations, in accordance with 9VAC5-140-420~~

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D, for the control period in the year of the applicable deadline under this subsection.

9VAC5-140-420. NO_x allowance allocations. (Repealed.)

~~A. 1. The heat input (in mmBtu) used for calculating NO_x allowance allocations for each NO_x Budget unit under 9VAC5 140 40 A shall be:~~

~~a. For a NO_x allowance allocation under 9VAC5 140 410 A:~~

~~(1) For a unit under 9VAC5 140 40 A 1, the average of the two highest amounts of the unit's heat input for the control periods in 1995 through 1999; or~~

~~(2) For a unit under 9VAC5 140 40 A 2, the control period in 1995 or, if the permitting authority determines that reasonably reliable data are available for control periods in 1996 through 1999, the average of the two highest amounts of the unit's heat input for the control periods in 1995 through 1999.~~

~~b. For a NO_x allowance allocation under 9VAC5 140 410 B, the average of the two highest amounts of the unit's heat input for the control periods in 2001 through 2005. If the unit is under 9VAC5 140 40 A and has less than two control periods of heat input, it shall not be required to average a zero balance to determine the average under this subdivision.~~

~~c. For a NO_x allowance allocation under 9VAC5 140 410 C, the average of the two highest amounts of the unit's heat input for the control period in the years that are four, five, six, seven, and eight years before the first year for which the allocation is being calculated. If the unit is under 9VAC5 140 40 A and has less than two control periods of heat input, it shall not be required to average a zero balance to determine the average under this subdivision.~~

~~2. The unit's heat input for the control period in each year specified under subdivision A 1 of this section shall be determined in accordance with 40 CFR Part 75. Notwithstanding the first sentence of this subdivision:~~

~~a. For a NO_x allowance allocation under 9VAC5 140 410 A, such heat input shall be determined using the best available data reported to the permitting authority for the unit if the unit was not otherwise subject to the requirements of 40 CFR Part 75 for the control period.~~

~~b. For a NO_x allowance allocation under 9VAC5 140 410 B or C for a unit exempt under 9VAC5 140 40 B, such heat input shall be treated as zero if the unit is exempt under 9VAC5 140 40 B during the control period.~~

~~B. For each group of five control periods specified in 9VAC5 140 410 A through C, the permitting authority will allocate to all NO_x Budget units under 9VAC5 140 40 A 1~~

~~that commenced operation before May 1, 1998, for allocations under 9VAC5 140 410 A; May 1, 2004, for allocations under 9VAC5 140 410 B; and May 1 of the year five years before the first year for which the allocation under 9VAC5 140 410 C is being calculated, a total number of NO_x allowances equal to the core trading program budget covering such units. The permitting authority will allocate in accordance with the following procedures:~~

~~1. The permitting authority will allocate NO_x allowances to each NO_x Budget unit under 9VAC5 140 40 A 1 for each control period in the following amounts:~~

~~a. For NO_x Budget units that commenced operation before May 1, 1998, an amount equaling 0.15 lb/mmBtu multiplied by the heat input determined under subsection A of this section, divided by 2,000 lb/ton, and rounded to the nearest whole number of NO_x allowances as appropriate.~~

~~b. For NO_x Budget units that commenced operation on or after May 1, 1998, an amount equaling the lesser of:~~

~~(1) 0.15 lb/mmBtu multiplied by the heat input determined under subsection A of this section, divided by 2,000 lb/ton, and rounded to the nearest whole number of NO_x allowances as appropriate; or~~

~~(2) The unit's most stringent state or federal NO_x emission limitation multiplied by the heat input determined under subsection A of this section, divided by 2,000 lb/ton, and rounded to the nearest whole number of NO_x allowances as appropriate.~~

~~2. If the initial total number of NO_x allowances allocated to all NO_x Budget units under 9VAC5 140 40 A 1 for a control period under subdivision 1 of this subsection does not equal the core trading program budget covering such units, the permitting authority will adjust the total number of NO_x allowances allocated to all such NO_x Budget units for the control period under subdivision 1 of this subsection so that the total number of NO_x allowances allocated equals the core trading program budget. This adjustment shall be made by: multiplying each unit's allocation by the core trading program budget covering such units; dividing by the total number of NO_x allowances allocated under subdivision 1 of this subsection for the control period; and rounding to the nearest whole number of NO_x allowances as appropriate.~~

~~C. For each group of five control periods specified in 9VAC5 140 410 A through C, the permitting authority will allocate to all NO_x Budget units under 9VAC5 140 40 A 2 that commenced operation before May 1, 1998, for allocations under 9VAC5 140 410 A; May 1, 2004, for allocations under 9VAC5 140 410 B; and May 1 of the year five years before the first year for which the allocation under 9VAC5 140 410 C is being calculated, a total number of NO_x allowances equal to the core trading program budget covering~~

such units. The permitting authority will allocate in accordance with the following procedures:

1. The permitting authority will allocate NO_x allowances to each NO_x Budget unit under 9VAC5-140-40 A 2 for each control period in the following amounts:

a. For NO_x Budget units that commenced operation before May 1, 1998, an amount equaling 0.17 lb/mmBtu multiplied by the heat input determined under subsection A of this section, divided by 2,000 lb/ton, and rounded to the nearest whole number of NO_x allowances as appropriate.

b. For NO_x Budget units that commenced operation on or after May 1, 1998, an amount equaling the lesser of:

(1) 0.17 lb/mmBtu multiplied by the heat input determined under subsection A of this section, divided by 2,000 lb/ton, and rounded to the nearest whole number of NO_x allowances as appropriate; or

(2) The unit's most stringent state or federal NO_x emission limitation multiplied by the heat input determined under subsection A of this section, divided by 2,000 lb/ton, and rounded to the nearest whole number of NO_x allowances as appropriate.

2. If the initial total number of NO_x allowances allocated to all NO_x Budget units under 9VAC5-140-40 A 2 for a control period under subdivision 1 of this subsection does not equal the core trading program budget covering such units, the permitting authority will adjust the total number of NO_x allowances allocated to all such NO_x Budget units for the control period under subdivision 1 of this subsection so that the total number of NO_x allowances allocated equals the core trading program budget covering such units. This adjustment shall be made by: multiplying each unit's allocation by the core trading program budget covering such units; dividing by the total number of NO_x allowances allocated under subdivision 1 of this subsection for the control period; and rounding to the nearest whole number of NO_x allowances as appropriate.

D. For each control period specified in 9VAC5-140-410 D, the permitting authority will allocate NO_x allowances to NO_x Budget units under 9VAC5-140-40 A (except for units exempt under 9VAC5-140-40 B) that commence operation, or are projected to commence operation, on or after: May 1, 1998 (for control periods under 9VAC5-140-410 A); May 1, 2004 (for control periods under 9VAC5-140-410 B); and May 1 of the year five years before the beginning of the group of five years that includes the control period (for control periods under 9VAC5-140-410 C). The permitting authority will make the allocations under this subsection in accordance with the following procedures:

1. The permitting authority will establish one allocation set aside for each control period. Each allocation set aside

shall be allocated NO_x allowances equal to the allocation set aside budget.

2. The NO_x authorized account representative of a NO_x Budget unit specified in this subsection may submit to the permitting authority a request, in a format specified by the permitting authority, to be allocated NO_x allowances for the control period. The NO_x allowance allocation request must be received by the permitting authority on or after the date on which the permitting authority issues a new source review program permit for the unit and by January 1 before the control period for which NO_x allowances are requested.

3. In a NO_x allowance allocation request under subdivision 2 of this subsection, the NO_x authorized account representative for a NO_x Budget unit under 9VAC5-140-40 A 1 may request for the control period NO_x allowances in an amount that does not exceed the lesser of:

a. 0.15 lb/mmBtu multiplied by the unit's maximum design heat input, multiplied by the lesser of 3,672 hours or the number of hours remaining in the control period starting with the day in the control period on which the unit commences operation or is projected to commence operation, divided by 2,000 lb/ton, and rounded to the nearest whole number of NO_x allowances as appropriate; or

b. The unit's most stringent state or federal NO_x emission limitation multiplied by the unit's maximum design heat input, multiplied by the lesser of 3,672 hours or the number of hours remaining in the control period starting with the day in the control period on which the unit commences operation or is projected to commence operation, divided by 2,000 lb/ton, and rounded to the nearest whole number of NO_x allowances as appropriate.

4. In a NO_x allowance allocation request under subdivision 2 of this subsection, the NO_x authorized account representative for a NO_x Budget unit under 9VAC5-140-40 A 2 may request for the control period NO_x allowances in an amount that does not exceed the lesser of:

a. 0.17 lb/mmBtu multiplied by the unit's maximum design heat input, multiplied by the lesser of 3,672 hours or the number of hours remaining in the control period starting with the day in the control period on which the unit commences operation or is projected to commence operation, divided by 2,000 lb/ton, and rounded to the nearest whole number of NO_x allowances as appropriate; or

b. The unit's most stringent state or federal NO_x emission limitation multiplied by the unit's maximum design heat input, multiplied by the lesser of 3,672 hours or the number of hours remaining in the control period starting with the day in the control period on which the unit commences operation or is projected to commence

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operation, divided by 2,000 lb/ton, and rounded to the nearest whole number of NO_x allowances as appropriate.

5. The permitting authority will review each NO_x allowance allocation request submitted in accordance with subdivision 2 of this subsection and will allocate NO_x allowances pursuant to such request as follows:

a. Upon receipt of the NO_x allowance allocation request, the permitting authority will make any necessary adjustments to the request to ensure that the requirements of this section and subdivisions 2, 3, and 4 of this subsection are met.

b. The permitting authority will determine the following amounts:

(1) The sum of the NO_x allowances requested (as adjusted under subdivision 5 a of this subsection) in all NO_x allowance allocation requests under subdivision 2 of this section for the control period; and

(2) For units exempt under 9VAC5 140 40 B that commenced operation, or are projected to commence operation, on or after May 1, 1998 (for control periods under 9VAC5 140 410 A); May 1, 2004 (for control periods under 9VAC5 140 410 B); and May 1 of the year five years before beginning of the group of five years that includes the control period (for control periods under 9VAC5 140 410 C), the sum of the NO_x emission limitations (in tons of NO_x) on which each unit's exemption under 9VAC5 140 40 B is based.

e. If the number of NO_x allowances in the allocation set aside for the control period less the amount under subdivision 5 b (2) of this subsection is not less than the amount determined under subdivision 5 b (1) of this subsection, the permitting authority will allocate the amount of the NO_x allowances requested (as adjusted under subdivision 5 a of this subsection) to the NO_x Budget unit for which the allocation request was submitted.

d. If the number of NO_x allowances in the allocation set aside for the control period less the amount under subdivision 5 b (2) of this subsection is less than the amount determined under subdivision 5 b (1) of this subsection, the permitting authority will allocate, to the NO_x Budget unit for which the allocation request was submitted, the amount of NO_x allowances requested (as adjusted under subdivision 5 a of this subsection) multiplied by the number of NO_x allowances in the allocation set aside for the control period less the amount determined under subdivision 5 b (2) of this subsection, divided by the amount determined under subdivision 5 b (1) of this subsection, and rounded to the nearest whole number of NO_x allowances as appropriate.

E. 1. For a NO_x Budget unit that is allocated NO_x allowances under subsection D of this section for a control period, the administrator will deduct NO_x allowances under 9VAC5 140 540 B, E, or F to account for the actual utilization of the unit during the control period. The administrator will calculate the number of NO_x allowances to be deducted to account for the unit's actual utilization using the following formulas and rounding to the nearest whole number of NO_x allowance as appropriate, provided that the number of NO_x allowances to be deducted shall be zero if the number calculated is less than zero:

NO_x allowances deducted for actual utilization for a unit under 9VAC5 140 40 A 1 = Unit's NO_x allowances allocated for control period (Unit's actual control period utilization x the lesser of 0.15 lb/mmBtu or the unit's most stringent state or federal NO_x emission limitation x 2,000 lb/ton); and

NO_x allowances deducted for actual utilization for a unit under 9VAC5 140 40 A 2 = Unit's NO_x allowances allocated for control period (Unit's actual control period utilization x the lesser of 0.17 lb/mmBtu or the unit's most stringent state or federal NO_x emission limitation x 2,000 lb/ton)

Where:

"Unit's NO_x allowances allocated for control period" is the number of NO_x allowances allocated to the unit for the control period under subdivision D of this section; and

"Unit's actual control period utilization" is the utilization (in mmBtu) of the unit during the control period.

2. The administrator will transfer any NO_x allowances deducted under subdivision 1 of this subsection to the allocation set aside for the control period for which they were allocated.

F. After making the deductions for compliance under 9VAC5 140 540 B, E, or F for a control period, the administrator will notify the permitting authority whether any NO_x allowances remain in the allocation set aside for the control period. The permitting authority will allocate any such NO_x allowances to the NO_x Budget units using the following formula and rounding to the nearest whole number of NO_x allowances as appropriate:

Unit's share of NO_x allowances remaining in allocation set aside = Total NO_x allowances remaining in allocation set aside x (Unit's NO_x allowance allocation) / (core trading program budget)

Where:

"Total NO_x allowances remaining in allocation set aside" is the total number of NO_x allowances remaining in the allocation set aside for the control period;

"Unit's NO_x-allowance allocation" is the number of NO_x allowances allocated under subsection B or C of this section to the unit for the control period to which the allocation set aside applies; and

"Core trading program budget" is the adjusted trading program budget for the control period to which the allocation set aside applies minus the allocation set aside budget.

G. If the administrator determines that NO_x allowances were allocated under subsection B, C, or D of this section for a control period and the recipient of the allocation is not actually a NO_x Budget unit under 9VAC5-140-40 A, the administrator will notify the permitting authority and NO_x authorized account representative and then will act in accordance with the following procedures:

1. a. The administrator will not record such NO_x allowances for the control period in an account under 9VAC5-140-530;

b. If the administrator already recorded such NO_x allowances for the control period in an account under 9VAC5-140-530 and if the administrator makes such determination before making all deductions pursuant to 9VAC5-140-540 (except deductions pursuant to 9VAC5-140-540 D 2) for the control period, then the administrator will deduct from the account NO_x allowances equal in number to and allocated for the same or a prior control period as the NO_x allowances allocated to such recipient for the control period. The NO_x authorized account representative shall ensure that the account contains the NO_x allowances necessary for completion of such deduction. If account does not contain the necessary NO_x allowances, the administrator will deduct the required number of NO_x allowances, regardless of the control period for which they were allocated, whenever NO_x allowances are recorded in the account; or

c. If the administrator already recorded such NO_x allowances for the control period in an account under 9VAC5-140-530 and if the administrator makes such determination after making all deductions pursuant to 9VAC5-140-540 (except deductions pursuant to 9VAC5-140-540 D 2) for the control period, then the administrator will apply subdivision 1 b of this subsection to any subsequent control period for which NO_x allowances were allocated to such recipient.

2. The administrator will transfer the NO_x allowances that are not recorded, or that are deducted, pursuant to subdivision 1 of this subsection to an allocation set aside.

9VAC5-140-430. Compliance supplement pool. (Repealed.)

A. Sources required to implement NO_x emission control measures by May 31, 2004, to demonstrate compliance with this part in the 2004 and 2005 ozone seasons may use NO_x allowances from the compliance supplement pool, as set forth in 9VAC5-140-910, issued in accordance with this section.

B. A source may not use NO_x allowances from the compliance supplement pool to demonstrate compliance after the 2005 control period.

C. For any NO_x Budget unit that intends to reduce its NO_x emission rate in the 2002 or 2003 control period, the owners and operators may request that early reduction credits (ERCs) be reserved in accordance with the following requirements:

1. Each NO_x Budget unit for which the owners and operators intend to request, or request, any ERCs in accordance with subdivision 4 of this subsection shall monitor and report NO_x emissions in accordance with Article 8 (9VAC5-140-700 et seq.) of this part starting in the 2001 control period and for each control period for which the ERCs are requested. The unit's percent monitor data availability shall not be less than 90% during the 2001 control period, and the unit shall be in full compliance with any applicable state or federal NO_x emission control requirements during 2001 through 2003.

2. NO_x emission rate and heat input under subdivision 3 of this subsection shall be determined in accordance with Article 8 (9VAC5-140-700 et seq.) of this part.

3. Each NO_x Budget unit for which the owners and operators request any ERCs under subdivision 4 of this subsection shall reduce its NO_x emission rate, for each control period for which ERCs are requested, to less than both 0.35 lb/mmBtu and 80% of the unit's NO_x emission rate in the 2001 control period. ERCs shall not be earned for reductions made to satisfy any requirement of the CAA.

4. The NO_x authorized account representative of a NO_x Budget unit that intends to meet the requirements of subdivisions 1 and 3 of this subsection may submit to the permitting authority a request to reserve ERCs for the unit based on NO_x emission rate reductions anticipated to be made by the unit in the control period for 2002 or 2003.

a. The NO_x authorized account representative may request that ERCs be reserved for the control period in an amount equal to the unit's anticipated heat input for the control period multiplied by the difference between 0.35 lb/mmBtu and the unit's anticipated NO_x emission rate for the control period, divided by 2000 lb/ton, and rounded to the nearest whole number of tons.

b. The NO_x authorized account representative shall submit the ERC reserve request, in a format acceptable to the permitting authority, by July 1, 2002.

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D. The permitting authority will review each ERC reserve request submitted in accordance with subsection C of this section and will reserve NO_x allowances for the NO_x Budget units covered by the request as follows:

1. Upon receipt of each ERC reserve request, the permitting authority will make any necessary adjustments to the request to ensure that the amount of the ERCs requested meets the requirements of subsection C of this section.

2. If 80% of the compliance supplement pool set forth in 9VAC5-140-910 has a number of NO_x allowances equal to or greater than the amount of ERCs in all ERC reserve requests under subsection C of this section for 2002 and 2003 (as adjusted under subdivision 1 of this subsection), the permitting authority will reserve for each NO_x Budget unit covered by the requests one NO_x allowance for each ERC requested (as adjusted under subdivision 1 of this subsection).

3. If 80% of the compliance supplement pool set forth in 9VAC5-140-910 has a number of NO_x allowances less than the amount of ERCs in all ERC reserve requests under subsection C of this section for 2002 and 2003 (as adjusted under subdivision 1 of this subsection), the permitting authority shall reserve NO_x allowances for each NO_x Budget unit covered by the requests according to the following formula and rounding to the nearest whole number of NO_x allowances as appropriate:

Unit's allocation for ERCs = Unit's adjusted ERCs × (Compliance supplement pool) / (Total adjusted ERCs for all units)

Where:

"Unit's allocation for ERCs" is the number of NO_x allowances reserved for the unit for ERCs.

"Unit's adjusted ERCs" is the amount of ERCs requested for the unit for 2002 and 2003 in ERC reserve requests under subsection C of this section, as adjusted under subdivision 1 of this subsection.

"Compliance supplement pool" is 80% of the number of NO_x allowances in the compliance supplement pool set forth in 9VAC5-140-910.

"Total adjusted ERCs for all units" is the amount of ERCs requested for all units for 2002 and 2003 in ERC reserve requests under subsection C of this section, as adjusted under subdivision 1 of this subsection.

4. The permitting authority will complete the ERC reserve issuance process by no later than September 1, 2002.

5. The NO_x authorized account representative shall submit verification that the NO_x Budget unit has met the requirements of subdivisions C 1 and 3 of this section, in a

format acceptable to the permitting authority, by February 1, 2004.

6. If the permitting authority finds that the NO_x Budget unit has met the requirements of subdivisions C 1 and 3 of this section, it will allocate the ERCs to the unit no later than April 1, 2004.

7. If the number of ERCs allocated under subdivision 6 of this subsection is less than the number of ERCs reserved, the excess ERCs will be returned to the compliance supplement pool for distribution under subsection F of this section.

E. For any NO_x Budget unit that reduces its NO_x emission rate in the 2002 or 2003 control period, the owners and operators may request early reduction credits (ERCs) in accordance with the following requirements:

1. Each NO_x Budget unit for which the owners and operators intend to request, or request, any ERCs in accordance with subdivision 4 of this subsection shall monitor and report NO_x emissions in accordance with Article 8 (9VAC5-140-700 et seq.) of this part starting in the 2001 control period and for each control period for which the ERCs are requested. The unit's percent monitor data availability shall not be less than 90% during the 2001 control period, and the unit shall be in full compliance with any applicable state or federal NO_x emission control requirements during 2001 through 2003.

2. NO_x emission rate and heat input under subdivisions 3 and 4 of this subsection shall be determined in accordance with Article 8 (9VAC5-140-700 et seq.) of this part.

3. Each NO_x Budget unit for which the owners and operators request any ERCs under subdivision 4 of this subsection shall reduce its NO_x emission rate, for each control period for which ERCs are requested, to less than both 0.35 lb/mmBtu and 80% of the unit's NO_x emission rate in the 2001 control period.

4. The NO_x authorized account representative of a NO_x Budget unit that meets the requirements of subdivisions 1 and 3 of this subsection may submit to the permitting authority a request for ERCs for the unit based on NO_x emission rate reductions made by the unit in the control period for 2002 or 2003.

a. The NO_x authorized account representative may request ERCs for the control period in an amount equal to the unit's heat input for the control period multiplied by the difference between 0.35 lb/mmBtu and the unit's NO_x emission rate for the control period, divided by 2000 lb/ton, and rounded to the nearest whole number of tons.

b. The NO_x authorized account representative shall submit the ERC request and verification that the NO_x Budget unit has met the requirements of subdivisions 1

and 3 of this subsection, in a format acceptable to the permitting authority, by February 1, 2004.

F. The permitting authority will review each ERC request submitted in accordance with subsection E of this section and will allocate NO_x allowances to NO_x Budget units covered by the request as follows:

1. Upon receipt of each ERC request, the permitting authority will make any necessary adjustments to the request to ensure that the amount of the ERCs requested meets the requirements of subsection E of this section.

2. If the compliance supplement pool set forth in 9VAC5-140-910 (minus any allowances issued under subsection D of this section) has a number of NO_x allowances equal to or greater than the amount of ERCs in all ERC requests under subsection E of this section for 2002 and 2003 (as adjusted under subdivision 1 of this subsection), the permitting authority will allocate to each NO_x Budget unit covered by the requests one NO_x allowance for each ERC requested (as adjusted under subdivision 1 of this subsection).

3. If the compliance supplement pool set forth in 9VAC5-140-910 (minus any allowances issued under subsection D of this section) has a number of NO_x allowances less than the amount of ERCs in all ERC requests under subsection E of this section for 2002 and 2003 (as adjusted under subdivision 1 of this subsection), the permitting authority will allocate NO_x allowances to each NO_x Budget unit covered by the requests according to the following formula and rounding to the nearest whole number of NO_x allowances as appropriate:

$$\text{Unit's allocation for ERCs} = \frac{\text{Unit's adjusted ERCs} \times (\text{Compliance supplement pool})}{(\text{Total adjusted ERCs for all units})}$$

Where:

"Unit's allocation for ERCs" is the number of NO_x allowances allocated to the unit for ERCs.

"Unit's adjusted ERCs" is the amount of ERCs requested for the unit for 2002 and 2003 in ERC requests under subsection E of this section, as adjusted under subdivision 1 of this subsection.

"Compliance supplement pool" is the number of NO_x allowances in the compliance supplement pool set forth in 9VAC5-140-910 minus any allowances issued under subsection D of this section.

"Total adjusted ERCs for all units" is the amount of ERCs requested for all units for 2002 and 2003 in ERC requests under subsection E of this section, as adjusted under subdivision 1 of this subsection.

4. If the permitting authority finds that the NO_x Budget unit has met the requirements of subdivisions E 1 and 3 of

this section, it will allocate the ERCs to the unit no later than April 1, 2004.

G. For any NO_x Budget unit that demonstrates a need for an extension of the May 31, 2004, compliance deadline, the owners and operators may request direct distribution credits (DDCs) in accordance with the following requirements:

1. The NO_x authorized account representative of a NO_x Budget unit may submit to the permitting authority a request for DDCs for the unit that contains a demonstration of the following:

a. For a source used to generate electricity, compliance with this chapter by May 31, 2004, would create undue risk for the reliability of the electricity supply. This demonstration shall include a showing that it would not be feasible to import electricity from other electricity generation systems during the installation of control technologies necessary to comply with this part.

b. For a source not used to generate electricity, compliance with this part by May 31, 2004, would create undue risk for the source or its associated industry. This demonstration shall include a showing that operation of the unit would be disrupted resulting in loss of services to the public or severely hampering operation of the facility and endangering future potential operation.

c. For a source subject to this part, it was not possible for the source to comply with this part by generating ERCs or acquiring ERCs from other sources.

d. For a source subject to this part, it was not possible to comply with this part by acquiring sufficient NO_x allowances from other sources or persons subject to the emissions trading program.

2. The NO_x authorized account representative shall submit the DDC request, in a format acceptable to the permitting authority, by February 1, 2004.

H. The permitting authority will review each DDC request submitted in accordance with subsection G of this section and will allocate NO_x allowances to NO_x Budget units covered by the request as follows:

1. Upon receipt of each DDC request, the permitting authority will make any necessary adjustments to the request to ensure that the amount of the DDCs requested meets the requirements of subsection G of this section.

2. If the compliance supplement pool set forth in 9VAC5-140-910 (minus any allowances issued under subsections D and F of this section) has a number of NO_x allowances equal to or greater than the amount of DDCs in all DDC requests under subsection G of this section (as adjusted under subdivision 1 of this subsection), the permitting authority will allocate to each NO_x Budget unit covered by

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the requests one NO_x allowance for each DDC requested (as adjusted under subdivision 1 of this subsection).

3. If the compliance supplement pool set forth in 9VAC5-140-910 (minus any allowances issued under subsections D and F of this section) has a number of NO_x allowances less than the amount of DDCs in all DDC requests under subsection G of this section (as adjusted under subdivision 1 of this subsection), the permitting authority will allocate NO_x allowances to each NO_x Budget unit covered by the requests according to the following formula and rounding to the nearest whole number of NO_x allowances as appropriate:

Unit's allocation for DDCs = Unit's adjusted DDCs x (Compliance supplement pool) / (Total adjusted DDCs for all units)

Where:

"Unit's allocation for DDCs" is the number of NO_x allowances allocated to the unit for DDCs.

"Unit's adjusted DDCs" is the amount of DDCs requested for the unit in DDC requests under subsection G of this section, as adjusted under subdivision 1 of this subsection.

"Compliance supplement pool" is the number of NO_x allowances in the compliance supplement pool set forth in 9VAC5-140-910 minus any allowances issued under subsections D and F of this section.

"Total adjusted DDCs for all units" is the amount of DDCs requested for all units in DDC requests under subsection G of this section, as adjusted under subdivision 1 of this subsection.

4. For a DDC request made under subsection G of this section, the permitting authority shall conduct a public comment period of at least 30 days to receive comment on the appropriateness of allocating DDCs to a source under subsection G of this section. At the end of the public comment period, a public hearing shall be held. The permitting authority will notify the public, by advertisement in at least one newspaper of general circulation in the affected air quality control region, of the opportunity for the public comment and the public hearing on the information available for public inspection under the provisions of subdivision 4 a of this subsection. The notification will be published at least 30 days prior to the day of the public hearing.

a. Information on the DDC request, as well as the preliminary review and analysis and preliminary decision of the permitting authority, will be available for public inspection during the entire public comment period in at least one location in the affected air quality control region.

b. A copy of the notice will be sent to all local air pollution control agencies having implementation plan responsibilities in the affected air quality control region, all states sharing the affected air quality control region, and to the regional administrator, U.S. Environmental Protection Agency.

5. If the permitting authority finds that the NO_x Budget unit has met the requirements of subsection G of this section, it will allocate the DDCs to the unit no later than May 31, 2004.

I. By May 31, 2004, the permitting authority will submit to the administrator the allocations of NO_x allowances determined under subsections D, F and H of this section. The administrator will record the allocations to the extent that they are consistent with the requirements of subsections C through H of this section.

J. NO_x allowances recorded under subsection I of this section may be deducted for compliance under 9VAC5-140-540 for the control periods in 2004 or 2005. Notwithstanding 9VAC5-140-550 A, the administrator will deduct as retired any NO_x allowance that is recorded under subsection I of this section and is not deducted for compliance in accordance with 9VAC5-140-540 for the control period in 2004 or 2005.

K. NO_x allowances recorded under subsection I of this section are treated as banked NO_x allowances in 2005 for the purposes of 9VAC5-140-550 A and B.

9VAC5-140-440 through 9VAC5-140-490. [Reserved] (Repealed.)

Article 6

NO_x Allowance Tracking System (Repealed)

9VAC5-140-500. NO_x Allowance Tracking System accounts. (Repealed.)

A. Consistent with 9VAC5-140-510 A, the administrator will establish one compliance account for each NO_x Budget unit and one overdraft account for each source with two or more NO_x Budget units. Allocations of NO_x allowances pursuant to Article 5 (9VAC5-140-400 et seq.) of this part or 9VAC5-140-880 and deductions or transfers of NO_x allowances pursuant to 9VAC5-140-310, 9VAC5-140-540, 9VAC5-140-560, Article 7 (9VAC5-140-600 et seq.) of this part, or Article 9 (9VAC5-140-800 et seq.) of this part will be recorded in the compliance accounts or overdraft accounts in accordance with this article.

B. Consistent with 9VAC5-140-510 B, the administrator will establish, upon request, a general account for any person. Transfers of allowances pursuant to Article 7 (9VAC5-140-600 et seq.) of this part will be recorded in the general account in accordance with this article.

9VAC5-140-510. Establishment of accounts. (Repealed.)

A. Upon receipt of a complete account certificate of representation under 9VAC5-140-130, the administrator will establish:

1. A compliance account for each NO_x Budget unit for which the account certificate of representation was submitted; and
2. An overdraft account for each source for which the account certificate of representation was submitted and that has two or more NO_x Budget units.

B. 1. Any person may apply to open a general account for the purpose of holding and transferring allowances. A complete application for a general account shall be submitted to the administrator and shall include the following elements in a format prescribed by the administrator:

- a. Name, mailing address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the NO_x authorized account representative and any alternate NO_x authorized account representative;
- b. Organization name and type of organization;
- c. A list of all persons subject to a binding agreement for the NO_x authorized account representative or any alternate NO_x authorized account representative to represent their ownership interest with respect to the NO_x allowances held in the general account;
- d. The following certification statement by the NO_x authorized account representative and any alternate NO_x authorized account representative: "I certify that I was selected as the NO_x authorized account representative or the NO_x alternate authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to NO_x allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the NO_x Budget Trading Program on behalf of such persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions and by any order or decision issued to me by the administrator or a court regarding the general account."
- e. The signature of the NO_x authorized account representative and any alternate NO_x authorized account representative and the dates signed.
- f. Unless otherwise required by the permitting authority or the administrator, documents of agreement referred to in the account certificate of representation shall not be submitted to the permitting authority or the administrator. Neither the permitting authority nor the administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

2. Upon receipt by the administrator of a complete application for a general account under subdivision 1 of this subsection:

- a. The administrator will establish a general account for the person or persons for whom the application is submitted.
- b. The NO_x authorized account representative and any alternate NO_x authorized account representative for the general account shall represent and, by his representations, actions, inactions, or submissions, legally bind each person who has an ownership interest with respect to NO_x allowances held in the general account in all matters pertaining to the NO_x Budget Trading Program, notwithstanding any agreement between the NO_x authorized account representative or any alternate NO_x authorized account representative and such person. Any such person shall be bound by any order or decision issued to the NO_x authorized account representative or any alternate NO_x authorized account representative by the administrator or a court regarding the general account.

e. Each submission concerning the general account shall be submitted, signed, and certified by the NO_x authorized account representative or any alternate NO_x authorized account representative for the persons having an ownership interest with respect to NO_x allowances held in the general account. Each such submission shall include the following certification statement by the NO_x authorized account representative or any alternate NO_x authorized account representative any: "I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the NO_x allowances held in the general account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

d. The administrator will accept or act on a submission concerning the general account only if the submission has been made, signed, and certified in accordance with subdivision 2 e of this subsection.

3. a. An application for a general account may designate one and only one NO_x authorized account representative and one and only one alternate NO_x authorized account representative who may act on behalf of the NO_x authorized account representative. The agreement by

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which the alternate NO_x authorized account representative is selected shall include a procedure for authorizing the alternate NO_x authorized account representative to act in lieu of the NO_x authorized account representative.

b. Upon receipt by the administrator of a complete application for a general account under subdivision 1 of this subsection, any representation, action, inaction, or submission by any alternate NO_x authorized account representative shall be deemed to be a representation, action, inaction, or submission by the NO_x authorized account representative.

4. a. The NO_x authorized account representative for a general account may be changed at any time upon receipt by the administrator of a superseding complete application for a general account under subdivision 1 of this subsection. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous NO_x authorized account representative prior to the time and date when the administrator receives the superseding application for a general account shall be binding on the new NO_x authorized account representative and the persons with an ownership interest with respect to the allowances in the general account.

b. The alternate NO_x authorized account representative for a general account may be changed at any time upon receipt by the administrator of a superseding complete application for a general account under subdivision 1 of this subsection. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate NO_x authorized account representative prior to the time and date when the administrator receives the superseding application for a general account shall be binding on the new alternate NO_x authorized account representative and the persons with an ownership interest with respect to the allowances in the general account.

c. (1) In the event a new person having an ownership interest with respect to NO_x allowances in the general account is not included in the list of such persons in the account certificate of representation, such new person shall be deemed to be subject to and bound by the account certificate of representation, the representation, actions, inactions, and submissions of the NO_x authorized account representative and any alternate NO_x authorized account representative of the source or unit, and the decisions, orders, actions, and inactions of the administrator, as if the new person were included in such list.

(2) Within 30 days following any change in the persons having an ownership interest with respect to NO_x allowances in the general account, including the addition of persons, the NO_x authorized account representative or any alternate NO_x authorized account representative shall

submit a revision to the application for a general account amending the list of persons having an ownership interest with respect to the NO_x allowances in the general account to include the change.

5. a. Once a complete application for a general account under subdivision 1 of this subsection has been submitted and received, the administrator will rely on the application unless and until a superseding complete application for a general account under subdivision 1 of this subsection is received by the administrator.

b. Except as provided in subdivision 4 of this subsection, no objection or other communication submitted to the administrator concerning the authorization, or any representation, action, inaction, or submission of the NO_x authorized account representative or any alternate NO_x authorized account representative for a general account shall affect any representation, action, inaction, or submission of the NO_x authorized account representative or any alternate NO_x authorized account representative or the finality of any decision or order by the administrator under the NO_x Budget Trading Program.

c. The administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the NO_x authorized account representative or any alternate NO_x authorized account representative for a general account, including private legal disputes concerning the proceeds of NO_x allowance transfers.

C. The administrator will assign a unique identifying number to each account established under subsection A or B of this section.

9VAC5-140-520. NO_x Allowance Tracking System responsibilities of NO_x authorized account representative. (Repealed.)

A. Following the establishment of a NO_x Allowance Tracking System account, all submissions to the administrator pertaining to the account, including, but not limited to, submissions concerning the deduction or transfer of NO_x allowances in the account, shall be made only by the NO_x authorized account representative for the account.

B. The administrator will assign a unique identifying number to each NO_x authorized account representative.

9VAC5-140-530. Recordation of NO_x allowance allocations. (Repealed.)

A. The administrator will record the NO_x allowances for 2004 for a NO_x Budget unit allocated under Article 5 (9VAC5-140-400 et seq.) of this part in the unit's compliance account, except for NO_x allowances under 9VAC5-140-40-B 4 b or 9VAC5-140-50-C 1, which will be recorded in the general account specified by the owners and operators of the unit. The administrator will also record the NO_x allowances

allocated under 9VAC5-140-880 A-1 for each NO_x-Budget opt-in source in its compliance account.

~~B. By August 1, 2002, the administrator will record the NO_x allowances for 2005 for a NO_x-Budget unit allocated under Article 5 (9VAC5-140-400 et seq.) of this part in the unit's compliance account, except for NO_x allowances under 9VAC5-140-40-B-4-b or 9VAC5-140-50-C-1, which will be recorded in the general account specified by the owners and operators of the unit. The administrator will record NO_x allowances for 2005 for a NO_x-Budget opt-in unit in the unit's compliance account as allocated under 9VAC5-140-880 A.~~

~~C. By May 1, 2003, the administrator will record the NO_x allowances for 2006 for a NO_x-Budget unit allocated under Article 5 (9VAC5-140-400 et seq.) of this part in the unit's compliance account, except for NO_x allowances under 9VAC5-140-40-B-4-b or 9VAC5-140-50-C-1, which will be recorded in the general account specified by the owners and operators of the unit. The administrator will record NO_x allowances for 2006 for a NO_x-Budget opt-in unit in the unit's compliance account as allocated under 9VAC5-140-880 A.~~

~~D. By May 1, 2004, the administrator will record the NO_x allowances for 2007 for a NO_x-Budget unit allocated under Article 5 (9VAC5-140-400 et seq.) of this part in the unit's compliance account, except for NO_x allowances under 9VAC5-140-40-B-4-b or 9VAC5-140-50-C-1, which will be recorded in the general account specified by the owners and operators of the unit. The administrator will record NO_x allowances for 2007 for a NO_x-Budget opt-in unit in the unit's compliance account as allocated under 9VAC5-140-880 A.~~

~~E. Each year starting with 2005, after the administrator has made all deductions from a NO_x-Budget unit's compliance account and the overdraft account pursuant to 9VAC5-140-540 (except deductions pursuant to 9VAC5-140-540 D-2), the administrator will record:~~

- ~~1. NO_x allowances, in the compliance account, as allocated to the unit under Article 5 (9VAC5-140-400 et seq.) of this part for the third year after the year of the control period for which such deductions were or could have been made;~~
- ~~2. NO_x allowances, in the general account specified by the owners and operators of the unit, as allocated under 9VAC5-140-40-B-4-b or 9VAC5-140-50-C-1 for the third year after the year of the control period for which such deductions are or could have been made; and~~
- ~~3. NO_x allowances, in the compliance account, as allocated to the unit under 9VAC5-140-880 A.~~

~~F. When allocating NO_x allowances to and recording them in an account, the administrator will assign each NO_x allowance a unique identification number that will include digits identifying the year for which the NO_x allowance is allocated.~~

9VAC5-140-540. Compliance. (Repealed.)

~~A. The NO_x allowances are available to be deducted for compliance with a unit's NO_x-Budget emissions limitation for a control period in a given year only if the NO_x allowances:~~

- ~~1. Were allocated for a control period in a prior year or the same year; and~~
- ~~2. Are held in the unit's compliance account, or the overdraft account of the source where the unit is located, as of the NO_x allowance transfer deadline for that control period or are transferred into the compliance account or overdraft account by a NO_x allowance transfer correctly submitted for recordation under 9VAC5-140-600 by the NO_x allowance transfer deadline for that control period.~~

~~B. 1. Following the recordation, in accordance with 9VAC5-140-610, of NO_x allowance transfers submitted for recordation in the unit's compliance account or the overdraft account of the source where the unit is located by the NO_x allowance transfer deadline for a control period, the administrator will deduct NO_x allowances available under subsection A of this section to cover the unit's NO_x emissions (as determined in accordance with Article 8 (9VAC5-140-700 et seq.) of this part) or to account for actual utilization under 9VAC5-140-420 E for the control period:~~

- ~~a. From the compliance account; and~~
- ~~b. Only if no more NO_x allowances available under subsection A of this section remain in the compliance account, from the overdraft account. In deducting allowances for units at the source from the overdraft account, the administrator will begin with the unit having the compliance account with the lowest NO_x Allowance Tracking System account number and end with the unit having the compliance account with the highest NO_x Allowance Tracking System account number (with account numbers sorted beginning with the left most character and ending with the right most character and the letter characters assigned values in alphabetical order and less than all numeric characters).~~

~~2. The administrator will deduct NO_x allowances first under subdivision 1 a of this subsection and then under subdivision 1 b of this subsection:~~

- ~~a. Until the number of NO_x allowances deducted for the control period equals the number of tons of NO_x emissions, determined in accordance with Article 8 (9VAC5-140-700 et seq.) of this part, from the unit for the control period for which compliance is being determined, plus the number of NO_x allowances required for deduction to account for actual utilization under 9VAC5-140-420 E for the control period; or~~
- ~~b. Until no more NO_x allowances available under subsection A of this section remain in the respective account.~~

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~~C. 1. The NO_x authorized account representative for each compliance account may identify by serial number the NO_x allowances to be deducted from the unit's compliance account under subsection B, D, or E of this section. Such identification shall be made in the compliance certification report submitted in accordance with 9VAC5-140-300.~~

~~2. The administrator will deduct NO_x allowances for a control period from the compliance account, in the absence of an identification or in the case of a partial identification of NO_x allowances by serial number under subdivision 1 of this subsection, or the overdraft account on a first in, first out (FIFO) accounting basis in the following order:~~

~~a. Those NO_x allowances that were allocated for the control period to the unit under Article 5 (9VAC5-140-400 et seq.) or Article 9 (9VAC5-140-800 et seq.) of this part;~~

~~b. Those NO_x allowances that were allocated for the control period to any unit and transferred and recorded in the account pursuant to Article 7 (9VAC5-140-600 et seq.) of this part, in order of their date of recordation;~~

~~c. Those NO_x allowances that were allocated for a prior control period to the unit under Article 5 (9VAC5-140-400 et seq.) or Article 9 (9VAC5-140-800 et seq.) of this part; and~~

~~d. Those NO_x allowances that were allocated for a prior control period to any unit and transferred and recorded in the account pursuant to Article 7 (9VAC5-140-600 et seq.) of this part, in order of their date of recordation.~~

~~D. 1. After making the deductions for compliance under subsection B of this section, the administrator shall deduct from the unit's compliance account or the overdraft account of the source where the unit is located a number of NO_x allowances, allocated for a control period after the control period in which the unit has excess emissions, equal to three times the number of the unit's excess emissions.~~

~~2. If the compliance account or overdraft account does not contain sufficient NO_x allowances, the administrator will deduct the required number of NO_x allowances, regardless of the control period for which they were allocated, whenever NO_x allowances are recorded in either account.~~

~~3. Any allowance deduction required under this subsection shall not affect the liability of the owners and operators of the NO_x Budget unit for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violation, as ordered under the CAA or the Virginia Air Pollution Control Law. The following guidelines shall be followed in assessing fines, penalties or other obligations:~~

~~a. For purposes of determining the number of days of violation, if a NO_x Budget unit has excess emissions for a control period, each day in the control period (153 days)~~

~~constitutes a day in violation unless the owners and operators of the unit demonstrate that a lesser number of days should be considered.~~

~~b. Each ton of excess emissions is a separate violation.~~

~~E. In the case of units sharing a common stack and having emissions that are not separately monitored or apportioned in accordance with Article 8 (9VAC5-140-700 et seq.) of this part:~~

~~1. The NO_x authorized account representative of the units may identify the percentage of NO_x allowances to be deducted from each such unit's compliance account to cover the unit's share of NO_x emissions from the common stack for a control period. Such identification shall be made in the compliance certification report submitted in accordance with 9VAC5-140-300.~~

~~2. Notwithstanding subdivision B 2 a of this section, the administrator will deduct NO_x allowances for each such unit until the number of NO_x allowances deducted equals the unit's identified percentage (under subdivision 1 of this subsection) of the number of tons of NO_x emissions, as determined in accordance with Article 8 (9VAC5-140-700 et seq.) of this part, from the common stack for the control period for which compliance is being determined or, if no percentage is identified, an equal percentage for each such unit, plus the number of allowances required for deduction to account for actual utilization under 9VAC5-140-420 E for the control period.~~

~~F. The administrator will record in the appropriate compliance account or overdraft account all deductions from such an account pursuant to subsection B, D, or E of this section.~~

9VAC5-140-550. Banking. (Repealed.)

~~A. NO_x allowances may be banked for future use or transfer in a compliance account, an overdraft account, or a general account, as follows:~~

~~1. Any NO_x allowance that is held in a compliance account, an overdraft account, or a general account will remain in such account unless and until the NO_x allowance is deducted or transferred under 9VAC5-140-310, 9VAC5-140-540, 9VAC5-140-560, Article 7 (9VAC5-140-600 et seq.) of this part, or Article 9 (9VAC5-140-800 et seq.) of this part.~~

~~2. The administrator will designate, as a "banked" NO_x allowance, any NO_x allowance that remains in a compliance account, an overdraft account, or a general account after the administrator has made all deductions for a given control period from the compliance account or overdraft account pursuant to 9VAC5-140-540 (except deductions pursuant to 9VAC5-140-540 D 2), and that was allocated for that control period or a control period in a prior year.~~

~~B. Each year starting in 2005, after the administrator has completed the designation of banked NO_x allowances under subdivision A 2 of this section and before May 1 of the year, the administrator will determine the extent to which banked NO_x allowances may be used for compliance in the control period for the current year, as follows:~~

~~1. The administrator will determine the total number of banked NO_x allowances held in compliance accounts, overdraft accounts, or general accounts.~~

~~2. If the total number of banked NO_x allowances determined, under subdivision 1 of this subsection, to be held in compliance accounts, overdraft accounts, or general accounts is less than or equal to 10% of the sum of the state trading program budgets for the control period for the states in which NO_x Budget units are located, any banked NO_x allowance may be deducted for compliance in accordance with 9VAC5-140-540.~~

~~3. If the total number of banked NO_x allowances determined, under subdivision 1 of this subsection, to be held in compliance accounts, overdraft accounts, or general accounts exceeds 10% of the sum of the state trading program budgets for the control period for the states in which NO_x Budget units are located, any banked allowance may be deducted for compliance in accordance with 9VAC5-140-540, except as follows:~~

~~a. The administrator will determine the following ratio: 0.10 multiplied by the sum of the state trading program budgets for the control period for the states in which NO_x Budget units are located and divided by the total number of banked NO_x allowances determined, under subdivision 1 of this subsection, to be held in compliance accounts, overdraft accounts, or general accounts.~~

~~b. The administrator will multiply the number of banked NO_x allowances in each compliance account or overdraft account by the ratio determined in subdivision 3 a of this subsection. The resulting product is the number of banked NO_x allowances in the account that may be deducted for compliance in accordance with 9VAC5-140-540. Any banked NO_x allowances in excess of the resulting product may be deducted for compliance in accordance with 9VAC5-140-540, except that, if such NO_x allowances are used to make a deduction, two such NO_x allowances shall be deducted for each deduction of one NO_x allowance required under 9VAC5-140-540.~~

9VAC5-140-560. Account error. (Repealed.)

The administrator may, at his sole discretion and on his own motion, correct any error in any NO_x Allowance Tracking System account. Within 10 business days of making such correction, the administrator shall notify the NO_x authorized account representative for the account.

9VAC5-140-570. Closing of general accounts. (Repealed.)

~~A. The NO_x authorized account representative of a general account may instruct the administrator to close the account by submitting a statement requesting deletion of the account from the NO_x Allowance Tracking System and by correctly submitting for recordation under 9VAC5-140-600 an allowance transfer of all NO_x allowances in the account to one or more other NO_x Allowance Tracking System accounts.~~

~~B. If a general account shows no activity for a period of a year or more and does not contain any NO_x allowances, the administrator may notify the NO_x authorized account representative for the account that the account will be closed and deleted from the NO_x Allowance Tracking System following 20 business days after the notice is sent. The account will be closed after the 20 day period unless before the end of the 20 day period the administrator receives a correctly submitted transfer of NO_x allowances into the account under 9VAC5-140-600 or a statement submitted by the NO_x authorized account representative demonstrating to the satisfaction of the administrator good cause as to why the account should not be closed.~~

9VAC5-140-580 through 9VAC5-140-590. [Reserved] (Repealed.)

Article 7

NO_x Allowance Transfers (Repealed)

9VAC5-140-600. Submission of NO_x allowance transfers. (Repealed.)

~~The NO_x authorized account representatives seeking recordation of a NO_x allowance transfer shall submit the transfer to the administrator. To be considered correctly submitted, the NO_x allowance transfer shall include the following elements in a format specified by the administrator:~~

- ~~1. The numbers identifying both the transferor and transferee accounts;~~
- ~~2. A specification by serial number of each NO_x allowance to be transferred; and~~
- ~~3. The printed name and signature of the NO_x authorized account representative of the transferor account and the date signed.~~

9VAC5-140-610. EPA recordation. (Repealed.)

~~A. Within five business days of receiving a NO_x allowance transfer, except as provided in subsection B of this section, the administrator will record a NO_x allowance transfer by moving each NO_x allowance from the transferor account to the transferee account as specified by the request, provided that:~~

- ~~1. The transfer is correctly submitted under 9VAC5-140-600;~~

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~~2. The transferor account includes each NO_x allowance identified by serial number in the transfer; and~~

~~3. The transfer meets all other requirements of this part.~~

~~B. A NO_x allowance transfer that is submitted for recordation following the NO_x allowance transfer deadline and that includes any NO_x allowances allocated for a control period prior to or the same as the control period to which the NO_x allowance transfer deadline applies will not be recorded until after completion of the process of recordation of NO_x allowance allocations in 9VAC5-140-530 B.~~

~~C. Where a NO_x allowance transfer submitted for recordation fails to meet the requirements of subsection A of this section, the administrator will not record such transfer.~~

9VAC5-140-620. Notification. (Repealed.)

~~A. Within five business days of recordation of a NO_x allowance transfer under 9VAC5-140-610, the administrator will notify each party to the transfer. Notice will be given to the NO_x authorized account representatives of both the transferor and transferee accounts.~~

~~B. Within 10 business days of receipt of a NO_x allowance transfer that fails to meet the requirements of 9VAC5-140-610 A, the administrator will notify the NO_x authorized account representatives of both accounts subject to the transfer of:~~

- ~~1. A decision not to record the transfer; and~~
- ~~2. The reasons for such nonrecordation.~~

~~C. Nothing in this section shall preclude the submission of a NO_x allowance transfer for recordation following notification of nonrecordation.~~

9VAC5-140-630 through 9VAC5-140-690. [Reserved] (Repealed.)

Article 8 Monitoring and Reporting

9VAC5-140-700. General requirements.

A. The owners and operators, and to the extent applicable, the NO_x authorized account representative of a NO_x Budget unit shall comply with the monitoring and reporting requirements as provided in this article and in Subpart H of 40 CFR Part 75. For purposes of complying with such requirements, the definitions in 9VAC5-140-20 and in 40 CFR 72.2 shall apply, and the terms "affected unit," "designated representative," and "continuous emission monitoring system" (or "CEMS") in 40 CFR Part 75 shall be replaced by the terms "NO_x Budget unit," "NO_x authorized account representative," and "continuous emission monitoring system" (or "CEMS"), respectively, as defined in 9VAC5-140-20.

B. The owner or operator of each NO_x Budget unit shall meet the following requirements. ~~These provisions also apply to a unit for which an application for a NO_x Budget opt in permit is submitted and not denied or withdrawn, as provided in Article 9 (9VAC5-140-800 et seq.) of this part:~~

1. Install all monitoring systems required under this article for monitoring NO_x mass. This includes all systems required to monitor NO_x emission rate, NO_x concentration, heat input, and flow, in accordance with 40 CFR 75.71 and 40 CFR 75.72.

2. Install all monitoring systems for monitoring heat input, ~~if required under 9VAC5-140-760 for developing NO_x allowance allocations.~~

3. Successfully complete all certification tests required under 9VAC5-140-710 and meet all other provisions of this article and 40 CFR Part 75 applicable to the monitoring systems under subdivisions 1 and 2 of this subsection.

4. Record, and report data from the monitoring systems under subdivisions 1 and 2 of this subsection.

C. The owner or operator shall meet the requirements of subdivisions B 1 ~~through, B 2, and B 3~~ of this section on or before the following dates and shall record and report data on and after the following dates:

~~1. NO_x Budget units for which the owner or operator intends to apply for early reduction credits under 9VAC5-140-430 shall have complied with the requirements of this article by May 1, 2001.~~

~~2. Except for NO_x Budget units under subdivision 1 of this subsection, NO_x Budget units under 9VAC5-140-40 that commence operation before January 1, 2003, shall comply with the requirements of this article by May 1, 2003.~~

~~3. 2.~~ NO_x Budget units under 9VAC5-140-40 that commence operation on or after January 1, 2003, and that report on an annual basis under 9VAC5-140-740 D shall comply with the requirements of this article by the later of the following dates:

- a. May 1, 2003; or
- b. The earlier of:

(1) 180 days after the date on which the unit commences operation; or

(2) For units under subdivision 1 of 9VAC5-140-40 ~~A-1~~, 90 days after the date on which the unit commences commercial operation.

~~4. 3.~~ NO_x Budget units under 9VAC5-140-40 that commence operation on or after January 1, 2003, and that report on a control period basis under 9VAC5-140-740 D shall comply with the requirements of this article by the later of the following dates:

a. The earlier of:

(1) 180 days after the date on which the unit commences operation; or

(2) For units under subdivision 1 of 9VAC5-140-40 A-1, 90 days after the date on which the unit commences commercial operation.

b. However, if the applicable deadline under subdivision ~~4 a 3 a~~ of this subsection does not occur during a control period, May 1; immediately following the date determined in accordance with subdivision ~~4 a 3 a~~ of this subsection.

~~5. 4.~~ For a NO_x Budget unit with a new stack or flue for which construction is completed after the applicable deadline under subdivision 1, 2, or 3 of this subsection ~~or Article 9 (9VAC5-140-800 et seq.) of this part:~~

a. 90 days after the date on which emissions first exit to the atmosphere through the new stack or flue;

b. However, if the unit reports on a control period basis under 9VAC5-140-740 D and the applicable deadline under subdivision ~~5 a 4 a~~ of this subsection does not occur during the control period, May 1 immediately following the applicable deadline in subdivision ~~5 a 4 a~~ of this subsection.

~~6. For a unit for which an application for a NO_x Budget opt in permit is submitted and not denied or withdrawn, the compliance dates specified under Article 9 (9VAC5-140-800 et seq.) of this part.~~

D. The owner or operator of a NO_x Budget unit under subdivision ~~C 5, or C 6~~ C 2, C 3, or C 4 of this section shall determine, record, and report NO_x mass emissions, heat input rate, and any other values required to determine NO_x mass emissions (e.g., NO_x emission rate and heat input rate, or NO_x concentration and stack flow rate) in accordance with 40 CFR 75.70(g), from the date and hour that the unit starts operating until the date and hour on which the continuous emission monitoring system, excepted monitoring system under Appendix D or E of 40 CFR Part 75, or excepted monitoring methodology under 40 CFR 75.19 is provisionally certified.

E. 1. No owner or operator of a NO_x Budget unit or a non-NO_x Budget unit monitored under 40 CFR 75.72(b)(2)(ii) shall use any alternative monitoring system, alternative reference method, or any other alternative for the required continuous emission monitoring system without having obtained prior written approval in accordance with 9VAC5-140-750.

2. No owner or operator of a NO_x Budget unit or a non-NO_x Budget unit monitored under 40 CFR 75.72(b)(2)(ii) shall operate the unit so as to discharge, or allow to be discharged, NO_x emissions to the atmosphere without accounting for all such emissions in accordance with the

applicable provisions of this article and 40 CFR Part 75 except as provided for in 40 CFR 75.74.

3. No owner or operator of a NO_x Budget unit or a non-NO_x Budget unit monitored under 40 CFR 75.72(b)(2)(ii) shall disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording NO_x mass emissions discharged into the atmosphere, except for periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the applicable provisions of this article and 40 CFR Part 75 except as provided for in 40 CFR 75.74.

4. No owner or operator of a NO_x Budget unit or a non-NO_x Budget unit monitored under 40 CFR 75.72(b)(2)(ii) shall retire or permanently discontinue use of the continuous emission monitoring system, any component thereof, or any other approved emission monitoring system under this article, except under any one of the following circumstances:

a. During the period that the unit is covered by a retired unit exemption under 9VAC5-140-50 that is in effect;

b. The owner or operator is monitoring emissions from the unit with another certified monitoring system approved, in accordance with the applicable provisions of this article and 40 CFR Part 75, by the permitting authority for use at that unit that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system; or

c. The NO_x authorized account representative submits notification of the date of certification testing of a replacement monitoring system in accordance with 9VAC5-140-710 ~~B~~ A 2.

9VAC5-140-710. Initial certification and recertification procedures.

~~A. The owner or operator of a NO_x Budget unit that is subject to an acid rain emissions limitation shall comply with the initial certification and recertification procedures of 40 CFR Part 75, except that:~~

~~1. If, prior to January 1, 1998, the administrator approved a petition under 40 CFR 75.17(a) or (b) for apportioning the NO_x emission rate measured in a common stack or a petition under 40 CFR 75.66 for an alternative to a requirement in 40 CFR 75.17, the NO_x authorized account representative shall resubmit the petition to the administrator under 9VAC5-140-750 A to determine if the approval applies under the NO_x Budget Trading Program.~~

~~2. For any additional CEMS required under the common stack provisions in 40 CFR 75.72, or for any NO_x concentration CEMS used under the provisions of 40 CFR~~

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~~75.71(a)(2), the owner or operator shall meet the requirements of subsection B of this section.~~

~~B. A. The owner or operator of a NO_x Budget unit that is not subject to an acid rain emissions limitation shall comply with the following initial certification and recertification procedures, except that the owner or operator of a unit that qualifies to use the low mass emissions excepted monitoring methodology under 40 CFR 75.19 shall also meet the requirements of subsection C of this section and the owner or operator of a unit that qualifies to use an alternative monitoring system under Subpart E of 40 CFR Part 75 shall also meet the requirements of subsection D of this section. The owner or operator of a NO_x Budget unit that is subject to an acid rain emissions limitation, but requires additional CEMS under the common stack provisions in 40 CFR 75.72, or that uses a NO_x concentration CEMS under 40 CFR 75.71(a)(2) also shall comply with the following initial certification and recertification procedures.~~

1. The owner or operator shall ensure that each emission monitoring system required by Subpart H of 40 CFR Part 75 (that includes the automated data acquisition and handling system) successfully completes all of the initial certification testing required under 40 CFR 75.20. The owner or operator shall ensure that all applicable certification tests are successfully completed by the deadlines specified in 9VAC5-140-700 C. In addition, whenever the owner or operator installs a monitoring system in order to meet the requirements of this part in a location where no such emission monitoring system was previously installed, initial certification according to 40 CFR 75.20 is required.

2. Whenever the owner or operator makes a replacement, modification, or change in a certified emission monitoring system that may significantly affect the ability of the system to accurately measure or record NO_x mass emissions or heat input rate or to meet the requirements of 40 CFR 75.21 or Appendix B to 40 CFR Part 75, the owner or operator shall recertify the emission monitoring system according to 40 CFR 75.20(b). Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that may significantly change the stack flow or concentration profile, the owner or operator shall recertify the continuous emissions monitoring system according to 40 CFR 75.20(b). Examples of changes that require recertification include: replacement of the analyzer, complete replacement of an existing continuous emission monitoring system, or change in location or orientation of the sampling probe or site.

3. a. The NO_x authorized account representative shall submit to the permitting authority, the EPA Region III Office and the administrator a written notice of the dates of certification in accordance with 9VAC5-140-730.

b. The NO_x authorized account representative shall submit to the permitting authority a certification application for each emission monitoring system required under Subpart H of 40 CFR Part 75. A complete certification application shall include the information specified in Subpart H of 40 CFR Part 75.

c. Except for units using the low mass emission excepted methodology under 40 CFR 75.19, the provisional certification date for a monitor shall be determined using the procedures set forth in 40 CFR 75.20(a)(3). A provisionally certified monitor may be used under the NO_x Budget ~~Trading~~ Program for a period not to exceed 120 days after receipt by the permitting authority of the complete certification application for the monitoring system under subdivision 3 b of this subsection. Data measured and recorded by the provisionally certified monitoring system, in accordance with the requirements of 40 CFR Part 75, shall be considered valid quality-assured data (retroactive to the date and time of provisional certification), provided that the permitting authority does not invalidate the provisional certification by issuing a notice of disapproval within 120 days of receipt of the complete certification application by the permitting authority.

d. The permitting authority shall issue a written notice of approval or disapproval of the certification application to the owner or operator within 120 days of receipt of the complete certification application under subdivision 3 b of this subsection. In the event the permitting authority does not issue such a notice within such 120-day period, each monitoring system that meets the applicable performance requirements of 40 CFR Part 75 and is included in the certification application will be deemed certified for use under the NO_x Budget ~~Trading~~ Program.

(1) If the certification application is complete and shows that each monitoring system meets the applicable performance requirements of 40 CFR Part 75, then the permitting authority will issue a written notice of approval of the certification application within 120 days of receipt.

(2) A certification application will be considered complete when all of the applicable information required to be submitted under subdivision 3 b of this subsection has been received by the permitting authority. If the certification application is not complete, then the permitting authority will issue a written notice of incompleteness that sets a reasonable date by which the NO_x authorized account representative shall submit the additional information required to complete the certification application. If the NO_x authorized account representative does not comply with the notice of incompleteness by the specified date, then the permitting

authority may issue a notice of disapproval under subdivision 3 d (3) of this subsection.

(3) If the certification application shows that any monitoring system does not meet the performance requirements of this part, or if the certification application is incomplete and the requirement for disapproval under subdivision 3 d (2) of this subsection has been met, the permitting authority will issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the permitting authority and the data measured and recorded by each uncertified monitoring system shall not be considered valid quality-assured data beginning with the date and hour of provisional certification. The owner or operator shall follow the procedures for loss of certification in subdivision 3 e of this subsection for each monitoring system that is disapproved for initial certification.

(4) The permitting authority may issue a notice of disapproval of the certification status of a monitor in accordance with 9VAC5-140-720 B.

e. If the permitting authority issues a notice of disapproval of a certification application under subdivision 3 d (3) of this subsection or a notice of disapproval of certification status under subdivision 3 d (4) of this subsection, then:

(1) The owner or operator shall substitute the following values, for each hour of unit operation during the period of invalid data specified under 40 CFR 75.20(a)(4)(iii), 40 CFR 75.20(b)(5), 40 CFR 75.20(h)(4), or 40 CFR 75.21(e) and continuing until the date and hour specified under 40 CFR 75.20(a)(5)(i):

(a) For units using or intending to monitor for NO_x emission rate and heat input or for units using the low mass emission excepted methodology under 40 CFR 75.19, the maximum potential NO_x emission rate and the maximum potential hourly heat input of the unit.

(b) For units intending to monitor for NO_x mass emissions using a NO_x pollutant concentration monitor and a flow monitor, the maximum potential concentration of NO_x and the maximum potential flow rate of the unit under section 2.1 of Appendix A of 40 CFR Part 75;

(2) The NO_x authorized account representative shall submit a notification of certification retest dates and a new certification application in accordance with subdivisions 3 a and b of this subsection; and

(3) The owner or operator shall repeat all certification tests or other requirements that were failed by the monitoring system, as indicated in the permitting authority's notice of disapproval, no later than 30 unit

operating days after the date of issuance of the notice of disapproval.

~~€. B.~~ The owner or operator of a gas-fired or oil-fired unit using the low mass emissions excepted methodology under 40 CFR 75.19 shall meet the applicable general operating requirements of 40 CFR 75.10 and the applicable requirements of 40 CFR 75.19. The owner or operator of such a unit shall also meet the applicable certification and recertification procedures of subsection ~~B A~~ of this section, except that the excepted methodology shall be deemed provisionally certified for use under the NO_x Budget ~~Trading~~ Program as of the date on which the certification application is received by the administrator. The methodology shall be considered to be certified either upon receipt of a written notice of approval from the administrator or, if such notice is not provided, at the end of the administrator's 120-day review period. However, a provisionally certified or certified low mass emissions excepted methodology shall not be used to report data under the NO_x Budget ~~Trading~~ Program prior to the applicable commencement date specified in 40 CFR 75.19(a)(1)(ii).

~~Đ. C.~~ The NO_x authorized account representative representing the owner or operator of each unit applying to monitor using an alternative monitoring system approved by the administrator and, if applicable, the permitting authority under Subpart E of 40 CFR Part 75 shall apply for certification to the permitting authority prior to use of the system under the NO_x ~~Trading~~ Budget Program. The NO_x authorized account representative shall apply for recertification following a replacement, modification or change according to the procedures in subsection ~~B A~~ of this section. The owner or operator of an alternative monitoring system shall comply with the notification and application requirements for certification according to the procedures specified in subdivision ~~B A~~ 3 of this section and 40 CFR 75.20(f).

9VAC5-140-730. Notifications.

The NO_x authorized account representative for a NO_x Budget unit shall submit written notice to the permitting authority and the administrator in accordance with 40 CFR 75.61, ~~except that if the unit is not subject to an acid rain emissions limitation, the notification is only required to be sent to the permitting authority.~~

9VAC5-140-740. Recordkeeping and reporting.

A. ~~4.~~ The NO_x authorized account representative shall comply with all recordkeeping and reporting requirements in this section, with the recordkeeping and reporting requirements under 40 CFR 75.73, and with the requirements of 9VAC5-140-100 E 1.

~~2. If the NO_x authorized account representative for a NO_x Budget unit subject to an acid rain emission limitation who signed and certified any submission that is made under~~

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~~Subpart F or G of 40 CFR Part 75 and that includes data and information required under this article or Subpart H of 40 CFR Part 75 is not the same person as the designated representative or the alternative designated representative for the unit under 40 CFR Part 72, the submission shall also be signed by the designated representative or the alternative designated representative.~~

~~B. 1. The owner or operator of a unit subject to an acid rain emissions limitation shall comply with requirements of 40 CFR 75.62, except that the monitoring plan shall also include all of the information required by Subpart H of 40 CFR Part 75. 2. The owner or operator of a unit that is not subject to an acid rain emissions limitation shall comply with requirements of 40 CFR 75.62, except that the monitoring plan is only required to include the information required by Subpart H of 40 CFR Part 75.~~

C. The NO_x authorized account representative shall submit an application to the permitting authority within 45 days after completing all initial certification or recertification tests required under 9VAC5-140-710 including the information required under Subpart H of 40 CFR Part 75.

D. The NO_x authorized account representative shall submit quarterly reports, as follows:

1. ~~If a unit is subject to an acid rain emission limitation or~~ if the owner or operator of the NO_x ~~budget~~ Budget unit chooses to meet the annual reporting requirements of this article, the NO_x authorized account representative shall submit a quarterly report, documenting the NO_x mass emissions from the unit, for each calendar quarter beginning with:

~~a. For a unit for which the owner or operator intends to apply or applies for the early reduction credits under 9VAC5-140-430, the calendar quarter that covers May 1, 2001, through June 30, 2001. NO_x mass emission data shall be recorded and reported from the first hour on May 1, 2001; or~~

~~b. a. For a unit that commences operation before January 1, 2003, and that is not subject to subdivision 1 a of this subsection, the calendar quarter covering May 1, 2003, through June 30, 2003. NO_x mass emission data shall be recorded and reported from the first hour on May 1, 2003; or~~

~~e. b. For a unit that commences operation on or after January 1, 2003:~~

(1) The calendar quarter in which the unit commences operation, if unit operation commences during a control period. NO_x mass emission data shall be recorded and reported from the date and hour when the unit commences operation; or

(2) The calendar quarter that includes May 1 through June 30 of the first control period following the date on

which the unit commences operation; if the unit does not commence operation during a control period. NO_x mass emission data shall be recorded and reported from the first hour on May 1 of that control period.

2. ~~If a NO_x budget unit is not subject to an acid rain emission limitation, then the~~ The NO_x authorized account representative shall either:

a. Meet all of the requirements of 40 CFR Part 75 related to monitoring and reporting NO_x mass emissions during the entire year and meet the reporting deadlines specified in subdivision 1 of this subsection; or

b. Submit quarterly reports, documenting NO_x mass emissions from the unit, only for the period from May 1 through September 30 of each year and including the data described in 40 CFR 75.74 (c)(6). The NO_x authorized account representative shall submit such quarterly reports, beginning with:

~~(1) For a unit for which the owner or operator intends to apply or applies for early reduction credits under 9VAC5-140-430, the calendar quarter covering May 1, 2001, through June 30, 2001. NO_x mass emission data shall be recorded and reported from the first hour on May 1, 2001;~~

~~(2) (1) For a unit that commences operation before January 1, 2003, and that is not subject to subdivision 2 b (1) of this subsection, the calendar quarter covering May 1 through June 30, 2003. NO_x mass emission data shall be recorded and reported from the first hour of May 1, 2003;~~

~~(3) (2) For a unit that commences operation on or after January 1, 2003, and during a control period, the calendar quarter in which the unit commences operation. NO_x mass emission data shall be reported from the date and hour corresponding to when the unit commences operation; or~~

~~(4) (3) For a unit that commences operation on or after January 1, 2003, and not during a control period, the calendar quarter that includes May 1 through June 30 of the first control period after the unit commences operation. NO_x mass emission data shall be recorded and reported from the first hour on May 1 of the first control period after the unit commences operation.~~

3. The NO_x authorized account representative shall submit each quarterly report to the administrator within 30 days following the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in Subpart H of 40 CFR Part 75 and 40 CFR 75.64.

~~a. For units subject to an acid rain emissions limitation, quarterly reports shall include all of the data and information required in Subpart H of 40 CFR Part 75 for~~

each NO_x Budget unit (or group of units using a common stack) as well as information required in Subpart G of 40 CFR Part 75.

b. For units not subject to an acid rain emissions limitation, quarterly Quarterly reports are only required to include all of the data and information required in Subpart H of 40 CFR Part 75 for each NO_x Budget unit (or group of units using a common stack).

4. The NO_x authorized account representative shall submit to the administrator a compliance certification in support of each quarterly report based on reasonable inquiry of those persons with primary responsibility for ensuring that all of the unit's emissions are correctly and fully monitored. The certification shall state that:

a. The monitoring data submitted were recorded in accordance with the applicable requirements of this article and 40 CFR Part 75, including the quality assurance procedures and specifications; and

b. For a unit with add-on NO_x emission controls and for all hours where data are substituted in accordance with 40 CFR 75.34(a)(1), the add-on emission controls were operating within the range of parameters listed in the monitoring plan and the substitute values do not systematically underestimate NO_x emissions; and

c. For a unit that is reporting on a control period basis under this subsection the NO_x emission rate and NO_x concentration values substituted for missing data under Subpart D of 40 CFR Part 75 are calculated using only values from a control period and do not systematically underestimate NO_x emissions.

9VAC5-140-750. Petitions.

A. The NO_x authorized account representative of a NO_x Budget unit that is subject to an acid rain emissions limitation may submit a petition under 40 CFR 75.66 to the administrator requesting approval to apply an alternative to any requirement of this article.

1. Application of an alternative to any requirement of this article is in accordance with this article only to the extent that the petition is approved by the administrator, in consultation with the permitting authority.

2. Notwithstanding subdivision 1 of this subsection, if the petition requests approval to apply an alternative to a requirement concerning any additional CEMS required under the common stack provisions of 40 CFR 75.72, the petition is governed by subsection B of this section.

B. The NO_x authorized account representative of a NO_x Budget unit that is not subject to an acid rain emissions limitation may submit a petition under 40 CFR 75.66 to the permitting authority and the administrator requesting

approval to apply an alternative to any requirement of this article.

1. The NO_x authorized account representative of a NO_x Budget unit that is subject to an acid rain emissions limitation may submit a petition under 40 CFR 75.66 to the permitting authority and the administrator requesting approval to apply an alternative to a requirement concerning any additional CEMS required under the common stack provisions of 40 CFR 75.72 or a NO_x concentration CEMS used under 40 CFR 75.71(a)(2).

2. Application of an alternative to any requirement of this article is in accordance with this article only to the extent the petition under this subsection is approved by both the permitting authority and the administrator.

9VAC5-140-760. Additional requirements to provide heat input data for allocations purposes. (Repealed.)

A. The owner or operator of a unit that elects to monitor and report NO_x mass emissions using a NO_x concentration system and a flow system shall also monitor and report heat input at the unit level using the procedures set forth in 40 CFR Part 75.

B. The owner or operator of a unit that monitor and report NO_x mass emissions using a NO_x concentration system and a flow system shall also monitor and report heat input at the unit level using the procedures set forth in 40 CFR Part 75 for any source that is applying for early reduction credits under 9VAC5-140-430.

Article 9 Individual Unit Opt-ins (Repealed)

9VAC5-140-800. Applicability. (Repealed.)

A unit that is not a NO_x Budget unit under 9VAC5-140-40 A, is not a unit exempt under 9VAC5-140-40 B, vents all of its emissions to a stack, and is operating may qualify under this article to become a NO_x Budget opt-in source. A unit that is a NO_x Budget unit under 9VAC5-140-40 A, is covered by an exemption under 9VAC5-140-40 B or 9VAC5-140-50 that is in effect, or is not operating is not eligible to become a NO_x Budget opt-in source.

9VAC5-140-810. General. (Repealed.)

Except otherwise as provided in this part, a NO_x Budget opt-in source shall be treated as a NO_x Budget unit for purposes of applying Articles 1 (9VAC5-140-10 et seq.) through 8 (9VAC5-140-700 et seq.) of this part.

9VAC5-140-820. NO_x authorized account representative. (Repealed.)

A unit for which an application for a NO_x Budget opt-in permit is submitted and not denied or withdrawn, or a NO_x Budget opt-in source located at the same source as one or

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more NO_x Budget units, shall have the same NO_x authorized account representative as such NO_x Budget units.

9VAC5-140-830. Applying for NO_x Budget opt in permit. (Repealed.)

~~A. In order to apply for an initial NO_x Budget opt in permit, the NO_x authorized account representative of a unit qualified under 9VAC5 140 800 may submit to the permitting authority at any time, except as provided under 9VAC5 140 860 G:~~

- ~~1. A complete NO_x Budget permit application under 9VAC5 140 220;~~
- ~~2. A monitoring plan submitted in accordance with Article 8 (9VAC5 140 700 et seq.) of this part; and~~
- ~~3. A complete account certificate of representation under 9VAC5 140 130, if no NO_x authorized account representative has been previously designated for the unit.~~

~~B. The NO_x authorized account representative of a NO_x Budget opt in source shall submit a complete NO_x Budget permit application under 9VAC5 140 220 to renew the NO_x Budget opt in permit in accordance with 9VAC5 140 210 C and, if applicable, an updated monitoring plan in accordance with Article 8 (9VAC5 140 700 et seq.) of this part.~~

9VAC5-140-840. Opt in process. (Repealed.)

~~The permitting authority will issue or deny a NO_x Budget opt in permit for a unit for which an initial application for a NO_x Budget opt in permit under 9VAC5 140 830 is submitted, in accordance with 9VAC5 140 200 and the following:~~

- ~~1. The permitting authority will determine, on an interim basis, the sufficiency of the monitoring plan accompanying the initial application for a NO_x Budget opt in permit under 9VAC5 140 830. A monitoring plan is sufficient, for purposes of interim review, if the plan appears to contain information demonstrating that the NO_x emissions rate and heat input of the unit are monitored and reported in accordance with Article 8 (9VAC5 140 700 et seq.) of this part. A determination of sufficiency shall not be construed as acceptance or approval of the unit's monitoring plan.~~
- ~~2. If the permitting authority determines that the unit's monitoring plan is sufficient under subdivision 1 of this section and after completion of monitoring system certification under Article 8 (9VAC5 140 700 et seq.) of this part, the NO_x emissions rate and the heat input of the unit shall be monitored and reported in accordance with Article 8 (9VAC5 140 700 et seq.) of this part for one full control period during which monitoring system availability is not less than 90% and during which the unit is in full compliance with any applicable state or federal emissions or emissions related requirements. Solely for purposes of applying the requirements in the prior sentence, the unit~~

~~shall be treated as a "NO_x Budget unit" prior to issuance of a NO_x Budget opt in permit covering the unit.~~

~~3. Based on the information monitored and reported under subdivision 2 of this section, the unit's baseline heat rate shall be calculated as the unit's total heat input (in mmBtu) for the control period and the unit's baseline NO_x emissions rate shall be calculated as the unit's total NO_x emissions (in lb) for the control period divided by the unit's baseline heat rate.~~

~~4. After calculating the baseline heat input and the baseline NO_x emissions rate for the unit under subdivision 3 of this section, the permitting authority will serve a draft NO_x Budget opt in permit on the NO_x authorized account representative of the unit.~~

~~5. Within 20 days after the issuance of the draft NO_x Budget opt in permit, the NO_x authorized account representative of the unit shall submit to the permitting authority a confirmation of the intention to opt in the unit or a withdrawal of the application for a NO_x Budget opt in permit under 9VAC5 140 830. The permitting authority will treat the failure to make a timely submission as a withdrawal of the NO_x Budget opt in permit application.~~

~~6. If the NO_x authorized account representative confirms the intention to opt in the unit under subdivision 5 of this section, the permitting authority will issue the draft NO_x Budget opt in permit in accordance with 9VAC5 140 200.~~

~~7. Notwithstanding subdivisions 1 through 6 of this section, if at any time before issuance of a draft NO_x Budget opt in permit for the unit, the permitting authority determines that the unit does not qualify as a NO_x Budget opt in source under 9VAC5 140 800, the permitting authority will issue a draft denial of a NO_x Budget opt in permit for the unit in accordance with 9VAC5 140 200.~~

~~8. A NO_x authorized account representative of a unit may withdraw its application for a NO_x Budget opt in permit under 9VAC5 140 830 at any time prior to the issuance of the final NO_x Budget opt in permit. Once the application for a NO_x Budget opt in permit is withdrawn, a NO_x authorized account representative wanting to reapply shall submit a new application for a NO_x Budget permit under 9VAC5 140 830.~~

~~9. The effective date of the initial NO_x Budget opt in permit shall be May 1 of the first control period starting after the issuance of the initial NO_x Budget opt in permit by the permitting authority. The unit shall be a NO_x Budget opt in source and a NO_x Budget unit as of the effective date of the initial NO_x Budget opt in permit.~~

9VAC5-140-850. NO_x Budget opt in permit contents. (Repealed.)

~~A. Each NO_x Budget opt in permit (including any draft or proposed NO_x Budget opt in permit, if applicable) will~~

contain all elements required for a complete NO_x Budget opt-in permit application under 9VAC5-140-220.

~~B. Each NO_x Budget opt-in permit is deemed to incorporate automatically the definitions of terms under 9VAC5-140-20 and, upon recordation by the administrator under Article 6 (9VAC5-140-500 et seq.), Article 7 (9VAC5-140-600 et seq.), or Article 9 (9VAC5-140-800 et seq.) of this part, every allocation, transfer, or deduction of NO_x allowances to or from the compliance accounts of each NO_x Budget opt-in source covered by the NO_x Budget opt-in permit or the overdraft account of the NO_x Budget source where the NO_x Budget opt-in source is located.~~

9VAC5-140-860. Withdrawal from NO_x Budget Trading Program. (Repealed.)

~~A. To withdraw from the NO_x Budget Trading Program, the NO_x authorized account representative of a NO_x Budget opt-in source shall submit to the permitting authority a request to withdraw effective as of a specified date prior to May 1 or after September 30. The submission shall be made no later than 90 days prior to the requested effective date of withdrawal.~~

~~B. Before a NO_x Budget opt-in source covered by a request under subsection A of this section may withdraw from the NO_x Budget Trading Program and the NO_x Budget opt-in permit may be terminated under subsection E of this section, the following conditions shall be met:~~

~~1. For the control period immediately before the withdrawal is to be effective, the NO_x authorized account representative shall submit or shall have submitted to the permitting authority an annual compliance certification report in accordance with 9VAC5-140-300.~~

~~2. If the NO_x Budget opt-in source has excess emissions for the control period immediately before the withdrawal is to be effective, the administrator will deduct or has deducted from the NO_x Budget opt-in source's compliance account, or the overdraft account of the NO_x Budget source where the NO_x Budget opt-in source is located, the full amount required under 9VAC5-140-540-D for the control period.~~

~~3. After the requirements for withdrawal under subdivisions 1 and 2 of this subsection are met, the administrator will deduct from the NO_x Budget opt-in source's compliance account, or the overdraft account of the NO_x Budget source where the NO_x Budget opt-in source is located, NO_x allowances equal in number to and allocated for the same or a prior control period as any NO_x allowances allocated to that source under 9VAC5-140-880 for any control period for which the withdrawal is to be effective. The administrator will close the NO_x Budget opt-in source's compliance account and will establish, and transfer any remaining allowances to, a new general account for the owners and operators of the NO_x Budget~~

~~opt-in source. The NO_x authorized account representative for the NO_x Budget opt-in source shall become the NO_x authorized account representative for the general account.~~

~~C. A NO_x Budget opt-in source that withdraws from the NO_x Budget Trading Program shall comply with all requirements under the NO_x Budget Trading Program concerning all years for which such NO_x Budget opt-in source was a NO_x Budget opt-in source, even if such requirements arise or must be complied with after the withdrawal takes effect.~~

~~D. 1. After the requirements for withdrawal under subsections A and B of this section are met (including deduction of the full amount of NO_x allowances required), the permitting authority will issue a notification to the NO_x authorized account representative of the NO_x Budget opt-in source of the acceptance of the withdrawal of the NO_x Budget opt-in source as of a specified effective date that is after such requirements have been met and that is prior to May 1 or after September 30.~~

~~2. If the requirements for withdrawal under subsections A and B of this section are not met, the permitting authority will issue a notification to the NO_x authorized account representative of the NO_x Budget opt-in source that the NO_x Budget opt-in source's request to withdraw is denied. If the NO_x Budget opt-in source's request to withdraw is denied, the NO_x Budget opt-in source shall remain subject to the requirements for a NO_x Budget opt-in source.~~

~~E. After the permitting authority issues a notification under subdivision D 1 of this section that the requirements for withdrawal have been met, the permitting authority will revise the NO_x Budget permit covering the NO_x Budget opt-in source to terminate the NO_x Budget opt-in permit as of the effective date specified under subdivision D 1 of this section. A NO_x Budget opt-in source shall continue to be a NO_x Budget opt-in source until the effective date of the termination.~~

~~F. If the permitting authority denies the NO_x Budget opt-in source's request to withdraw, the NO_x authorized account representative may submit another request to withdraw in accordance with subsections A and B of this section.~~

~~G. Once a NO_x Budget opt-in source withdraws from the NO_x Budget Trading Program and its NO_x Budget opt-in permit is terminated under this section, the NO_x authority account representative may not submit another application for a NO_x Budget opt-in permit under 9VAC5-140-830 for the unit prior to the date that is four years after the date on which the terminated NO_x Budget opt-in permit became effective.~~

9VAC5-140-870. Change in regulatory status. (Repealed.)

~~A. When a NO_x Budget opt-in source becomes a NO_x Budget unit under 9VAC5-140-40, the NO_x authorized account representative shall notify in writing the permitting authority and the administrator of such change in the NO_x~~

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Budget opt in source's regulatory status, within 30 days of such change.

B. Upon notification under subsection A of this section, the permitting authority and administrator will take the following actions:

1. a. When the NO_x Budget opt in source becomes a NO_x Budget unit under 9VAC5-140-40, the permitting authority will revise the NO_x Budget opt in source's NO_x Budget opt in permit to meet the requirements of a NO_x Budget permit under 9VAC5-140-230 as of an effective date that is the date on which such NO_x Budget opt in source becomes a NO_x Budget unit under 9VAC5-140-40.

b. (1) The administrator will deduct from the compliance account for the NO_x Budget unit under subdivision 1 a of this subsection, or the overdraft account of the NO_x Budget source where the unit is located, NO_x allowances equal in number to and allocated for the same or a prior control period as:

(a) Any NO_x allowances allocated to the NO_x Budget unit (as a NO_x Budget opt in source) under 9VAC5-140-880 for any control period after the last control period during which the unit's NO_x Budget opt in permit was effective; and

(b) If the effective date of the NO_x Budget permit revision under subdivision 1 a of this subsection is during a control period, the NO_x allowances allocated to the NO_x Budget unit (as a NO_x Budget opt in source) under 9VAC5-140-880 for the control period multiplied by the ratio of the number of days, in the control period, starting with the effective date of the permit revision under subdivision 1 a of this subsection, divided by the total number of days in the control period.

(2) The NO_x authorized account representative shall ensure that the compliance account of the NO_x Budget unit under subdivision 1 a of this subsection, or the overdraft account of the NO_x Budget source where the unit is located, includes the NO_x allowances necessary for completion of the deduction under subdivision 1 b (1) of this subsection. If the compliance account or overdraft account does not contain sufficient NO_x allowances, the administrator will deduct the required number of NO_x allowances, regardless of the control period for which they were allocated, whenever NO_x allowances are recorded in either account.

c. (1) For every control period during which the NO_x Budget permit revised under subdivision 1 a of this subsection is effective, the NO_x Budget unit under subdivision 1 a of this subsection will be treated, solely for purposes of NO_x allowance allocations under 9VAC5-140-420, as a unit that commenced operation on the effective date of the NO_x Budget permit revision

under subdivision 1 a of this subsection and will be allocated NO_x allowances under 9VAC5-140-420.

(2) Notwithstanding subdivision 1 c (1) of this subsection, if the effective date of the NO_x Budget permit revision under subdivision 1 a of this subsection is during a control period, the following number of NO_x allowances will be allocated to the NO_x Budget unit under subdivision 1 a of this subsection under 9VAC5-140-420 for the control period: the number of NO_x allowances otherwise allocated to the NO_x Budget unit under 9VAC5-140-420 for the control period multiplied by the ratio of the number of days, in the control period, starting with the effective date of the permit revision under subdivision 1 a of this subsection, divided by the total number of days in the control period.

2. a. When the NO_x authorized account representative of a NO_x Budget opt in source does not renew its NO_x Budget opt in permit under 9VAC5-140-830 B, the administrator will deduct from the NO_x Budget opt in unit's compliance account, or the overdraft account of the NO_x Budget source where the NO_x Budget opt in source is located, NO_x allowances equal in number to and allocated for the same or a prior control period as any NO_x allowances allocated to the NO_x Budget opt in source under 9VAC5-140-880 for any control period after the last control period for which the NO_x Budget opt in permit is effective. The NO_x authorized account representative shall ensure that the NO_x Budget opt in source's compliance account or the overdraft account of the NO_x Budget source where the NO_x Budget opt in source is located includes the NO_x allowances necessary for completion of such deduction. If the compliance account or overdraft account does not contain sufficient NO_x allowances, the administrator will deduct the required number of NO_x allowances, regardless of the control period for which they were allocated, whenever NO_x allowances are recorded in either account.

b. After the deduction under subdivision 2 a of this subsection is completed, the administrator will close the NO_x Budget opt in source's compliance account. If any NO_x allowances remain in the compliance account after completion of such deduction and any deduction under 9VAC5-140-540, the administrator will close the NO_x Budget opt in source's compliance account and will establish, and transfer any remaining allowances to, a new general account for the owners and operators of the NO_x Budget opt in source. The NO_x authorized account representative for the NO_x Budget opt in source shall become the NO_x authorized account representative for the general account.

9VAC5-140-880. NO_x allowance allocations to opt in units. (Repealed.)

A. 1. By December 31 immediately before the first control period for which the NO_x Budget opt in permit is effective,

the permitting authority will allocate NO_x allowances to the NO_x Budget opt in source and submit to the administrator the allocation for the control period in accordance with subsection B of this section.

2. By no later than December 31, after the first control period for which the NO_x Budget opt in permit is in effect, and December 31 of each year thereafter, the permitting authority will allocate NO_x allowances to the NO_x Budget opt in source, and submit to the administrator allocations for the next control period, in accordance with subsection B of this section.

B. For each control period for which the NO_x Budget opt in source has an approved NO_x Budget opt in permit, the NO_x Budget opt in source will be allocated NO_x allowances in accordance with the following procedures:

1. The heat input (in mmBtu) used for calculating NO_x allowance allocations shall be the lesser of:

- a. The NO_x Budget opt in source's baseline heat input determined pursuant to subdivision 3 of 9VAC5-140-840; or
- b. The NO_x Budget opt in source's heat input, as determined in accordance with Article 8 (9VAC5-140-700 et seq.) of this part, for the control period in the year prior to the year of the control period for which the NO_x allocations are being calculated.

2. The permitting authority will allocate NO_x allowances to the NO_x Budget opt in source in an amount equaling the heat input (in mmBtu) determined under subdivision 1 of this subsection multiplied by the lesser of:

- a. The NO_x Budget opt in source's baseline NO_x emissions rate (in lb/mmBtu) determined pursuant to subdivision 3 of 9VAC5-140-840; or
- b. The most stringent state or federal NO_x emissions limitation applicable to the NO_x Budget opt in source during the control period.

3. The permitting authority will not allocate to any NO_x Budget opt in source any NO_x allowances from the state trading program budget set forth in 9VAC5-140-900.

9VAC5-140-890. [Reserved] (Repealed.)

Article 10

State Trading Program Budget and Compliance Supplement Pool

9VAC5-140-900. State trading program budget. (Repealed.)

For use in each control period for the year 2004 and each year thereafter, the total number of NO_x tons apportioned to all NO_x Budget units is the sum of the NO_x tons apportioned under 9VAC5-140-920 and 9VAC5-140-930.

9VAC5-140-910. Compliance supplement pool budget for years 2004 and 2005. (Repealed.)

For use in each control period for the years 2004 and 2005, the total number of NO_x tons apportioned to all NO_x Budget units for use as a compliance supplement pool is the number of NO_x tons specified for the Commonwealth of Virginia in Appendix D to 40 CFR Part 97.

9VAC5-140-920. Total electric generating unit allocations. (Repealed.)

A. For use in each control period for the years 2004 through 2008, the total number of NO_x tons apportioned to all NO_x Budget units under 9VAC5-140-40-A-1 is the number of NO_x tons specified for EGUs for the Commonwealth of Virginia in Appendix C to 40 CFR Part 97.

B. For use in each control period for the year 2009 and each year thereafter, the total number of NO_x tons apportioned to all NO_x Budget units under 9VAC5-140-40-A-1 is 17,091.

9VAC5-140-930. Total nonelectric generating unit allocations. (Repealed.)

A. For use in each control period for the years 2004 through 2008, the total number of NO_x tons apportioned to all NO_x Budget units under 9VAC5-140-40-A-2 is 4,104.

B. For use in each control period for the year 2009 and each year thereafter, the total number of NO_x tons apportioned to all NO_x Budget units under 9VAC5-140-40-A-2 is 4,104.

VA.R. Doc. No. R18-5229; Filed September 29, 2017, 1:39 p.m.

VIRGINIA WASTE MANAGEMENT BOARD

Forms

REGISTRAR'S NOTICE: Forms used in administering the following regulation have been filed by the Department Environmental Quality. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

Title of Regulation: 9VAC20-81. Solid Waste Management Regulations.

Contact Information: Debra Harris, Policy and Planning Specialist, Department of Environmental Quality, 629 East Main Street, Richmond, VA 23219, telephone (804) 698-4209, or email debra.harris@deq.virginia.gov.

FORMS (9VAC20-81)

[Annual Report QA/QC Submission Checklist, DEQ Form ARSC-01 \(rev. 7/2011\)](#)

[Solid Waste Management Facility Permit Applicant's Disclosure Statement, DEQ Form DISC-01 \(rev. 7/2012\)](#)

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~~Solid Waste Management Facility Permit Applicant's Disclosure Statement - Key Personnel, DEQ Form DISC-02 (rev. 7/12)~~

~~Solid Waste Management Facility Disclosure Statement - Quarterly Update, DEQ Form DISC-03 (rev. 7/12)~~

~~Request for Certification (Local Government), DEQ Form SW-11-1 (rev. 7/11)~~

[Solid Waste Management Facility Permit Applicant - Key Personnel Disclosure Statement, DEQ Form DISC-02 \(rev. 7/2017\)](#)

[Solid Waste Management Facility Disclosure Statement - Quarterly Update, DEQ Form DISC-03 \(rev. 7/2017\)](#)

[Request for Certification \(Local Government\), DEQ Form SW-11-1 \(rev. 6/2016\)](#)

[Special Waste Disposal Request, DEQ Form SWDR \(rev. 1/2012\)](#)

[Solid Waste Part A Application, DEQ Form SW PTA \(rev. 3/2011\)](#)

[Solid Waste Disposal Facility Part B Application, DEQ Form SW PTB \(rev. 3/2011\)](#)

[Solid Waste Information and Assessment Program - Reporting Table, Form DEQ 50-25 with Statement of Economic Benefits Form and Instructions \(rev. 11/2014\)](#)

[Exempt Yard Waste Composting Annual Report, DEQ Form YW-2 \(rev. 7/2011\)](#)

[Exempt Yard Waste Compost Facility - Notice of Intent and Certification, DEQ Form YW-3 \(rev. 7/2011\)](#)

[Exempt Yard Waste & Herbivorous Manures Compost Facility - Notice of Intent and Certification, DEQ Form YW-4 \(rev. 7/2011\)](#)

VA.R. Doc. No. R18-4982; Filed October 4, 2017, 11:53 a.m.

STATE WATER CONTROL BOARD

Additional Public Hearing and Extension of Public Comment Period

Title of Regulation: **9VAC25-260. Water Quality Standards (amending 9VAC25-260-140, 9VAC25-260-155, 9VAC25-260-170).**

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

The State Water Control Board noticed a public comment period and public hearing on proposed amendments to 9VAC25-260, Water Quality Standards, in the Virginia Register of Regulations (34:2 VA.R. 193-236 September 18, 2017). The proposed amendments update the ammonia criteria for the protection of freshwater aquatic life as well as implementation issues and impacts to regulated dischargers,

revise the bacteria criteria for human health protection in recreation waters, revise the cadmium criteria for the protection of freshwater and saltwater aquatic life, and update 94 human health criteria parameters.

The board has scheduled an additional public hearing and extended the public comment period. The public hearing will be held on November 28, 2017, at 4 p.m. at the Department of Environmental Quality Blue Ridge Regional Office, 3019 Peters Creek Road, Roanoke, Virginia.

The public comment period has been extended through December 8, 2017.

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

VA.R. Doc. No. R18-2148; Filed October 10, 2017, 9:27 a.m.



TITLE 14. INSURANCE

STATE CORPORATION COMMISSION

Proposed Regulation

<p>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.</p>
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Title of Regulation: **14VAC5-335. Rules Governing Claims-Made Liability Insurance Policies (amending 14VAC5-335-10 through 14VAC5-335-60; adding 14VAC5-335-23, 14VAC5-335-27, 14VAC5-335-45).**

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

Public Hearing Information: A public hearing will be held upon request.

Public Comment Deadline: November 30, 2017.

Agency Contact: Eric Lowe, Policy Advisor, State Corporation Commission, Bureau of Insurance, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9628, FAX (804) 371-9873, or email eric.lowe@scc.virginia.gov.

Summary:

The proposed amendments update the rules to reflect current positions and practices for filing and approval, establish greater clarity for ease of application, and modernize the rules to create more consistency with the

regulatory requirements of other states. The proposed amendments (i) clarify and further define that the rules do not apply to incidental claims-made liability insurance, (ii) make a distinction between a basic extended reporting period and a supplemental reporting period and identify clear standards for each, (iii) amend the required consumer notice provided with a claims-made insurance policy, (iv) clarify and simplify the extended reporting period requirements upon policy termination, (v) reduce the period of time for the mandatory offer of a supplemental extended reporting period, (vi) add a requirement for the insurer to provide loss information to the insured, and (vii) clarify certain prohibitions and minimum standards.

AT RICHMOND, OCTOBER 2, 2017

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. INS-2017-00202

Ex Parte: In the matter of
Amending the Rules Governing
Claims-Made Liability Insurance Policies

ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia ("Code") provides that the State Corporation Commission ("Commission") shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction, and § 3 8 .2-223 of the Code provides that the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of Title 38.2 of the Code.

The rules and regulations issued by the Commission pursuant to § 38.2-223 of the Code are set forth in Title 14 of the Virginia Administrative Code. A copy may also be found at the Commission's website: <http://www.scc.virginia.gov/case>.

The Bureau of Insurance ("Bureau") has submitted to the Commission proposed amendments to rules set forth in Chapter 335 of Title 14 of the Virginia Administrative Code, entitled "Rules Governing Claims-Made Liability Insurance Policies" ("Rules"), which amend the Rules at 14 VAC 5-335-10 through 14 VAC 5-335-60 and add new Rules at 14 VAC 5-335-23, 14 VAC-335-27 and 14 VAC 5-335-45.

The amendments to Chapter 335 are necessary to update the Rules to reflect current positions and practices for filing and approval, establish greater clarity for ease of application and modernize the Rules to create more consistency with the regulatory requirements of other states. These amendments clarify and further define that the Rules do not apply to incidental claims-made liability insurance, make a distinction between a basic extended reporting period and a supplemental

reporting period and identify clear standards for each, amend the required consumer notice provided with a claims-made insurance policy, clarify and simplify the extended reporting period requirements upon policy termination, reduce the period of time for the mandatory offer of a supplemental extended reporting period, add a requirement for the insurer to provide loss information to the insured, and clarify certain prohibitions and minimum standards.

NOW THE COMMISSION is of the opinion that the Bureau's proposal to amend the Rules at 14 VAC 5-335-10 through 14 VAC 5-335-60 and add new Rules at 14 VAC 5-335-23, 14 VAC-335-27 and 14 VAC 5-335-45 should be considered for adoption.

Accordingly, IT IS ORDERED THAT:

(1) The proposed amendments to the "Rules Governing Claims-Made Liability Insurance Policies," which amend the Rules at 14 VAC 5-335-10 through 14 VAC 5-335-60 and add new Rules at 14 VAC 5-335-23, 14 VAC-335-27 and 14 VAC 5-335-45, are attached hereto and made a part hereof.

(2) All interested persons who desire to comment in support of or in opposition to, or request a hearing to consider the proposed amendments, shall file such comments or hearing request on or before November 30, 2017, with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Interested persons desiring to submit comments electronically may do so by following the instructions at the Commission's website: <http://www.scc.virginia.gov/case>. All comments shall refer to Case No. INS-2017-00202.

(3) The Bureau shall hold a meeting during the comment period in order for insurers and interested persons to address questions about the proposed Rules to the Bureau. The meeting will be held on Thursday, November 2, 2017, at 10 a.m. in the Commission's third floor training room located in the Tyler Building, 1300 East Main Street, Richmond, Virginia 23219.

(4) If no written request for a hearing on the proposal to amend the Rules as outlined in this Order is received on or before November 30, 2017, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposal, may adopt the Rules as submitted by the Bureau.

(5) The Bureau forthwith shall provide notice of the proposal to amend the Rules by sending, by e-mail or U.S. mail, a copy of this Order, together with the proposal, to all insurers licensed by the Commission to write insurance as defined in §§ 3 8 .2-11 7, 3 8 .2-118 and 3 8 .2-111 B of the Code, as well as all interested persons.

(6) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, together with the

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proposed amended Rules, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

(7) The Commission's Division of Information Resources shall make available this Order and the attached proposed amended Rules on the Commission's website: <http://www.scc.virginia.gov/case>.

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

(9) This matter is continued.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: 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 Rebecca Nichols.

14VAC5-335-10. Scope.

The provisions of this chapter shall apply to all policies of liability insurance, as defined in §§ 38.2-117, 38.2-118, and subsection B of § 38.2-111 of the Code of Virginia, that limit the time allowed for reporting claims arising out of injury, damage, or wrongful act or omission covered by the policy. Any such policy shall be deemed to be a claims-made liability insurance policy for purposes of this chapter. The provisions of this chapter shall apply to ~~all~~ claims-made liability insurance policies delivered or issued for delivery in the Commonwealth to become effective on or after ~~January 1, 2005~~ July 1, 2018.

This chapter shall not apply to incidental claims-made liability insurance.

14VAC5-335-20. Definitions.

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

"Basic extended reporting period" means an extension of the time allowed for reporting claims, after termination of any claims-made liability coverage, for injury, damage, or wrongful act or omission that occurred prior to termination of the coverage and that, except for the requirement to report claims during the policy period, was otherwise covered by the policy.

"Claims-made liability insurance ~~policy~~" means an insurance policy or endorsement providing coverage for the insured's liability for injury, damage, or wrongful act or omission occurring prior to the termination of coverage but subsequent to any applicable retroactive date, provided the claim for such injury, damage, or wrongful act or omission is

first made during the policy period or any extended reporting period.

~~"Extended reporting period" means an extension of the time allowed for reporting claims, after termination of claims-made liability coverage, for injury, damage, or wrongful act or omission that occurred prior to termination of the coverage and that, except for the requirement to report claims during the policy period, was otherwise covered by the policy.~~

"Incidental claims-made liability insurance" means any claims-made liability insurance that is contained in any policy of insurance in which the coverage is provided with either no separate or identifiable charge or with a premium amount that does not exceed 10% of the total premium charged for the policy.

"Medical malpractice insurance" means insurance coverage against the legal liability of the insured and against loss, damage, or expense incident to a claim arising out of the death or injury of any person as the result of negligence in rendering or failing to render professional service by any provider of health care.

"Policy" means a coverage part, form, or endorsement that is contained in a contract of insurance.

"Retroactive date" means the date on or after which injury, damage, or wrongful act or omission may occur and be covered under a claims-made liability insurance policy.

"Supplemental extended reporting period" means an extended reporting period that is available for the insured to purchase.

14VAC5-335-23. Required notice.

The following notice, or a notice that is substantially similar, shall be provided in writing with each new and renewal claims-made liability insurance policy issued or delivered in this Commonwealth:

You have purchased claims-made liability insurance. When this insurance terminates, the insurer will send an offer with the available options for purchasing the supplemental extended reporting period. You may be entitled to receive information on claims under this policy. If you have any questions regarding your claims-made coverage or the importance of purchasing the supplemental extended reporting period, please contact your insurance company or your insurance agent.

14VAC5-335-27. Standards for basic extended reporting period.

An insurer may offer a basic extended reporting period that is included in the policy and incurs no additional charge. The basic extended reporting period shall not be longer than 12 months.

14VAC5-335-30. Insurers Requirement to offer supplemental extended reporting period coverage.

A. Every claims-made liability insurance policy issued or delivered in this Commonwealth shall include a provision ~~which shall offer to that the named insured extended reporting period coverage upon termination of claims made coverage may purchase a supplemental extended reporting period in accordance with the provisions of 14VAC5-335-40 upon policy termination.~~ To the extent that policy limits apply separately to each named insured, each named insured shall be separately entitled to purchase ~~an a supplemental~~ extended reporting period. ~~Termination Policy termination~~ of claims-made coverage shall include:

1. Cancellation or nonrenewal of the policy by the insurer or the insured;
2. Advancement of any applicable retroactive date; or
3. Renewal of the ~~coverage policy~~ on other than a claims-made basis.

~~B. The insured shall be allowed at least 30 days after termination in which to purchase the extended reporting period coverage.~~

~~C. Notwithstanding the foregoing, B. No offer of a supplemental extended reporting period coverage does not have to be offered is required~~ if cancellation or nonrenewal of a claims-made liability insurance policy is due to:

1. Nonpayment of premium;
2. Failure to comply with terms or conditions of the policy; or
3. Fraud.

C. Each claims-made liability insurance policy shall contain provisions that clearly state when the supplemental extended reporting period will and will not be offered.

D. No insurer shall deliver or issue for delivery a claims-made liability insurance policy in this Commonwealth unless such policy contains the provisions set forth in subsections A, B and C of this section. Upon a policy termination in accordance with subsection A of this section, the insurer shall offer in writing to the named insured a supplemental extended reporting period. The offer shall include the duration and premium of the minimum required supplemental extended reporting period coverage in 14VAC5-335-40 and all other available duration and premium options. The offer shall be sent no earlier than the date of notification of termination of the policy and not later than 15 days after the termination of the policy. The named insured shall have a minimum of 30 days from the termination of the policy to purchase the supplemental extended reporting period.

E. The following notice, or a notice that is substantially similar, shall be provided in writing with each new and

~~renewal claims made liability insurance policy issued or delivered in this Commonwealth:~~

~~You have purchased a claims made liability insurance policy. Please read this policy carefully to understand your coverage. There are certain circumstances in which you must be provided the opportunity to purchase an extended reporting period for reporting claims. These are explained in your policy. If you have any questions regarding the cost of an extended reporting period or the available options under the extended reporting period, please contact your insurance company or your insurance agent.~~

14VAC5-335-40. Extended Supplemental extended reporting period requirements.

A. Each insurer shall offer a supplemental extended reporting period to allow an extension of the time allowed to report claims as follows:

1. For medical ~~professional liability malpractice~~ insurance, an unlimited extended reporting period shall be offered with unimpaired limits of liability and shall be effective the same day as the termination of the policy; or
2. For all other claims-made liability insurance policies, a ~~two-year~~ one-year extended reporting period shall be offered.

~~However, this shall not prohibit In addition, the insurer from may also offering offer greater or more limited extensions of time in which to report claims. No insurer shall deliver or issue for delivery a claims made liability insurance policy in this Commonwealth unless such policy contains the applicable provisions set forth in this subsection.~~

~~B. Each insurer shall offer an extended reporting period that includes unimpaired limits of liability equal to the limits of the policy being extended. However, this shall not prohibit the insurer from also offering higher or lower limits of liability applicable to the extended reporting period. No insurer shall deliver or issue for delivery a claims made liability insurance policy in this Commonwealth unless such policy contains the applicable provisions set forth in this subsection. This subsection shall not apply to excess or umbrella liability coverage, or environmental impairment or pollution liability coverage, or to a limited extended reporting period of 60 days or less provided automatically without an additional premium charge; nor shall this subsection apply to any class, line, subclassification, or market segment exempted from this requirement by order of the commission In the event the policy contains no basic extended reporting period or the insured purchases reinstated limits in whole or in part, the supplemental extended reporting period shall be effective the same day as the termination of the policy.~~

C. When an insurer excludes any existing coverage from a claims made liability insurance policy and the policy remains in effect or is renewed, the insurer shall offer an extended

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~~reporting period for such coverage on the same basis that the extended reporting period would be offered if the entire policy were being terminated. For purposes of this subsection, the exclusion of any existing coverage shall not include changes in policy limits or deductibles.~~

14VAC5-335-45. Requirement to provide loss information.

If the policy is issued with an aggregate limit, the insurer shall provide loss information to the named insured with the notice of cancellation or nonrenewal of the claims-made policy or within 15 calendar days of the insured's request. The loss information shall include the aggregate amount of payments and reserves subject to the aggregate limit for any closed claims, open claims, or notices of occurrence for the period to which the aggregate applies.

14VAC5-335-50. Prohibitions.

~~A. Once purchased by the insured, The supplemental extended reporting period coverage shall not be cancelled canceled by the insurer without the consent of the insured except for nonpayment of premium or fraud. No extended reporting endorsement shall be delivered or issued for delivery in this Commonwealth unless it contains this provision.~~

~~B. Except with respect to a limited extended reporting period of 60 days or less provided automatically without an additional premium charge, an insurer shall be prohibited from voiding No insurer shall deny coverage under a supplemental extended reporting period coverage on the basis that other applicable insurance coverage is in effect. However, this shall not prohibit an An insurer from applying may apply the supplemental extended reporting period coverage as excess over such other insurance.~~

14VAC5-335-60. Severability.

If any provision of this chapter or ~~the its~~ application thereof to any person or circumstance is for any reason held to be invalid by a court, the remainder of ~~the this~~ chapter and the application of ~~such provision~~ the provisions to other persons or circumstances shall not be affected ~~thereby~~.

VA.R. Doc. No. R18-5289; Filed October 2, 2017, 1:46 p.m.

being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form to access it. The form is also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

Title of Regulation: 18VAC48-50. Common Interest Community Manager Regulations.

Contact Information: Joseph Haughwout, Board Administrator, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Richmond, VA 23233, telephone (804) 367-2684, or email joseph.haughwout@dpor.virginia.gov.

FORMS (18VAC48-50)

[Common Interest Community Manager Change of Personnel Form, A492-0501MGTCHG-v1 \(eff. 10/2013\)](#)

[Common Interest Community Manager License Application, A492-0501LIC-v1 \(eff. 10/2013\)](#)

[Common Interest Community Manager Training Program Approval Application, A492-05TRAPRV-v2 \(eff. 5/2017\)](#)

[Certified Principals/Supervisory Employee Experience Verification Form, A492-0510EXP-v1 \(eff. 10/2013\)](#)

[Common Interest Community Manager Application Comprehensive Training Program Equivalency Form, A492-0501TREQ-v1 \(eff. 9/2013\)](#)

[Common Interest Community Manager License Renewal Application, A492-0501REN-v1 \(eff. 10/2013\)](#)

[Common Interest Community Manager Principal or Supervisory Employee Certificate Application, A492-0510CERT-v1 \(eff. 10/2013\)](#)

[Principal or Supervisory Employee Certificate Renewal Form, A492-0510REN-v1 \(eff. 10/2017\)](#)

[Common Interest Community Manager Application Supplement Experience Verification Form, A492-0510EXP-v1 \(eff. 10/2013\)](#)

VA.R. Doc. No. R18-5309; Filed October 6, 2017, 1:15 p.m.

BOARD OF MEDICINE

Fast-Track Regulation

Title of Regulation: 18VAC85-80. Regulations Governing the Licensure of Occupational Therapists (amending 18VAC85-80-71).

Statutory Authority: §§ 54.1-2400 and 54.1-2912.1 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

COMMON INTEREST COMMUNITY BOARD

Forms

REGISTRAR'S NOTICE: Forms used in administering the following regulation have been filed by the Department of Professional and Occupational Regulation. The form is not

Public Comment Deadline: November 29, 2017.

Effective Date: December 14, 2017.

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

Basis: Section 54.1-2400 of the Code of Virginia provides the Board of Medicine the authority to promulgate regulations that are reasonable and necessary to administer effectively the regulatory system. The specific mandate for the Board of Medicine to promulgate regulations requiring continuing education is found in § 54.1-2912.1 of the Code of Virginia.

Purpose: The purpose of the amendments is to (i) eliminate the requirement that the continued competency activity and assessment form be completed and retained with supporting documentation of continuing education courses or activities for renewal of an active license and (ii) change the title of the chapter for consistency with licensure and regulation of both occupational therapists and occupational therapy assistants. Since the content of the requirement for continuing education is not being amended, there is assurance that occupational therapists will continue to be minimally competent to practice with skill and competency and therefore to protect public health and safety.

Rationale for Using Fast-Track Rulemaking Process: The changes are unanimously approved by the Advisory Board on Occupational Therapy. These changes were included in an action that was previously adopted, which included an amendment for recognition of National Board for Certification in Occupational Therapy as evidence of completion of continuing education. That proposed action has been withdrawn because there was opposition to that amendment, and there was legislation passed in the 2017 Session of the General Assembly to prohibit that amendment. The remaining amendments in the previous action, included in this fast-track rulemaking action, had no opposition.

Substance: The board is amending 18VAC85-80-71 on continued competency requirements to eliminate the requirement for completion of the Continued Competency Activity and Assessment Form and the requirement that the board audit two percent of licensees. An amendment will also change the title of the chapter from Regulations Governing the Licensure of Occupational Therapists to Regulations Governing the Practice of Occupational Therapy.

Issues: There are no primary advantages or disadvantages to the public. There are no advantages or disadvantages to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Medicine (Board) proposes to 1) eliminate the

requirement for completion of the Continued Competency Activity and Assessment Form, 2) no longer specify the frequency of random audits, and 3) change the title of the chapter from Regulations Governing the Licensure of Occupational Therapists to Regulations Governing the Practice of Occupational Therapy.

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

Estimated Economic Impact. Currently license renewal is completed electronically with an attestation that the licensee has met the continued competency requirements. The proposal to clarify that it is not required for a licensee to complete the Continued Competency Activity and Assessment Form in order to renew biennially will have no impact on requirements. Nonetheless it would be beneficial in that it may reduce potential confusion and associated time wasted in determining administrative requirements.

The current regulation specifies that the Board shall "periodically conduct a random audit of at least one to two percent of its active licensees to determine compliance." The Board proposes to amend the language to "periodically conduct a random audit of its active licensees to determine compliance." The amended language would allow the number of audits to be consistent with staffing levels and other factors as they arise.

Amending the title of the regulation will not have a large impact. The chapter includes regulations for licensure of occupational therapy assistants as well as for occupational therapists. It also regulates the individual and supervisory responsibilities of practitioners and includes the standards of practice for the profession. Thus the proposed title is a better indicator of the regulation's contents.

Businesses and Entities Affected. The proposed amendments potentially affect the 3,803 persons with a current license as an occupational therapist and 1,384 with a current license as an occupational therapy assistant. Only 2% work in private practices, either in a group or solo practice.¹ All such private practices would likely be small businesses.

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

Projected Impact on Employment. The proposed amendments do not significantly affect employment.

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

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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.

¹ Data source: Department of Health Professions

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

Summary:

The amendments eliminate the requirement for completion of the Continued Competency Activity and Assessment Form by practitioners, remove the requirement that the board audit at least one to two percent of its licensees for compliance with continued competency requirements, and modify the name of the chapter.

CHAPTER 80
REGULATIONS GOVERNING THE LICENSURE
PRACTICE OF OCCUPATIONAL THERAPISTS
THERAPY

18VAC85-80-71. Continued competency requirements for renewal of an active license.

A. In order to renew an active license biennially, a practitioner shall complete ~~the Continued Competency Activity and Assessment Form that is provided by the board and that shall indicate completion of~~ at least 20 contact hours of continuing learning activities as follows:

1. A minimum of 10 of the 20 hours shall be in Type 1 activities, which shall consist of an organized program of study, classroom experience, or similar educational experience that is related to a licensee's current or anticipated roles and responsibilities in occupational therapy and approved or provided by one of the following organizations or any of its components:

- a. Virginia Occupational Therapy Association;
- b. American Occupational Therapy Association;

c. National Board for Certification in Occupational Therapy;

d. Local, state, or federal government agency;

e. Regionally accredited college or university;

f. Health care organization accredited by a national accrediting organization granted authority by the Centers for Medicare and Medicaid Services to assure compliance with Medicare conditions of participation; or

g. An American Medical Association Category 1 Continuing Medical Education program.

2. No more than 10 of the 20 hours may be Type 2 activities, which may include consultation with another therapist, independent reading or research, preparation for a presentation, or other such experiences that promote continued learning. Up to two of the Type 2 continuing education hours may be satisfied through delivery of occupational therapy services, without compensation, to low-income individuals receiving services through a local health department or a free clinic organized in whole or primarily for the delivery of health services. One hour of continuing education may be credited for three hours of providing such volunteer services as documented by the health department or free clinic.

B. A practitioner shall be exempt from the continuing competency requirements for the first biennial renewal following the date of initial licensure in Virginia.

C. The practitioner shall retain in his records ~~the completed form with~~ all supporting documentation for a period of six years following the renewal of an active license.

D. The board shall periodically conduct a representative random audit ~~of at least one to two percent~~ of its active licensees to determine compliance. The practitioners selected for the audit shall provide ~~the completed Continued Competency Activity and Assessment Form and~~ all supporting documentation within 30 days of receiving notification of the audit.

E. Failure to comply with these requirements may subject the licensee to disciplinary action by the board.

F. The board may grant an extension of the deadline for continuing competency requirements for up to one year for good cause shown upon a written request from the licensee prior to the renewal date.

G. The board may grant an exemption for all or part of the requirements for circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters.

VA.R. Doc. No. R18-5191; Filed October 2, 2017, 8:59 a.m.

REAL ESTATE BOARD

Final Regulation

REGISTRAR'S NOTICE: The Real Estate 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 Real Estate Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 18VAC135-20. Virginia Real Estate Board Licensing Regulations (amending 18VAC135-20-180).

Statutory Authority: §§ 54.1-201 and 54.1-2105 of the Code of Virginia.

Effective Date: December 1, 2017.

Agency Contact: Christine Martine, Executive Director, Real Estate Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8552, FAX (804) 527-4299, or email reboard@dpor.virginia.gov.

Summary:

Chapter 67 of the 2017 Acts of Assembly amended statutory provisions concerning protection of escrow funds in the event of foreclosure involving real property subject to lease transactions. This regulatory action conforms 18VAC135-20-180, which addresses maintenance and management of escrow accounts by real estate licensees, to the new statutory language.

18VAC135-20-180. Maintenance and management of escrow accounts.

A. Maintenance of escrow accounts.

1. If money is to be held in escrow, each firm or sole proprietorship shall maintain in the name by which it is licensed one or more federally insured separate escrow accounts in a federally insured depository into which all down payments, earnest money deposits, money received upon final settlement, application deposits as defined by § 55-248.4 of the Code of Virginia, rental payments, rental security deposits, money advanced by a buyer or seller for the payment of expenses in connection with the closing of real estate transactions, money advanced by the broker's client or expended on behalf of the client, or other escrow funds received by him or his associates on behalf of his client or any other person shall be deposited unless all principals to the transaction have agreed otherwise in writing. The balance in the escrow accounts shall be sufficient at all times to account for all funds that are designated to be held by the firm or sole proprietorship. The principal broker shall be held responsible for these accounts, including having signatory authority on these

accounts. The supervising broker and any other licensee with escrow account authority may be held responsible for these accounts. All such accounts, checks and bank statements shall be labeled "escrow" and the account(s) ~~account(s)~~ accounts shall be designated as "escrow" accounts with the financial institution where such accounts are established.

2. Funds to be deposited in the escrow account may include moneys which shall ultimately belong to the licensee, but such moneys shall be separately identified in the escrow account records and shall be paid to the firm by a check drawn on the escrow account when the funds become due to the licensee. Funds in an escrow account shall not be paid directly to the licensees of the firm. The fact that an escrow account contains money which may ultimately belong to the licensee does not constitute "commingling of funds" as set forth by subdivision C 2 of this section, provided that there are periodic withdrawals of said funds at intervals of not more than six months, and that the licensee can at all times accurately identify the total funds in that account which belong to the licensee and the firm.

3. If escrow funds are used to purchase a certificate of deposit, the pledging or hypothecation of such certificate, or the absence of the original certificate from the direct control of the principal or supervising broker, shall constitute commingling as prohibited by subdivision C 2 of this section.

4. Lease transactions: application deposits. Any application deposit as defined by § 55-248.4 of the Code of Virginia paid by a prospective tenant for the purpose of being considered as a tenant for a dwelling unit to a licensee acting on behalf of a landlord client shall be placed in escrow by the end of the fifth business banking day following approval of the rental application by the landlord unless all principals to the lease transaction have agreed otherwise in writing.

B. Disbursement of funds from escrow accounts.

1. a. Purchase transactions. Upon the ratification of a contract, earnest money deposits and down payments received by the principal broker or supervising broker or his associates must be placed in an escrow account by the end of the fifth business banking day following ratification, unless otherwise agreed to in writing by the principals to the transaction, and shall remain in that account until the transaction has been consummated or terminated. In the event the transaction is not consummated (nonconsummation), the principal broker or supervising broker shall hold such funds in escrow until (i) all principals to the transaction have agreed in writing as to their disposition, and the funds shall be returned to the agreed upon principal within 20 days of the agreement, ~~or~~ (ii) a court of competent jurisdiction orders such disbursement of the funds, ~~or~~ (iii) the funds are

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successfully interpleaded into a court of competent jurisdiction pursuant to this section, or (iv) the broker can pay the funds to the principal to the transaction who is entitled to receive them in accordance with the clear and explicit terms of the contract ~~which~~ that established the deposit. In the latter event, prior to disbursement, the broker shall give written notice to the principal to the transaction not to receive the deposit by either (i) hand delivery receipted for by the addressee, or (ii) ~~by~~ certified mail return receipt requested, with a copy to the other party, that this payment will be made unless a written protest from that principal to the transaction is received by the broker within 30 days of the hand delivery or mailing, as appropriate, of that notice. If the notice is sent within 90 days of the date of nonconsummation, the broker may send the notice by receiptable email or facsimile if such email address or facsimile information is set forth in the contract or otherwise provided by the recipient. In all events, the broker may send the notice to the notice address, if any, set forth in the contract. If the contract does not contain a notice address and the broker does not have another address for the recipient of the notice, the broker may send it to the last known address of the recipient. No broker shall be required to make a determination as to the party entitled to receive the earnest money deposit. The broker shall not be deemed to violate any obligation to any client by virtue of making such a determination. A broker who has carried out the above procedure shall be construed to have fulfilled the requirements of this chapter.

A principal broker or supervising broker holding escrow funds for a principal to the transaction may seek to have a court of competent jurisdiction take custody of disputed or unclaimed escrow funds via an interpleader action pursuant to § 16.1-77 of the Code of Virginia.

If a principal broker or supervising broker is holding escrow funds for the owner of real property and such property is foreclosed upon ~~by a lender~~, the principal broker or supervising broker shall have the right to file an interpleader action pursuant to § 16.1-77 of the Code of Virginia.

If there is in effect at the date of the foreclosure sale a real estate purchase contract to buy the property foreclosed upon and the real estate purchase contract provides that the earnest money deposit held in escrow by a firm or sole proprietorship shall be paid to a principal to the contract in the event of a termination of the real estate purchase contract, the foreclosure shall be deemed a termination of the real estate purchase contract, and the principal broker or supervising broker may, absent any default on the part of the purchaser, disburse the earnest money deposit to the purchaser pursuant to such provisions of the real estate purchase contract without further consent from, or notice to, the principals.

b. Lease transactions: security deposits. Any security deposit held by a firm or sole proprietorship shall be placed in an escrow account by the end of the fifth business banking day following receipt, unless otherwise agreed to in writing by the principals to the transaction. Each such security deposit shall be treated in accordance with the security deposit provisions of the Virginia Residential Landlord and Tenant Act, Chapter 13.2 (§ 55-248.2 et seq.) of Title 55 of the Code of Virginia, unless exempted therefrom, in which case the terms of the lease or other applicable law shall control. Notwithstanding anything in this section to the contrary, unless the landlord has otherwise become entitled to receive the security deposit or a portion thereof, the security deposit shall not be removed from an escrow account required by the lease without the written consent of the tenant. If there is in effect at the date of the foreclosure sale a tenant in a residential dwelling unit foreclosed upon and the landlord is holding a security deposit of the tenant, the landlord shall handle the security deposit in accordance with applicable law, which requires the holder of the landlord's interest in the dwelling unit at the time of termination of tenancy to return any security deposit and any accrued interest that is duly owed to the tenant, whether or not such security deposit is transferred with the landlord's interest by law or equity, and regardless of any contractual agreements between the original landlord and his successors in interest. Nothing ~~herein~~ in this section shall be construed to prevent the landlord from making lawful deductions from the security deposit in accordance with applicable law.

c. Lease transactions: prepaid rent or escrow fund advances. Unless otherwise agreed in writing by all principals to the transaction, all prepaid rent and other money paid to the licensee in connection with the lease shall be placed in an escrow account by the end of the fifth business banking day following receipt and remain in that account until paid in accordance with the terms of the lease and the property management agreement, as applicable, except the prepaid rent, which shall be treated in accordance with the prepaid rent provision of the Virginia Residential Landlord and Tenant Act, Chapter 13.2 (§ 55-248.2 et seq.) of Title 55 of the Code of Virginia.

d. Lease transactions: rent payments. If there is in effect at the date of the foreclosure sale a tenant in a residential dwelling unit foreclosed upon and the rent is paid to a licensee acting on behalf of the landlord pursuant to a properly executed property management agreement, the licensee may collect the rent in accordance with § 54.1-2108.1 A 4 of the Code of Virginia.

2. a. Purchase transactions. Unless otherwise agreed in writing by all principals to the transaction, a licensee shall

not be entitled to any part of the earnest money deposit or to any other money paid to the licensee in connection with any real estate transaction as part of the licensee's commission until the transaction has been consummated.

b. Lease transactions. Unless otherwise agreed in writing by the principals to the lease or property management agreement, as applicable, a licensee shall not be entitled to any part of the security deposit or to any other money paid to the licensee in connection with any real estate lease as part of the licensee's commission except in accordance with the terms of the lease or the property management agreement, as applicable. Notwithstanding anything in this section to the contrary, unless the landlord has otherwise become entitled to receive the security deposit or a portion thereof, the security deposit shall not be removed from an escrow account required by the lease without the written consent of the tenant. Except in the event of a foreclosure, if a licensee elects to terminate the property management agreement with the landlord, the licensee may transfer any funds held in escrow on behalf of the landlord in accordance with § 54.1-2108.1 B 5 of the Code of Virginia. If there is in effect at the date of the foreclosure sale a written property management agreement between the licensee and the landlord, the property management agreement shall continue in accordance with § 54.1-2108.1 A 5 of the Code of Virginia.

3. On funds placed in an account bearing interest, written disclosure in the contract of sale or lease at the time of contract or lease writing shall be made to the principals to the transaction regarding the disbursement of interest.

4. A licensee shall not disburse or cause to be disbursed moneys from an escrow or property management escrow account unless sufficient money is on deposit in that account to the credit of the individual client or property involved.

5. Unless otherwise agreed in writing by all principals to the transaction, expenses incidental to closing a transaction (e.g., fees for appraisal, insurance, credit report, etc.) shall not be deducted from a deposit or down payment.

C. Actions including improper maintenance of escrow funds include:

1. Accepting any note, nonnegotiable instrument, or anything of value not readily negotiable, as a deposit on a contract, offer to purchase, or lease, without acknowledging its acceptance in the agreement;

2. Commingling the funds of any person by a principal or supervising broker or his employees or associates or any licensee with his own funds, or those of his corporation, firm, or association;

3. Failure to deposit escrow funds in an account or accounts designated to receive only such funds as required by subdivision A 1 of this section;

4. Failure to have sufficient balances in an escrow account or accounts at all times for all funds that are designated to be held by the firm or sole proprietorship as required by this chapter; and

5. Failing, as principal broker, to report to the board within three business days instances where the principal broker reasonably believes the improper conduct of a licensee, independent contractor, or employee has caused noncompliance with this section.

VA.R. Doc. No. R18-5290; Filed September 28, 2017, 1:40 p.m.

TITLE 21. SECURITIES AND RETAIL FRANCHISING

STATE CORPORATION COMMISSION

Forms

NOTICE: The following forms used in administering the regulation were filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

Titles of Regulations: **21VAC5-10. General Administration - Securities Act.**

21VAC5-20. Broker-Dealers, Broker-Dealer Agents and Agents of the Issuer.

21VAC5-30. Securities Registration.

21VAC5-40. Exempt Securities and Transactions.

21VAC5-45. Federal Covered Securities.

21VAC5-80. Investment Advisors.

Agency Contact: Jude C. Richnafsky, Senior Examiner, Division of Securities and Retail Franchising, State Corporation Commission, Tyler Building, 9th Floor, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9415, or email jude.richnafsky@scc.virginia.gov.

FORMS (21VAC5-10)

Broker-Dealer and Agent Forms

~~Form BD—Uniform Application for Broker-Dealer Registration (rev. 1/08).~~

~~Form S.A.11—Broker-Dealer's Surety Bond (rev. 7/99).~~

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~~Form S.A.2—Application for Renewal of a Broker-Dealer's Registration (rev. 7/99).~~

~~Form S.D.4—Application for Renewal of Registration as an Agent of an Issuer (1997).~~

~~Form S.D.4.A—Non-NASD Broker-Dealer or Issuer Agents to be Renewed Exhibit (1974).~~

~~Form S.D.4.B—Non-NASD Broker-Dealer or Issuer Agents to be Canceled with no disciplinary history (1974).~~

~~Form S.D.4.C—Non-NASD Broker-Dealer or Issuer Agents to be Canceled with disciplinary history (1974).~~

~~Form BDW—Uniform Notice of Termination or Withdrawal of Registration as a Broker-Dealer (rev. 4/07).~~

~~Rev. Form U4—Uniform Application for Securities Industry Registration or Transfer (rev. 5/09).~~

~~Rev. Form U5—Uniform Termination Notice for Securities Industry Registration (rev. 5/09).~~

~~Form BD, Uniform Application for Broker-Dealer Registration (rev. 1/2008)~~

~~Form BDW, Uniform Notice of Termination or Withdrawal of Registration as a Broker-Dealer (rev. 4/2007)~~

~~[Form S.A. 2, Application for Renewal of a Broker-Dealer's Registration \(rev. 10/2017\)](#)~~

~~Form S.A. 11, Broker-Dealer's Surety Bond (rev. 7/1999)~~

~~[Form S.D.4, Application for Renewal of Registration as an Agent of an Issuer \(2017\)](#)~~

~~Form S.D.4.A, Agents to be Renewed - Exhibit I (rev. 1974)~~

~~Form S.D.4.B, Agents to be Canceled (Records Clear) - Exhibit II (rev. 1974)~~

~~Form S.D.4.C, Agents to be Canceled (Without clear Records) - Exhibit III (rev. 1974)~~

~~Rev. Form U4, Uniform Application for Securities Industry Registration or Transfer (rev. 5/2009)~~

~~Rev. Form U5, Uniform Termination Notice for Securities Industry Registration (rev. 5/2009)~~

~~Investment Advisor and Investment Advisor Representative Forms~~

~~Form ADV, Uniform Application for Registration of Investment Advisors (rev. 10/12).~~

~~Part IA.~~

~~Part IB.~~

~~Part 2.~~

~~Form ADV W—Notice of Withdrawal from Registration as an Investment Advisor (rev. 11/10).~~

~~Surety Bond Form (rev. 7/99).~~

~~Rev. Form U—Uniform U4—Uniform Application for Securities Industry Registration or Transfer (rev. 5/09).~~

~~Rev. Form U—Uniform U5—Uniform Termination Notice for Securities Industry Registration (rev. 5/09).~~

~~Form S.A.3—Affidavit for Waiver of Examination (rev. 7/99).~~

~~Form S.A.15—Investment Advisor Representative Multiple Employment Agreement (eff. 7/07).~~

~~Form S.A.16—Agent Multiple Employment Agreement (eff. 7/07).~~

~~[Form ADV, Uniform Application for Registration of Investment Registration and Report by Exempt Reporting Advisers](#)~~

~~[Part IA, SEC 1707 \(7/2017\)](#)~~

~~Part IB, paper version (rev. 10/2012)~~

~~Part 2, Uniform Requirements for the Investment Adviser Brochure and Brochure Supplements (undated)~~

~~Form ADV-W - Notice of Withdrawal from Registration as an Investment Advisor (rev. 11/2010)~~

~~[Form S.A. 3, Affidavit for Waiver of Examination \(undated, filed 10/2017\)](#)~~

~~[Form S.A. 10, Investment Advisor's Surety Bond Form \(rev. 10/2017\)](#)~~

~~Form S.A. 15, Investment Advisor Representative Multiple Employment Agreement (eff. 7/2007)~~

~~Form S.A. 16, Agent Multiple Employment Agreement (eff. 7/2007)~~

~~Rev. Form U4, Uniform Application for Securities Industry Registration or Transfer (rev. 5/2009)~~

~~Rev. Form U5, Uniform Termination Notice for Securities Industry Registration (rev. 5/2009)~~

~~Securities Registration and Notice Filing Forms~~

~~Form U 1—Uniform Application to Register Securities (7/81).~~

~~Form U 2—Uniform Consent to Service of Process (7/81).~~

~~Form U 2-a—Uniform Form of Corporate Resolution (rev. 7/99).~~

~~Form S.A.4—Registration by Notification—Original Issue (rev. 11/96).~~

~~Form S.A.5—Registration by Notification—Non-Issuer Distribution (rev. 11/96).~~

~~Form S.A.6 Registration by Notification Pursuant to 21VAC5-30-50 Non Issuer Distribution "Secondary Trading" (1989).~~

~~Form S.A.8 Registration by Qualification (7/91).~~

~~Form S.A.12 Escrow Agreement (1971).~~

~~Form S.A.13 Impounding Agreement (rev. 7/99).~~

~~Form VA Parts 1 and 2 Notice of Limited Offering of Securities (rev. 11/96).~~

~~Form NF Uniform Investment Company Notice Filing (4/97).~~

[Form U-1, Uniform Application to Register Securities \(undated, filed 10/2017\)](#)

[Form U-2, Uniform Consent to Service of Process \(rev. 6/2016\)](#)

[Form U-2A, Uniform Form of Corporate Resolution \(rev. 6/2016\)](#)

Form S.A. 4, Registration by Notification - Original Issue (rev. 11/1996)

Form S.A. 5, Registration by Notification - Non-Issuer Distribution (rev. 11/1996)

Form S.A. 6, Registration by Notification - Non-Issuer Distribution "Secondary Trading" (1989)

Form S.A. 8, Registration by Qualification (rev. 7/1991)

Form S.A. 12, Escrow Agreement (1971)

Form S.A. 13, Impounding Agreement (rev. 7/1999)

Form VA-1, Parts 1 and 2, Notice of Limited Offering of Securities (rev. 11/1996)

Form NF, Uniform Investment Company Notice Filing (4/1997)

FORMS (21VAC5-20)

Form BD, Uniform Application for Broker-Dealer Registration, SEC 1490 (rev. 1/2008)

Form BDW, Uniform Request for Broker-Dealer Withdrawal, SEC 122 (rev. 4/2007)

[Form S.A. 2, Application for Renewal of a Broker-Dealer's Registration \(rev. 10/2017\)](#)

Form S.A. 11, Broker-Dealer's Surety Bond (rev. 7/1999)

[Form S.D.4, Application for Renewal of Registration as an Agent of an Issuer \(2017\)](#)

Form S.D.4.A., Agents to be Renewed - Exhibit I (rev. 1974)

Form S.D.4.B., Agents to be Canceled (Records Clear) - Exhibit II (rev. 1974)

Form S.D.4.C., Agents to be Canceled (Without Clear Records) - Exhibit III (rev. 1974)

Rev. Form U4, Uniform Application for Securities Industry Registration or Transfer (rev. 5/2009)

Rev. Form U5, Uniform Termination Notice for Securities Industry Registration (rev. 5/2009)

FORMS (21VAC5-30)

[Form U-1, Uniform Application to Register Securities \(undated, filed 10/2017\)](#)

[Form U-2, Uniform Consent to Service of Process \(rev. 6/2016\)](#)

[Form U-2A, Uniform Form of Corporate Resolution \(rev. 6/2016\)](#)

Form S.A. 4, Registration by Notification - Original Issue (rev. 11/1996)

Form S.A. 5, Registration by Notification - Non-Issuer Distribution (rev. 11/1996)

Form S.A. 6, Registration by Notification - Non-Issuer Distribution "Secondary Trading" (1989)

Form S.A. 8, Registration by Qualification (rev. 7/1991)

Form S.A. 12, Escrow Agreement (1971)

Form S.A. 13, Impounding Agreement (rev. 7/1999)

FORMS (21VAC5-40)

Form D, Notice of Exempt Offering of Securities, U.S. Securities and Exchange Commission, SEC1972 (rev. 2/2012)

Intrastate Crowdfunding Exemption, Form ICE (eff. 7/2015)

Notice of Limited Offering of Securities, Form VA-1, Parts 1 and 2 (rev. 11/1996)

[Model Accredited Investor Exemption Uniform Notice of Transaction Form \(undated, filed 10/2017\)](#)

FORMS (21VAC5-45)

Form D, Notice of Exempt Offering of Securities, U.S. Securities and Exchange Commission, SEC1972 (rev. 2/2012)

~~Uniform Consent to Service of Process, Form U-2 (7/1981)~~

[Uniform Consent to Service of Process, Form U-2 \(rev. 7/2017\)](#)

Uniform Notice of Regulation A - Tier 2 Offering (undated, filed 10/2016)

Form NF - Uniform Investment Company Notice Filing (4/1997)

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FORMS (21VAC5-80)

Form ADV, Uniform Application for Investment Adviser Registration and Report by Exempt Reporting Advisers

[Part IA, SEC 1707 \(7/2017\)](#)

Part IB, paper version (rev. 10/2012)

Part 2, Uniform Requirements for the Investment Adviser
Brochure and Brochure Supplements (undated)

Form ADV-W, Notice of Withdrawal from Registration as
an Investment Advisor, SEC 777 (rev. 11/2010)

[Form S.A. 3, Affidavit for Waiver of Examination \(undated,
filed 10/2017\)](#)

[Form S.A. 10, Investment Advisor's Surety Bond Form \(rev.
10/2017\)](#)

Form S.A. 15, Investment Advisor Representative Multiple
Employment Agreement (eff. 7/2007)

Form S.A. 16, Agent Multiple Employment Agreement (eff.
7/2007)

Rev. Form U4, Uniform Application for Securities Industry
Registration or Transfer, (rev. 5/2009)

Rev. Form U5, Uniform Termination Notice for Securities
Industry Registration (rev. 5/2009)

VA.R. Doc. No. R18-5274; Filed October 3, 2017, 7:10 p.m.

GENERAL NOTICES/ERRATA

STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

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 Behavioral Health and Developmental Services is conducting a periodic review and small business impact review of **12VAC35-105, Rules and Regulations for Licensing Providers by the Department of Behavioral Health and Developmental Services.**

The review of this regulation will be guided by the principles in Executive Order 17 (2014).

The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins Monday, October 30, 2017, and ends Friday, December 15, 2017.

Comments may be submitted online to the Virginia Regulatory Town Hall at <http://www.townhall.virginia.gov/L/Forums.cfm>. Comments may also be sent to Cleopatra L. Booker, Psy.D., Director, Office of Licensing, Department of Behavioral Health and Developmental Services, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 786-1747, FAX (804) 692-0066, or email cleopatra.booker@dbhds.virginia.gov.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations.

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 Behavioral Health and Developmental Services is conducting a periodic review and small business impact review of **12VAC35-180, Regulations to Assure the Protection of Subjects in Human Research.**

The review of this regulation will be guided by the principles in Executive Order 17 (2014).

The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins October 30, 2017, and ends November 21, 2017.

Comments may be submitted online to the Virginia Regulatory Town Hall at <http://www.townhall.virginia.gov/L/Forums.cfm>. Comments may also be sent to Ruth Anne Walker, Regulatory Coordinator, Department of Behavioral Health and Developmental Services, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 225-2252, FAX (804) 786-8623, or email ruthanne.walker@dbhds.virginia.gov.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Alton Post Office Solar, LLC Notice of Intent for Small Renewable Energy (Solar) Project Permit by Rule - Halifax County

Alton Post Office Solar, LLC 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 Halifax County, Virginia, pursuant to 9VAC15-60.

The proposed project will be located along Route 711, Alton Post Office Road, north of Route 768, Hendricks Road, east of Route 699, Mount Carmel Road, and southwest of Alton in Halifax County. This project will have a maximum generating capacity of 150 megawatts alternating current across roughly 502 acres on multiple parcels. The project will connect to the grid through transmission lines that bisect the property.

Contact Information: Mary E. Major, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, FAX (804) 698-4510, or email mary.major@deq.virginia.gov.

General Notices/Errata

Crystal Hill Solar, LLC Notice of Intent for Small Renewable Energy (Solar) Project Permit by Rule - Halifax County

Crystal Hill Solar, LLC, 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 Halifax County, Virginia, pursuant to 9VAC15-60.

The proposed project will be located along the south side of Crystal Hill Road near Crystal Hill in Halifax County. This project will have a maximum generating capacity of 150 megawatts alternating current across roughly 629 acres on multiple parcels. The project will connect to the grid through a substation that is adjacent to the site.

Contact Information: Mary E. Major, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, FAX (804) 698-4510, or email mary.major@deq.virginia.gov.

VIRGINIA LOTTERY

Director's Orders

The following Director's Orders of the Virginia Lottery were filed with the Virginia Registrar of Regulations on October 11, 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, 900 East Main Street, 11th Floor, Richmond, Virginia.

Director's Order Number One Hundred Thirty-Seven (17)

Certain Virginia Promotion; Rescission of Promotion - GPM Loyalty Card Retailer Incentive Promotion (79 2017) (this Director's Order is effective nunc pro tunc to August 1, 2017, and shall remain in full force and effect unless amended or rescinded by further Director's Order)

Director's Order Number One Hundred Forty-Two (17)

Virginia Lottery's Computer-Generated Game "Print 'n Play Blackjack" Final Rules for Game Operation (effective September 29, 2017)

Director's Order Number One Hundred Forty-Three (17)

Virginia Lottery's Computer-Generated Game "Print 'n Play Daily Crossword" Final Rules for Game Operation (effective September 29, 2017)

Director's Order Number One Hundred Forty-Four (17)

Virginia Lottery's Computer-Generated Game "Print 'n Play Extreme Crossword" Final Rules for Game Operation (effective September 29, 2017)

Director's Order Number One Hundred Forty-Five (17)

Virginia Lottery's Computer-Generated Game "Print 'n Play Gold Bar Bingo" Final Rules for Game Operation (effective September 29, 2017)

Director's Order Number One Hundred Forty-Six (17)

Virginia Lottery's Computer-Generated Game "Print 'n Play High Stakes Blackjack" Final Rules for Game Operation (effective September 29, 2017)

Director's Order Number One Hundred Forty-Seven (17)

Virginia Lottery's Computer-Generated Game "Print 'n Play Hot 'n Spicy Bingo" Final Rules for Game Operation (effective September 29, 2017)

Director's Order Number One Hundred Forty-Eight (17)

Virginia Lottery's Computer-Generated Game "Print 'n Play Lucky Bingo" Final Rules for Game Operation (effective September 29, 2017)

Director's Order Number One Hundred Forty-Nine (17)

Virginia Lottery's Computer-Generated Game "Print 'n Play Platinum Crossword" Final Rules for Game Operation (effective September 29, 2017)

Director's Order Number One Hundred Fifty (17)

Virginia Lottery's Computer-Generated Game "Print 'n Play Smokin Hot Crossword" Final Rules for Game Operation (effective September 29, 2017)

Director's Order Number One Hundred Fifty-One (17)

Virginia Lottery's Computer-Generated Game "Print 'n Play Bonus Bingo" Final Rules for Game Operation (effective September 29, 2017)

Director's Order Number One Hundred Fifty-Two (17)

Virginia Lottery's Scratch Game 1841 "Extreme Millions" Final Rules for Game Operation (effective September 29, 2017)

Director's Order Number One Hundred Fifty-Three (17)

Virginia Lottery's Scratch Game 1844 "Casino Cheer" Final Rules for Game Operation (effective September 29, 2017)

Director's Order Number One Hundred Fifty-Four (17)

Virginia Lottery's Scratch Game 1842 "Holiday Dreams" Final Rules for Game Operation (effective September 29, 2017)

Director's Order Number One Hundred Fifty-Five (17)

Virginia Lottery's Scratch Game 1846 "Merry Multiplier" Final Rules for Game Operation (effective September 29, 2017)

Director's Order Number One Hundred Fifty-Six (17)

Virginia Lottery's Scratch Game 1843 "Peppermint Double Match" Final Rules for Game Operation (effective September 29, 2017)

Director's Order Number One Hundred Fifty-Seven (17)

Virginia Lottery's Scratch Game 1845 "Winter Winnings" Final Rules for Game Operation (effective September 29, 2017)

Director's Order Number One Hundred Fifty-Nine (17)

Virginia Lottery's Scratch Game 1851 "Big Money Maker" Final Rules for Game Operation (effective September 29, 2017)

Director's Order Number One Hundred Sixty (17)

Virginia Lottery's Scratch Game 1823 "\$500 Winfall" Final Rules for Game Operation (effective September 29, 2017)

Director's Order Number One Hundred Sixty-One (17)

Virginia Lottery's Scratch Game 1819 "Double Your Cash" Final Rules for Game Operation (effective October 2, 2017)

Director's Order Number One Hundred Sixty-Two (17)

Certain Virginia Print 'n Play Games; End of Games:

Virginia Lottery's Print 'n Play \$50,000 Blackjack (57 2017)

Virginia Lottery's Print 'n Play Diamond Club Crossword (60 2017)

Virginia Lottery's Print 'n Play Gold Rush Crossword (61 2017)

Virginia Lottery's Print 'n Play High Roller Bingo (62 2017)

Virginia Lottery's Print 'n Play Safari Bingo (64 2017)

Virginia Lottery's Print 'n Play Blackjack Classic (106 2017)

Virginia Lottery's Print 'n Play Bullseye Bingo (107 2017)

Virginia Lottery's Print 'n Play Horoscope Crossword (108 2017)

Virginia Lottery's Print 'n Play Money Bag Crossword (109 2017)

Virginia Lottery's Print 'n Play Rockin' Bingo (110 2017)

This Director's Order is effective nunc pro tunc to September 28, 2017, and shall remain in full force and effect unless amended or rescinded by further Director's Order

BOARD OF MEDICAL ASSISTANCE SERVICES

Draft Early Intervention Provider Manual for Stakeholder Input

Comment period: October 5, 2017, to November 4, 2017.

The draft versions of Chapters II, IV, and VI, and Appendix D of the Early Intervention Provider Manual are posted on the Department of Medical Assistance Services website for public comment through November 4, 2017. Please see the overview below for more details.

Overview of Changes: The Early Intervention Provider Manual (Chapter II, pages 3 & 9; Chapter IV, pages 5 & 17-19; Chapter VI, pages 6-8; and Appendix D, all) has been updated to include a child's age limits, the contact note checklist, and the requirements related to the early intervention services, which are covered under Commonwealth Coordinated Care Plus Managed Care Program accordingly.

The draft manual can be viewed at http://www.dmas.virginia.gov/Content_pgs/pd-pmnl.aspx.

The finalized version will be officially posted by November 9, 2017, on the DMAS website at <https://www.virginiamedicaid.dmas.virginia.gov/wps/myportal/providermanual>.

Contact Information: Emily McClellan, Regulatory Manager, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680, TDD (800) 343-0634, or email emily.mcclellan@dmas.virginia.gov.

Draft 2017- 2019 Medicaid Quality Strategy

Comment period: October 30, 2017, through November 30, 2017.

In accordance with the requirements of the federal Medicaid authority, the Centers for Medicare and Medicaid Services, the Department of Medical Assistance Services gives notice that the agency is publishing for public comment a draft of the DMAS 2017-2019 Medicaid Quality Strategy. The Code of Federal Regulations, specifically, 42 CFR 438.340, requires states that contract with managed care organizations (MCOs) to have a written strategy for accessing and improving the quality of managed care services offered to all MCOs. It also requires those states to obtain the input of recipients and other stakeholders in the development of the strategy and to make the strategy available for public comment before adopting as final. The purpose of this notice is to fulfill that requirement.

A copy of the 2017-2019 Medicaid Quality Strategy may be reviewed on the DMAS website at <http://www.dmas.virginia.gov/default.aspx>.

This notice is being made available for comment by interested parties through November 30, 2017. Following this public notice period, DMAS shall take into consideration the public comments received and submit the final draft of the DMAS 2017-2019 Medicaid Quality Strategy to the Centers for Medicare and Medicaid Services for approval. Anyone

General Notices/Errata

wishing to provide public comment on the DMAS 2017-2019 Medicaid Quality Strategy may submit comments to the contact listed below.

Contact Information: Valerie Collier, Quality Program Manager, Virginia Department of Medical Assistance Services, Division of Health Care Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 786-2273, FAX (804) 786-5799, or email valerie.collier@dmas.virginia.gov.

STATE WATER CONTROL BOARD

Proposed Consent Special Order for Belvedere Land Holdings, LLC

An enforcement action has been proposed for Belvedere Land Holdings, LLC and New Belvedere, Inc., as successors in interest to Belvedere Station Land Trust, for violations in Albemarle County, Virginia. The State Water Control Board proposes to issue a special order by consent to Belvedere Land Holdings, LLC and New Belvedere, Inc., as successors in interest to Belvedere Station Land Trust, to address noncompliance with the State Water Control Law and regulations. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Carla Pool will accept comments by email at carla.pool@deq.virginia.gov, FAX at (804) 698-4277, or postal mail at Department of Environmental Quality, Central Office, P.O. Box 1105, Richmond, VA 23218, from October 30, 2017, to November 29, 2017.

Proposed Consent Order for Enterprise RAC Company of Maryland, LLC

An enforcement action has been proposed for Enterprise RAC Company of Maryland, LLC in Fairfax County, Virginia. The consent order describes a settlement to resolve violations of State Water Control Law and the applicable regulations associated with the vehicle wash facility located at Enterprise Rent-A-Car. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Stephanie Bellotti will accept comments by email at stephanie.bellotti@deq.virginia.gov, or postal mail at Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, from October 31, 2017, through December 1, 2017.

Proposed Enforcement Action for C. Ray Beard, as Trustee for the Estate of W. P. Beard, and W. P. Beard III for the Red Hill Utility Company, LLC

An enforcement action has been proposed for C. Ray Beard, as Trustee for the Estate of W. P. Beard, and W. P. Beard III for the Red Hill Utility Company, LLC Wastewater Treatment Plant, located in Prince George, Virginia. The enforcement action requires certain repairs or upgrades to the

treatment plant and the payment of a civil charge for violations of the conditions of Virginia Pollutant Discharge Elimination System Permit No. VA0028258, which governs wastewater discharges from the plant. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Heather Deihls will accept comments by email at heather.deihls@deq.virginia.gov, by FAX at (804) 527-5106, or by postal mail at the Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, from October 30, 2017, through November 29, 2017.

Proposed Enforcement Action for City of Norfolk

An enforcement action has been proposed for the City of Norfolk for violations of the State Water Control Law in Suffolk, Virginia. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Jennifer Coleman, Esq. will accept comments by email at jennifer.coleman@deq.virginia.gov, FAX at (757) 518-2009, or postal mail at Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA 23462, from October 30, 2017, to November 28, 2017.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Contact Information: *Mailing Address:* Virginia Code Commission, Pocahontas Building, 900 East Main Street, 8th Floor, Richmond, VA 23219; *Telephone:* (804) 698-1810; *Email:* varegs@dls.virginia.gov.

Meeting Notices: Section 2.2-3707 C of the Code of Virginia requires state agencies to post meeting notices on their websites and on the Commonwealth Calendar at <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.

ERRATA

STATE CORPORATION COMMISSION

Title of Regulation: 14VAC5-318. Rules Governing Term and Universal Life Insurance Reserve Financing.

Publication: 34:3 VA.R. 442-448 October 2, 2017

Correction to Proposed Regulation:

Page 445, 14VAC5-318-40, column 2, subdivision 4 d, line 4, after "Virginia" insert "and without recognition of any departures from NAIC statutory accounting practices and procedures pertaining to the admission or valuation of assets or liabilities that increase the assuming insurer's reported surplus"

VA.R. Doc. No. R18-5199; Filed October 13, 2017

BOARD OF VETERINARY MEDICINE

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

Publication: 34:4 VA.R. 474 October 16, 2017

Correction to Petition for Rulemaking:

Page 474, column 2, Nature of Petitioner's Request: after "administration of" change "Schedule VI" to "Schedule II-V"

VA.R. Doc. No. R18-07; Filed October 13, 2017

STATE BOARD OF SOCIAL SERVICES

Title of Regulation: 22VAC40-180. Voluntary Registration of Family Day Homes - Requirements for Providers.

Publication: 33:2 VA.R. 266-270 September 19, 2016

Correction to Title of Regulation:

Page 266, column 1, line 3, after "22VAC40-180-10" replace "**through**" with "**, 22VAC40-180-30,**"

Page 266, column 1, line 5 after "22VAC40-180-110" insert "**; repealing 22VAC40-180-20**"

VA.R. Doc. No. R17-4656

