VIRGINIA REGISTER OF REGULATIONS

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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

Unless exempted by law, an agency wishing to adopt, amend, or repeal regulations must follow the procedures in the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia). Typically, this includes first publishing 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 proposed regulation 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 of Regulations 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 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 the final regulation contains changes made after publication of the proposed regulation that 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*. Pursuant to § 2.2-4007.06 of the Code of Virginia, any person may request that the agency solicit additional public comment on certain changes made after publication of the proposed regulation. The agency shall suspend the regulatory process for 30 days upon such request from 25 or more individuals, 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 alternative to the standard process set forth in the Administrative Process Act for regulations deemed by the Governor to be noncontroversial. To use this process, the Governor's concurrence is required and advance notice must be provided to certain legislative committees. Fast-track regulations become effective on the date noted in the regulatory action if fewer than 10 persons object to using the process in accordance with § 2.2-4012.1.

EMERGENCY REGULATIONS

Pursuant to § 2.2-4011 of the Code of Virginia, an agency may adopt emergency regulations if necessitated by an emergency situation or when Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or fewer from its enactment. In either situation, approval of the Governor is required. The emergency regulation is effective upon its filing with the Registrar of Regulations, unless a later date is specified per § 2.2-4012 of the Code of Virginia. Emergency regulations are limited to no more than 18 months in duration; however, may be extended for six months under the circumstances noted in § 2.2-4011 D. Emergency regulations are published as soon as possible in the *Virginia Register* and are on the Register of Regulations website at register.dls.virgina.gov.

During the time the emergency regulation is in effect, the agency may proceed with the adoption of permanent regulations in accordance with the Administrative Process Act. 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. **34:8 VA.R. 763-832 December 11, 2017,** refers to Volume 34, Issue 8, pages 763 through 832 of the *Virginia Register* issued on December 11, 2017.

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.

PUBLICATION SCHEDULE AND DEADLINES

This schedule is available on the Virginia Register of Regulations website (http://register.dls.virginia.gov).

September 2020 through August 2021

Volume: Issue	Material Submitted By Noon*	Will Be Published On
37:3	September 9, 2020	September 28, 2020
37:4	September 23, 2020	October 12, 2020
37:5	October 7, 2020	October 26, 2020
37:6	October 21, 2020	November 9, 2020
37:7	November 4, 2020	November 23, 2020
37:8	November 16, 2020 **(Monday)**	December 7, 2020
37:9	December 2, 2020	December 21, 2020
37:10	December 14, 2020 **(Monday)**	January 4, 2021
37:11	December 28, 2020 **(Monday)**	January 18, 2021
37:12	January 13, 2021	February 1, 2021
37:13	January 27, 2021	February 15, 2021
37:14	February 10, 2021	March 1, 2021
37:15	February 24, 2021	March 15, 2021
37:16	March 10, 2021	March 29, 2021
37:17	March 24, 2021	April 12, 2021
37:18	April 7, 2021	April 26, 2021
37:19	April 21, 2021	May 10, 2021
37:20	May 5, 2021	May 24, 2021
37:21	May 19, 2021	June 7, 2021
37:22	June 2, 2021	June 21, 2021
37:23	June 16, 2021	July 5, 2021
37:24	June 30, 2021	July 19, 2021
37:25	July 14, 2021	August 2, 2021
37:26	July 28, 2021	August 16, 2021

*Filing deadlines are Wednesdays unless otherwise specified.

PETITIONS FOR RULEMAKING

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF DENTISTRY

Initial Agency Notice

Title of Regulation: **18VAC60-21. Regulations Governing the Practice of Dentistry.**

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

Name of Petitioner: Lily Nejadian.

Nature of Petitioner's Request: The petitioner is requesting amendments to specify that dentists with appropriate training or certification can purchase and administer Botox and dermal filler injectables.

Agency Plan for Disposition of Request: The petition will be published on August 31, 2020, in the Virginia Register of Regulations and also posted on the Virginia Regulatory Town Hall at www.townhall.virginia.gov to receive public comment ending September 30, 2020. The request to amend regulations and any comments for or against the petition will be considered by the board at the first scheduled meeting after the close of the comment period, which will be December 11, 2020.

Public Comment Deadline: September 30, 2020.

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

VA.R. Doc. No. R21-01 Filed July 31, 2020, 4:08 p.m.

BOARD OF OPTOMETRY

Agency Decision

Title of Regulation: **18VAC105-20. Regulations Governing the Practice of Optometry.**

Statutory Authority: §§ 54.1-2400 and 54.1-3223 of the Code of Virginia.

Name of Petitioner: David Haine.

Nature of Petitioner's Request: To amend 18VAC105-20-45 to include the number of contact lenses that can be dispensed from a prescription for contact lenses.

Agency Decision: Request denied.

Statement of Reason for Decision: The board discussed the request to amend regulations to add a requirement to include the total number of lenses on a prescription and voted not to initiate rulemaking. The board concurred with the comment from the National Association of Optometrists and Opticians that it is contrary to the spirit of Federal Trade Commission law and rules. Additionally, the regulation would be very difficult to monitor or enforce.

Agency Contact: Leslie L. Knachel, Executive Director, Board of Optometry, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 597-4130, email leslie.knachel@dhp.virginia.gov.

VA.R. Doc. No. R20-39 Filed July 30, 2020, 9:04 a.m.

BOARD OF SOCIAL WORK

Initial Agency Notice

Title of Regulation: **18VAC140-20. Regulations Governing the Practice of Social Work.**

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

Name of Petitioner: Michael Beattie.

Nature of Petitioner's Request: To pause the time limit or deadline for completion of supervised experience during an emergency declared by the Governor. The effective date would be retroactive to February 20, 2020.

Agency Plan for Disposition of Request: In accordance with Virginia law, the petition was filed with the Virginia Registrar of Regulations and will be published on August 31, 2020, with comment accepted through September 30, 2020. The petition is also posted on the Virginia Regulatory Town Hall at www.townhall.virginia.gov. The petition and any comment will be considered by the board at its next meeting following the close of the comment period, which is scheduled for November 6, 2020. The petitioner will be informed of its decision following that meeting.

Public Comment Deadline: September 30, 2020.

Agency Contact: Jaime Hoyle, Executive Director, Board of Social Work, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4406, or email jaime.hoyle@dhp.virginia.gov.

VA.R. Doc. No. R21-02 Filed August 7, 2020, 10:43 a.m.

TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

COMMISSION ON THE VIRGINIA ALCOHOL SAFETY ACTION PROGRAM

Initial Agency Notice

Title of Regulation: **24VAC35-60. Ignition Interlock Regulations.**

Statutory Authority: § 18.2-270.2 of the Code of Virginia.

Name of Petitioner: Cynthia Hites.

Nature of Petitioner's Request: "I, Cynthia Hites, a citizen of the Commonwealth of Virginia, pursuant to § 2.2-4007 of the Code of Virginia, do humbly submit this petition for the following amendment to Virginia Administrative Code 24VAC35-60-80. Currently, interlock devices are implemented contrary to the "Visual-Manual NHTSA Driver Distraction Guidelines for Portable and Aftermarket Devices." This publication states, "Driver distraction is a specific type of inattention that occurs when drivers divert their attention away from the driving task to focus on another activity." "Phase 1 Guidelines are based upon a number of fundamental principles. These principles include that: the driver's eyes should usually be looking at the road ahead; the driver should be able to keep at least one hand on the steering wheel while performing a secondary task (both driving-related and non-driving related); the distraction induced by any secondary task performed while driving should not exceed that associated with a baseline reference task (manual radio tuning); any task performed by a driver should be interruptible at any time; the driver, not the system/device, should control the pace of task interactions; and displays should be easy for the driver to see and content presented should be easily discernible." These data show that many drivers continue to engage in visual-manual distraction activities with their portable devices while driving. IID rolling retests are very concerning because research by NHTSA shows "visual-manual manipulation of devices while driving dramatically increases crash risk." Installed in any vehicle, I believe ignition interlock is an inherent, significant cognitive distraction, but to install IID in a vehicle that is exclusively hand-foot-operated is extraordinarily dangerous to the driver, and to overall public safety. The mandated use of the in-car Breath Alcohol Ignition Interlock Device is the epitome of visual-manual, and cognitive driver distraction, and I submit no IID shall be installed on any vehicle with a non-fully-automatic transmission. In the interest of offender and public safety, please add the following language to the statute: "N. Under no circumstances shall an ignition interlock device be installed on a vehicle having manual transmission." I totaled my 5-speed '07 Mustang while retrieving a dropped IID handset, and attempting to simultaneously shift into second gear in order to pull over. Thank you for considering the public safety hazard posed by ignition interlock devices. Cynthia Hites."

Agency Plan for Disposition of Request: The Commission on the Virginia Alcohol Safety Action Program plans to consider this petition at its October 30, 2020, meeting.

Public Comment Deadline: September 30, 2020,

Agency Contact: Richard L. Foy, Field Services Specialist, Commission on the Virginia Alcohol Safety Action Program, 1111 East Main Street, Suite 801, Richmond, VA 23219, telephone (804) 786-5895, or email rfoy@vasap.virginia.gov.

VA.R. Doc. No. R21-03 Filed August 10, 2020, 11:47 a.m.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

DEPARTMENT OF MINES, MINERALS AND ENERGY

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Mines, Minerals and Energy conducted a periodic review and a small business impact review of **4VAC25-11, Public Participation Guidelines**, and determined that this regulation should be retained in its current form. The department is publishing its report of findings dated July 1, 2020, to support this decision.

The department has determined that this regulation is necessary to ensure the agency's stakeholders are aware of the requirements for publicly participating in the regulatory process. The regulation is clearly written and easily understandable.

The Department of Mines, Minerals and Energy recommends that this regulation stay in effect without change.

This regulation is mandated by statute. In conjunction with the Coal Mining Safety Board, the Division of Mines Chief has determined this regulation is effective as currently written and does not burden small businesses. There are no known overlaps or conflicts with federal or state law.

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

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Mines, Minerals and Energy conducted a periodic review and a small business impact review of **4VAC25-60, Rules and Regulations Governing the Installation and Use of Automated Temporary Roof Support Systems**, and determined that this regulation should be retained in its current form. The department is publishing its report of findings dated July 1, 2020, to support this decision.

The Division of Mines Chief, in consultation with the Coal Mine Safety Board (CMSB), has determined that this regulation is necessary for the protection of public health, safety, and welfare. The regulation is vital to ensuring the safety of underground mines in the Commonwealth. The regulation is clearly written and easily understandable.

The Department of Mines, Minerals and Energy recommends that this regulation stay in effect without change.

This regulation is mandated by statute. In conjunction with the CMSB, the chief has determined this regulation is effective as currently written and does not burden small businesses. There are no known overlaps or conflicts with federal or state law.

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

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Mines, Minerals and Energy conducted a periodic review and a small business impact review of **4VAC25-70, Regulations Governing Disruption of Communications in Mines**, and determined that this regulation should be retained in its current form. The department is publishing its report of findings dated July 1, 2020, to support this decision.

The Division of Mines Chief, in consultation with the Coal Mining Safety Board (CMSB), has determined that this regulation is necessary for the protection of public health, safety, and welfare. The regulation is vital to ensuring the safety of underground mines in the Commonwealth. The regulation is clearly written and easily understandable.

The Department of Mines, Minerals and Energy recommends that this regulation stay in effect without change.

This regulation is mandated by statute. In conjunction with the CMSB, the chief has determined this regulation is effective as currently written and does not burden small businesses. There are no known overlaps or conflicts with federal or state law.

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

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Mines, Minerals and Energy conducted a periodic review and a small business impact review of **4VAC25-90, Regulations Governing the Use of Diesel-Powered Equipment in Underground Coal Mines**, and determined that this regulation should be retained in its current form. The department is publishing its report of findings dated July 1, 2020, to support this decision.

This regulation is necessary for the protection of public health, safety, and welfare. The regulation is vital to ensuring the safety of underground coal mines in the Commonwealth. The regulation is clearly written and easily understandable.

The Department of Mines, Minerals and Energy recommends that this regulation stay in effect without change.

This regulation is mandated by statute. In conjunction with the Coal Mining Safety Board, the Division of Mines Chief has determined this regulation is effective as currently written and does not burden small businesses. There are no known overlaps or conflicts with federal or state law.

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

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Mines, Minerals and Energy conducted a periodic review and a small business impact review of **4VAC25-101, Regulations Governing Vertical Ventilation Holes and Mining Near Gas and Oil Wells**, and determined that this regulation should be retained in its current form. The department is publishing its report of findings dated July 10, 2020, to support this decision.

The Division of Mines Chief, in consultation with the Coal Mine Safety Board (CMSB), has determined that this regulation is necessary for the protection of public health, safety, and welfare. The regulation is vital to ensuring the safety of underground and surface mines in the Commonwealth. The regulation is clearly written and easily understandable.

The Department of Mines, Minerals and Energy recommends that this regulation stay in effect without change.

This regulation is mandated by statute. In conjunction with the CMSB, the chief has determined this regulation is effective as currently written and does not burden small businesses.

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

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Mines, Minerals and Energy conducted a periodic review and a small business impact review of **4VAC25-110, Regulations Governing Blasting in Surface Mining Operations**, and determined that this regulation should be retained in its current form. The department is publishing its report of findings dated July 10, 2020, to support this decision.

The Division of Mines Chief, in consultation with the Coal Mine Safety Board (CMSB), has determined that this regulation is necessary for the protection of public health, safety, and welfare. The regulation is vital to ensuring the safety of underground and surface mines in the Commonwealth. The regulation is clearly written and easily understandable.

The Department of Mines, Minerals and Energy recommends that this regulation stay in effect without change.

This regulation is mandated by statute. In conjunction with the CMSB, the chief has determined this regulation is effective as currently written and does not burden small businesses.

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

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Mines, Minerals and Energy conducted a periodic review and a small business impact review of **4VAC25-120, Requirements for Installation and Use of Cabs and Canopies**, and determined that this regulation should be retained in its current form. The department is publishing its report of findings dated July 10, 2020, to support this decision.

The Division of Mines Chief, in consultation with the Coal Mining Safety Board (CMSB), has determined that this regulation is necessary for the protection of public health, safety, and welfare. The regulation is vital to ensuring the safety of underground mines in the Commonwealth. The regulation is clearly written and easily understandable.

The Department of Mines, Minerals and Energy recommends that this regulation stay in effect without change.

This regulation is mandated by statute. In conjunction with the CMSB, the chief has determined this regulation is effective as currently written and does not burden small businesses.

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

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Mines, Minerals and Energy (DMME) conducted a periodic review and a small business impact review of **4VAC25-145, Regulations on the Eligibility of Certain Mining Operators to Perform Reclamation Projects**, and determined that this regulation should be retained in its current form. The department is publishing its report of findings dated July 10, 2020, to support this decision.

The Director of DMME has determined that this regulation is necessary for the protection of public health, safety, and

welfare. The regulation is vital to ensuring the public safety and welfare relating to mined land reclamation projects in the Commonwealth. The regulation is clearly written and easily understandable.

The Department of Mines, Minerals and Energy recommends that this regulation stay in effect without change.

This regulation is mandated by statute. The Director of DMME has determined this regulation is effective as currently written and does not burden small businesses.

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

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Air Pollution Control Board conducted a periodic review and small business impact review of **9VAC5-170, Regulation for General Administration**, and determined that this regulation should be retained in its current form. The department is publishing its report of findings dated July 28, 2020, to support this decision.

The regulation has been effective in protecting public health, safety, and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth. The department has determined that the regulation is clearly written and easily understandable by the individuals and entities affected. It is written so as to permit only one reasonable interpretation, is written to adequately identify the affected entity, and, insofar as possible, is written in nontechnical language.

This regulation satisfies the provisions of the law and legally binding state and federal requirements and is effective in meeting its goals; therefore, the regulation is being retained without amendment.

This regulation continues to be needed. This regulation allows for the consistent application of the general administrative requirements for all regulatory programs. No comments were received that indicate a need to repeal or revise the regulation. The regulation's level of complexity is appropriate to ensure that the regulated entities are able to meet their legal mandates as efficiently and cost-effectively as possible.

This regulation does not overlap, duplicate, or conflict with any state law or other state regulation. This regulation was last amended in 2014. This chapter was also amended in 2008, 2009, and 2013. Over time, the regulation generally becomes less expensive to characterize, measure, and mitigate the regulated pollutants that contribute to poor air quality. This regulation continues to provide for the consistent application of the general administrative requirements for all regulatory programs.

The department, through examination of the regulation, has determined that the regulatory requirements currently minimize the economic impact of emission control regulations on small businesses and thereby minimize the impact on existing and potential Virginia employers and their ability to maintain and increase the number of jobs in the Commonwealth.

Contact Information: Gary E. Graham, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 689-4103, FAX (804) 698-4319, or email gary.graham@deq.virginia.gov.

STATE WATER CONTROL BOARD

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Water Control Board conducted a periodic review and a small business impact review of **9VAC25-20, Fees for Permits and Certificates**, and determined that this regulation should be amended to remove obsolete fees.

The fast-track regulatory action to amend 9VAC25-20, which is published in this issue of the Virginia Register, serves as the report of findings.

Contact Information: Melissa Porterfield, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (803) 698-4238, or email melissa.porterfield@deq.virginia.gov.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Water Control Board conducted a periodic review and a small business impact review of **9VAC25-80, General Regulations under State Water Control Law - Requirement No. 1**, and determined that this regulation should be repealed as unnecessary.

The fast-track regulatory action to amend 9VAC25-80, which is published in this issue of the Virginia Register, serves as the report of findings.

Contact Information: Melissa Porterfield, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (803) 698-4238, or email melissa.porterfield@deq.virginia.gov.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Health conducted a periodic review and a small business impact review of **12VAC5-460, Regulations Governing Tourist Establishment Swimming Pools and Other Public Pools**, and determined this regulation should be amended to update the chapter with modern standards for health and safety at water recreation facilities.

The Notice of Intended Regulatory Action to amend 12VAC5-460, which is published in this issue of the Virginia Register, serves as the report of findings.

Contact Information: Julie Henderson, Director of Food and General Environmental Services, Virginia Department of Health, 109 Governor Street, Richmond, VA 23235, telephone (804) 864-7455, FAX (804) 864-7475, TTY (800) 828-1120, or email julie.henderson@vdh.virginia.gov.

TITLE 17. LIBRARIES AND CULTURAL RESOURCES

BOARD OF HISTORIC RESOURCES

Agency Notice

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulations are undergoing a periodic review and a small business impact review: **17VAC5-11, Public Participation Guidelines**; **17VAC5-20, Regulations Governing Permits for the Archaeological Removal of Human Remains**; and **17VAC5-30, Evaluation Criteria and Procedures for Designations by the Board of Historic Resources**. The review will be guided by the principles in Executive Order 14 (as amended July 16, 2018).

The purpose of this review is to determine whether each regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to each regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public comment period begins August 31, 2020, and ends September 21, 2020.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency.

Following the close of the public comment period, a report of both reviews will be posted on the Virginia Regulatory Town Hall and published in the Virginia Register of Regulations.

Contact Information: Jennifer Pullen, Executive Assistant, Department of Historic Resources, 2801 Kensington Avenue, Richmond, VA 23221, telephone (804) 482-6085, FAX (804) 367-2391, or email jennifer.pullen@dhr.virginia.gov.

TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Social Services conducted a periodic review and a small business impact review of **22VAC40-601, Supplemental Nutrition Assistance Program**, and determined that this regulation should be amended to repeal 22VAC40-601-50, which allows denial of applications for SNAP benefits after 30 days if the local department of social services is unable to process the application because additional information is needed.

The Notice of Intended Regulatory Action to amend 22VAC40-601, which is published in this issue of the Virginia Register, serves as the report of findings.

Contact Information: Celestine Jackson, Human Services Consultant, Department of Social Services, 7 North Eighth Street, Richmond, VA 23219, telephone (804) 726-7376, FAX (804) 726-7356, or email celestine.jackson1@dss.virginia.gov.

DEPARTMENT FOR THE BLIND AND VISUALLY IMPAIRED

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department for the Blind and Visually Impaired conducted a periodic review and a small business impact review of **22VAC45-30, Regulations Governing the Sale and Distribution of Goods and Articles Made by Blind Persons**, and determined that this regulation should be amended to (i) align the chapter with §§ 51.5-101 through 51.5-105 of the Code of Virginia, (ii) incorporate the use of people first language, and (iii) correct the agency name.

The Notice of Intended Regulatory Action to amend 22VAC45-30, which is published in this issue of the Virginia Register, serves as the report of findings.

Contact Information: Susan K. Davis, MS, CRC, Regulatory Coordinator, Department for the Blind and Vision Impaired, 397 Azalea Avenue, Richmond, VA 23227, telephone (804) 371-3184, or email susan.davis@dbvi.virginia.gov.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department for the Blind and Visually Impaired conducted a periodic review and a small business impact review of **22VAC45-70, Provision of Services in Rehabilitation Teaching**, and **22VAC45-80, Provision of Independent Living Rehabilitation Services**, and determined that the regulations should be amended to update 22VAC45-70 and repeal 22VAC45-80.

The Notice of Intended Regulatory Action to amend 22VAC45-70 and repeal 22VAC45-80, which is published in this issue of the Virginia Register, serves as the report of findings.

Contact Information: Susan K. Davis, MS, CRC, Regulatory Coordinator, Department for the Blind and Vision Impaired, 397 Azalea Avenue, Richmond, VA 23227, telephone (804) 371-3184, or email susan.davis@dbvi.virginia.gov.

TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

DEPARTMENT OF TRANSPORTATION

Agency Notice

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulations are undergoing a periodic review and a small business impact review: **24VAC30-61, Rules and Regulations Governing the Transportation of Hazardous Materials Through Bridge-Tunnel Facilities**; **24VAC30-271, Economic Development Access Fund Policy**; **24VAC30-315, Standards for Use of Traffic Control Devices to Classify, Designate, Regulate, and Mark State Highways**; **24VAC30-340, Debarment or Suspension of Contractors**; **24VAC30-390, Virginia Scenic Highways and Byways**; **24VAC30-490, Roads in the Grounds of State Institutions**; **24VAC30-500, Roads in the Grounds of State Parks**; and **24VAC30-540, Conveyance of Lands and Disposal of Improvements**. The review will be guided by the principles in Executive Order 14 (as amended July 16, 2018).

The purpose of this review is to determine whether each regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to each regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public comment period begins August 31, 2020, and ends September 21, 2020.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency.

Following the close of the public comment period, a report of both reviews will be posted on the Virginia Regulatory Town Hall and published in the Virginia Register of Regulations.

Contact Information: JoAnne P. Maxwell, Agency Regulatory Coordinator, Governance and Legislative Affairs Division, Department of Transportation, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-1830, or email joanne.maxwell@vdot.virginia.gov.

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 **12VAC5-460, Regulations Governing Tourist Establishment Swimming Pools and Other Public Pools**. The purpose of the proposed action is to update the chapter with modern standards for health and safety at water recreation facilities, including standards for water quality, facility maintenance and operation, safety equipment, and water recirculation systems. Incorporating developments from more recent advancements in the water recreation industry will assist Virginia water recreation facilities in providing safe and healthy environments for their patrons. The proposed action is a result of a periodic review.

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

Statutory Authority: §§ 35.1-11, 35.1-13, 35.1-16, and 35.1-17 of the Code of Virginia.

Public Comment Deadline: September 30, 2020.

Agency Contact: Julie Henderson, Director of Food and General Environmental Services, Virginia Department of Health, 109 Governor Street, Richmond, VA 23235, telephone (804) 864-7455, FAX (804) 864-7475, TTY (800) 828-1120, or email julie.henderson@vdh.virginia.gov.

VA.R. Doc. No. R21-6474; Filed August 6, 2020, 11:52 a.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 divide the existing sewage disposal systems contracting specialty in 18VAC50-22-30 into two new specialties: alternative sewage disposal system contracting and conventional sewage disposal system contracting. A division of the existing specialty will align the licensing of the contractor licenses for these specialties, issued by the Board for Contractors, with the individual licenses issued by the Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals.

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: September 30, 2020.

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. R21-6438; Filed August 6, 2020, 12:46 p.m.

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 **18VAC50-30, Individual License and Certification Regulations**. The purpose of the proposed action is to lower the current vocational training requirement for certified backflow prevention device workers who have fewer than seven years of experience in water distribution systems to 32 hours.

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

Statutory Authority: §§ 54.1-201 and 54.1-1102 of the Code of Virginia.

Public Comment Deadline: September 30, 2020.

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. R21-6447; Filed August 6, 2020, 12:48 p.m.

BOARD OF MEDICINE

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Medicine intends to consider amending **18VAC85-20, Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry, and Chiropractic**. The purpose of the proposed action is to specify that the standard of practice would prohibit a doctor from engaging in conversion therapy with a patient. The proposed action would also define conversion therapy and specify that it does not include counseling or therapy that provides assistance to a person undergoing gender transition or counseling or therapy that provides acceptance, support, and understanding. The goal is to align regulations of the board with the stated policies and ethics for the professions.

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

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

Public Comment Deadline: September 30, 2020.

Agency Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4621, FAX (804) 527-4429, or email william.harp@dhp.virginia.gov.

VA.R. Doc. No. R21-6216; Filed August 6, 2020, 2:00 p.m.

BOARD OF NURSING

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Nursing intends to consider amending **18VAC90-19, Regulations Governing the Practice of Nursing**. The purpose of the proposed action is to specify that the standard of practice prohibits a nurse from engaging in conversion therapy with a patient. The amendments will define conversion therapy and specify that it does not include counseling or therapy that provides assistance to a person undergoing gender transition or counseling or therapy that provides acceptance, support, and understanding. The goal is to align regulations of the board with the stated policies and ethics for the profession.

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

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

Public Comment Deadline: September 30, 2020.

Agency Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4520, FAX (804) 527-4455, or email jay.douglas@dhp.virginia.gov.

VA.R. Doc. No. R21-6475; Filed August 6, 2020, 2:04 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Boards of Nursing and Medicine intend to consider amending **18VAC90-30, Regulations Governing the Licensure of Nurse Practitioners**. The purpose of the proposed action is to specify that the standard of practice prohibits a nurse practitioner from engaging in conversion therapy with a patient. The amendments will define conversion therapy and specify that it does not include counseling or therapy that provides assistance to a person undergoing gender transition or counseling or therapy that provides acceptance, support, and understanding. The goal is to align regulations with the stated policies and ethics for the professions of nursing and medicine.

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

Statutory Authority: §§ 54.1-2400 and 54.1-2957 of the Code of Virginia.

Public Comment Deadline: September 30, 2020.

Agency Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4520, FAX (804) 527-4455, or email jay.douglas@dhp.virginia.gov.

VA.R. Doc. No. R21-6476; Filed August 6, 2020, 2:06 p.m.

BOARD OF OPTOMETRY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Optometry intends to consider amending **18VAC105-20, Regulations of the Virginia Board of Optometry**. The purpose of the proposed action is to (i) reiterate the Code of Virginia requirement effective July 1, 2020, that a prescription for a controlled substance that contains an opioid must be issued as an electronic prescription and (ii) provide for a one-year waiver from the requirement if the practitioner can demonstrate economic hardship, technological limitations, or other exceptional circumstances beyond the practitioner's control.

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

Statutory Authority: §§ 54.1-2400 and 54.1-3408.02 of the Code of Virginia.

Public Comment Deadline: October 14, 2020.

Agency Contact: Leslie L. Knachel, Executive Director, Board of Optometry, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 597-4130, FAX (804) 527-4471, or email leslie.knachel@dhp.virginia.gov.

VA.R. Doc. No. R21-6199; Filed August 12, 2020, 2:06 p.m.

BOARD OF PHARMACY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Pharmacy intends to consider amending **18VAC110-60, Regulations Governing Pharmaceutical Processors**. The purpose of the proposed action is to prohibit the production of an oil intended to be vaporized or inhaled from containing vitamin E acetate.

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

Statutory Authority: §§ 54.1-3442.6 and 54.1-3447 of the Code of Virginia.

Public Comment Deadline: September 30, 2020.

Agency Contact: Caroline Juran, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4456, FAX (804) 527-4472, or email caroline.juran@dhp.virginia.gov.

VA.R. Doc. No. R21-6250; Filed August 6, 2020, 2:07 p.m.

TITLE 22. SOCIAL SERVICES

DEPARTMENT 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 **22VAC-40-601, Supplemental Nutrition Assistance Program**. This chapter establishes the framework by which local departments of social services administer the Supplemental Nutrition Assistance Program (SNAP), which provides nutrition benefits to supplement the food budget of eligible families so that they can purchase healthy food and move toward self-sufficiency. The purpose of the proposed action is to repeal 22VAC40-601-50, which allows denial of applications for SNAP benefits after 30 days if the local department of social services is unable to process the application because additional information is needed. Federal regulations permit this processing method. The agency adopted 22VAC40-601-50 in 2011 as a potential local workload reduction effort. However, full comprehension of federal requirements and system changes required for implementation have extinguished the impact on work reduction outcomes. Thorough evaluation of the application denial method revealed that timing of staff work activities would shift, but not necessarily result in a reduction. This proposed action is a result of a periodic review.

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 of the Code of Virginia.

Public Comment Deadline: September 30, 2020.

Agency Contact: Celestine Jackson, Human Services Consultant, Department of Social Services, 7 North Eighth Street, Richmond, VA 23219, telephone (804) 726-7376, FAX (804) 726-7356, or email celestine.jackson1@dss.virginia.gov.

VA.R. Doc. No. R21-6420; Filed August 7, 2020, 10:31 a.m.

DEPARTMENT FOR THE BLIND AND VISION IMPAIRED

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 the Blind and Vision Impaired intends to consider amending **22VAC45-30, Regulations Governing the Sale and Distribution of Goods and Articles Made by Blind Persons**. The purpose of the proposed action, as a result of the periodic review process, is to (i) align the chapter with §§ 51.5-101 through 51.5-105 of the Code of Virginia, (ii) incorporate the use of people first language, and (iii) correct the agency name.

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

Statutory Authority: § 51.5-65 of the Code of Virginia.

Public Comment Deadline: September 30, 2020.

Agency Contact: Susan K. Davis, MS, CRC, Regulatory Coordinator, Department for the Blind and Vision Impaired, 397 Azalea Avenue, Henrico, VA 23227, telephone (804) 371-3140, FAX (804) 371-3157, or email susan.davis@dbvi.virginia.gov.

VA.R. Doc. No. R21-6345; Filed August 6, 2020, 1:07 p.m.

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 the Blind and Vision Impaired (DBVI) intends to consider amending **22VAC45-70, Provision of Services in Rehabilitation Teaching**, and repealing **22VAC45-80, Provision of Independent Living Rehabilitation Services**. The purpose of the proposed action is to implement the results of a periodic review and amend 22VAC45-70 (Provision of Services in Rehabilitation Teaching) while simultaneously repealing 22VAC45-80 (Provision of Independent Living Rehabilitation Services). These two chapters include language that is identical or very similar regarding referral for, eligibility determination of, plan for, and scope of rehabilitation teaching and independent living services. DBVI does not operate independent living centers for the blind as described in 22VAC45-80. Rather, DBVI coordinates and provides independent living services through its Rehabilitation Teaching/Independent Living Program and as ancillary services through its Vocational Rehabilitation Services Program.

This action updates 22VAC45-70 to (i) reflect a change in title; (ii) expand rehabilitation teaching services to include independent living services, which is current agency practice; (iii) update definitions and state and federal citations; and (iv) make other technical or necessary changes.

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

Statutory Authority: § 51.5-65 of the Code of Virginia.

Public Comment Deadline: September 30, 2020.

Agency Contact: Susan K. Davis, MS, CRC, Regulatory Coordinator, Department for the Blind and Vision Impaired, 397 Azalea Avenue, Richmond, VA 23227, telephone (804) 371-3184, or email susan.davis@dbvi.virginia.gov.

VA.R. Doc. No. R21-6293; Filed August 6, 2020, 1:04 p.m.

TITLE 1. ADMINISTRATION

STATE BOARD OF ELECTIONS

Final Regulation

REGISTRAR'S NOTICE: The State Board of Elections is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 B 8 of the Code of Virginia, which exempts agency action relating to the conduct of elections or eligibility to vote.

Title of Regulation: **1VAC20-40. Voter Registration (amending 1VAC20-40-10).**

Statutory Authority: § 24.2-103 of the Code of Virginia.

Effective Date: September 23, 2020.

Agency Contact: Samantha Buckley, Policy Analyst II, Department of Elections, Richmond, VA 23219, telephone (804) 864-8948, or email samantha.buckley@elections.virginia.gov.

Summary:

Pursuant to Chapter 1064 of the 2020 Acts of Assembly, the amendments (i) strike the mention of a photo as it relates to voter IDs and (ii) establish that the expiration date on a Virginia driver's license shall not be considered when determining the validity of a driver's license offered for voting purposes

Article 1
General Provisions

1VAC20-40-10. Definitions.

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

"Abode" or "place of abode" means a physical place where a person dwells. One may have multiple places of abode, such as a second home.

"Address" or "residence address" for purposes of voter registration and address confirmation means the address of residence in the precinct required for voter registration. An alternative mailing address may be included on a voter registration application when: (i) the residence address of the applicant cannot receive mail; or (ii) the voter is otherwise eligible by law to provide an alternative mailing address. Alternative mailing addresses must be sufficient to enable the delivery of mail by the United States Postal Service. The post office box for published lists may be provided either by the United States Postal Service or a commercial mail receiving agency (CMRA) described in the United States Postal Service Domestic Mail Manual.

"Authorized personnel" means the designated individuals of a general registrar's office or the Department of Elections who are permitted to access the voter registration database and capture information necessary to generate photo identification cards.

"Domicile" means a person's primary home, the place where a person dwells and which he considers to be the center of his domestic, social, and civil life. Domicile is primarily a matter of intention, supported by an individual's factual circumstances. Once a person has established domicile, establishing a new domicile requires that he intentionally abandon his old domicile. For any applicant, the registrar shall presume that domicile is at the address of residence given by the person on the application. The registrar shall not solicit evidence to rebut this presumption if the application appears to be legitimate, except as provided in 1VAC20-40-40 B and C.

"Permanent satellite location" means an office managed, maintained, and operated under the control of the general registrar for the locality that is consistently operational throughout the year and is not the principal office of the general registrar. Offices of other agencies where registration takes place pursuant to § 24.2-412 B of the Code of Virginia are not considered permanent satellite locations.

"Residence," "residency," or "resident" for all purposes of qualification to register and vote means and requires both domicile and a place of abode.

"Valid" for all purposes related to voter identification means (i) the document appears to be genuinely issued by the agency or issuing entity appearing upon the document, ~~(ii) the bearer of the document reasonably appears to be the person whose photograph is contained thereon,~~ and ~~(iii)~~ (ii) the document shall be current or have expired within the preceding 12 months. The expiration date on a Virginia driver's license shall not be considered when determining the validity of a driver's license offered for voting purposes. The officer of election shall determine whether the document is officially acceptable based on its face.

"Voter photo identification card" means the official voter registration card containing the voter's photograph and signature referenced in § 24.2-404 A 3 of the Code of Virginia.

VA.R. Doc. No. R21-6483; Filed August 11, 2020, 2:59 p.m.

Proposed Regulation

REGISTRAR'S NOTICE: The State Board of Elections is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 B 8 of the Code of Virginia, which exempts agency action relating to the conduct of elections or eligibility to vote.

Title of Regulation: **1VAC20-60. Election Administration (amending 1VAC20-60-50).**

Statutory Authority: § 24.2-103 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: October 2, 2020.

Agency Contact: Daniel Davenport, Policy Analyst, Department of Elections, 1100 Bank Street, Richmond, VA 23219, telephone (804) 593-2270, or email daniel.davenport@elections.virginia.gov.

Summary:

The proposed amendments add an alternative secure process for dealing with overfull optical scan ballot containers at the general registrar's office and satellite office locations.

1VAC20-60-50. Overfull optical scan ballot container.

A. If an optical scan reader in use in ~~a registrar's office or~~ a polling place or a central absentee precinct malfunctions because the connected ballot container includes too many ballots, election officials may open the ballot container and empty the ballots with the following safeguards:

1. The optical scan ballot container shall be opened in plain sight of any authorized party representatives or other observers and, once the ballots have been deposited into an auxiliary ballot container, both ballot containers shall remain in plain sight in the polling place.

2. Any such auxiliary ballot container used shall meet the requirements of § 24.2-623 of the Code of Virginia.

3. In a general, special, or dual-party primary election, a minimum of two officers of election, not representing the same political party, shall execute such a transfer of ballots. In a single-party primary election, the transfer shall be conducted by a minimum of two officers of election who may represent the same party.

B. In the event that an optical scan reader in a general registrar's office or satellite location malfunctions because the connected ballot container includes too many ballots or there is no storage for ballots, election officials may follow either the process outlined in subsection A of this section or the following alternative procedure:

1. The general registrar, assistant registrars, or officers of election may remove the overflow ballots from the connected ballot container and place them in a secure container.

2. That container will be sealed or locked by the general registrar, assistant registrars, or officers of election with their signatures, the date, and a record of the number of ballots that have been secured in that container.

3. The sealed or locked container shall be immediately transported to the general registrar's office by either the officers of election, the general registrar, or an assistant general registrar.

4. At the general registrar's office, the container shall be stored in a secure, locked location that is away from the access or view of the public and that is accessible only to the general registrar or assistant registrars.

VA.R. Doc. No. R21-6480; Filed August 11, 2020, 5:04 p.m.

Proposed Regulation

REGISTRAR'S NOTICE: The State Board of Elections is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 B 8 of the Code of Virginia, which exempts agency action relating to the conduct of elections or eligibility to vote.

Title of Regulation: **1VAC20-60. Election Administration (adding 1VAC20-60-70).**

Statutory Authority: § 24.2-103 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: October 2, 2020.

Agency Contact: Daniel Davenport, Policy Analyst, Department of Elections, 1100 Bank Street, Richmond, VA 23219, telephone (804) 393-0493, or email daniel.davenport@elections.virginia.gov.

Summary:

The proposed new section establishes logic and accuracy testing requirements for electronic pollbooks.

1VAC20-60-70. Mandatory logic and accuracy testing for electronic pollbooks.

All localities must perform logic and accuracy testing on their electronic pollbooks (EPBs) and certify to the Department of Elections that testing was completed by noon on the day prior to any election. This testing must confirm that the EPBs will provide promptly an accurate and secure record of those who have voted pursuant to § 24.2-611 of the Code of Virginia. Specifically, the logic and accuracy testing must do the following:

1. The logic and accuracy testing must confirm that the appropriate election-specific data files were downloaded to the electronic pollbook. In dual primary elections, localities must show that applicable voter registration files were downloaded from both political parties so that the combined data files contain all voters and all absentee ballot information for voters eligible to participate in the election.

2. The logic and accuracy testing must confirm that the electronic pollbooks for each election are set to the correct type of election being held in that jurisdiction. For example, the data on the electronic pollbook must correlate with

whether the upcoming election is a primary (single or dual) or general election.

3. The logic and accuracy testing must show that all precincts will provide the correct ballot styles to voters in the precincts. The locality must provide certification to the Department of Elections that all EPBs being used in an election have been tested in compliance with this section.

If a locality repeatedly fails to perform logic and accuracy testing on their electronic pollbooks, then the Department of Elections and State Board of Elections may disallow the locality's use of electronic pollbooks in subsequent elections.

VA.R. Doc. No. R21-6477; Filed August 11, 2020, 5:02 p.m.

Proposed Regulation

REGISTRAR'S NOTICE: The State Board of Elections is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 B 8 of the Code of Virginia, which exempts agency action relating to the conduct of elections or eligibility to vote.

Title of Regulation: **1VAC20-70. Absentee Voting (amending 1VAC20-70-20).**

Statutory Authority: § 24.2-103 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: October 2, 2020.

Agency Contact: Daniel Davenport, Policy Analyst, Department of Elections, 1100 Bank Street, Richmond, VA 23219, telephone (804) 393-0493, or email daniel.davenport@elections.virginia.gov.

Summary:

The proposed amendments (i) clarify that a missing postmark is an immaterial omission and that a ballot received by noon on the third day after an election with no postmark will still count toward that election's result and (ii) define "postmark."

1VAC20-70-20. Material omissions from absentee ballots.

A. Pursuant to the requirements of § 24.2-706 of the Code of Virginia, a timely received absentee ballot contained in an Envelope B shall not be rendered invalid if it contains an error or omission not material to its proper processing.

B. The following omissions are always material and any Envelope B containing such omissions shall be rendered invalid if any of the following exists:

1. Except as provided in subdivisions C 2 and 3 of this section, the voter did not include his full first name;

2. The voter did not provide his last name;

3. The voter omitted his generational suffix when one or more individuals with the same name are registered at the same address, and it is impossible to determine the identity of the voter;

4. The voter did not provide his house number and street name or his rural route address;

5. The voter did not provide either his city or zip code;

6. The voter did not sign Envelope B; or

7. The voter's witness did not sign Envelope B.

C. The ballot shall not be rendered invalid if on the Envelope B:

1. The voter included his full name in an order other than "last, first, middle";

2. The voter used his first initial instead of his first full name, so long as the voter provided his full middle name;

3. The voter provided a derivative of his legal name as his first or middle name (e.g., "Bob" instead of "Robert");

4. If the voter provided his first name and last name, the voter did not provide a middle name or a middle initial;

5. The voter did not provide his residential street identifier (Street, Drive, etc.);

6. The voter did not provide a zip code, so long as the voter provided his city;

7. The voter did not provide his city, so long as the voter provided his zip code;

8. The voter omitted the date, or provided an incorrect or incomplete date on which he signed Envelope B; or

9. The ballot is imperfectly sealed within Envelope B, provided that the outer envelope with Envelope B and the ballot arrived sealed.

10. The illegibility of a voter's or witness' signature on an Envelope B shall not be considered an omission or error.

D. For the purposes of this regulation, "city" may include the voter's locality, town, or any acceptable mailing name for the five-digit zip code of the voter's residence.

E. Whether an error or omission on an Envelope B not specifically addressed by this regulation is material and shall render the absentee ballot invalid shall be determined by a majority of the officers of the election present.

F. The ballot shall not be rendered invalid based on a missing or illegible postmark if the ballot is received by the general registrar's office by noon on the third day after the election pursuant to § 24.2-709 of the Code of Virginia and the return envelope does not have a postmark, or the postmark is missing or illegible.

G. For the purposes of this chapter, "postmark" means an official postmark of the United States Postal Service (USPS) or any other official indicia of confirmation of mailing by the USPS or other postal or delivery service.

VA.R. Doc. No. R21-6478; Filed August 11, 2020, 4:59 p.m.

Proposed Regulation

REGISTRAR'S NOTICE: The State Board of Elections is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 B 8 of the Code of Virginia, which exempts agency action relating to the conduct of elections or eligibility to vote.

Title of Regulation: **1VAC20-70. Absentee Voting (adding 1VAC20-70-70).**

Statutory Authority: § 24.2-103 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: October 2, 2020.

Agency Contact: David Nichols, Director of Election Services, Department of Elections, 1100 Bank Street, Richmond, VA 23219, telephone (804) 864-8952, or email david.nichols@elections.virginia.gov.

Summary:

The proposed amendments establish requirements for absentee ballot envelopes.

1VAC20-70-70. Mandatory mailing elements on absentee ballot envelopes.

A. For the purposes of this regulation, the following words and terms have the following meanings:

"Outer absentee envelope" means the envelope containing the materials referred to in § 24.2-706 B 3 of the Code of Virginia.

"Special insignia" and "insignia" mean the Official Election Mail logo registered by the United States Postal Service with the United States Patent and Trademark Office.

B. All general registrars must place intelligent mail barcodes on both the outer absentee envelope and on the return envelope.

C. Both the outer absentee envelope and return envelope must include a special insignia to identify Official Election Mail. The Department of Elections will ensure the proper insignia is available to the general registrars of each county and city.

VA.R. Doc. No. R21-6479; Filed August 11, 2020, 4:56 p.m.

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

DEPARTMENT OF FORENSIC SCIENCE

Final Regulation

Title of Regulation: **6VAC40-30. Regulations for the Approval of Field Tests for Detection of Drugs (amending 6VAC40-30-10, 6VAC40-30-30, 6VAC40-30-40, 6VAC40-30-50, 6VAC40-30-70, 6VAC40-30-80).**

Statutory Authority: § 9.1-1110 of the Code of Virginia.

Effective Date: October 1, 2020.

Agency Contact: Amy Jenkins, Department Counsel, Department of Forensic Science, 700 North 5th Street, Richmond, VA 23219, telephone (804) 786-6848, FAX (804) 786-6857, or email amy.jenkins@dfs.virginia.gov.

Summary:

The amendments (i) modify the definitions of "field test" and "field test kit" to include presumptive mobile instruments, (ii) provide a process by which the department evaluates presumptive mobile instruments, (iii) establish a separate set of requirements for maintenance of approved status for presumptive mobile instruments, and (iv) provide the fee schedule for approval of presumptive mobile instruments.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

Part I
Definitions

6VAC40-30-10. Definitions.

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

"Agency" means any federal, state, or local government law-enforcement organization in the Commonwealth.

"Approval authority" means the Director of the Department of Forensic Science or the director's designee.

"Department" means the Department of Forensic Science.

"Drug" means any controlled substance, imitation controlled substance, or marijuana, as defined in § 18.2-247 of the Code of Virginia.

"Field test" means any presumptive chemical test ~~unit~~ or any presumptive mobile instrument used outside of a ~~chemical~~ forensic laboratory environment to detect the presence of a drug.

~~"Field test kit" means a combination of individual field tests units.~~

"List of approved field tests" means a list of field tests ~~or field test kits~~ approved by the department for use by law-enforcement agencies in the Commonwealth and periodically published by the department in the Virginia Register of Regulations in accordance with § 19.2-188.1 of the Code of Virginia.

"Manufacturer" means any entity that makes or assembles field ~~test units or field test kits~~ tests to be used by any law-enforcement officer or agency in the Commonwealth for the purpose of detecting a drug.

"Manufacturers' instructions and claims" means those testing procedures, requirements, instructions, precautions, and proposed conclusions that are published by the manufacturer and supplied with the field tests ~~or field test kits~~.

"Street drug preparations" means any drug or combination of drugs and any other substance that has been encountered or is likely to be encountered by a law-enforcement officer as a purported drug in the Commonwealth.

6VAC40-30-30. Request for evaluation.

A. Any manufacturer that wishes to submit field tests ~~or field test kits~~ for evaluation shall submit a written request for evaluation to the department director at the following address:

Director
Department of Forensic Science
700 North Fifth Street
Richmond, VA 23219

B. ~~Materials~~ For presumptive chemical tests, materials sufficient for at least 10 ~~field~~ tests shall be supplied for each drug for which the manufacturer requests evaluation. The materials shall include all instructions, precautions, color charts, flow charts, and ~~the like which~~ other accompanying informational materials that are provided with the ~~field~~ test ~~or field test kit~~ and ~~which~~ that describe the use and interpretation of the ~~tests~~ test. The manufacturer shall also include exact specifications as to the chemical composition of all chemical or reagents used in the presumptive chemical tests. These specifications shall include the volume or weight of the chemicals and the nature of their packaging. Safety Data Sheets for each chemical or reagent shall be sufficient for this purpose.

C. ~~The manufacturer shall also include exact specifications as to the chemical composition of all chemicals or reagents used in the field tests. These shall include the volume or weight of the chemicals and the nature of their packaging. Material Safety Data Sheets for each chemical or reagent shall be sufficient for this purpose~~ For presumptive mobile instruments, two nonsequentially manufactured instruments and supporting materials shall be supplied for each model for which the manufacturer requests evaluation. These materials shall include all instructions, all training materials regarding the use of the instrument by law enforcement, the instrument specifications, a list of compounds in the instrument's library, and any foundational validation studies. If the manufacturer provides training for users of the instruments beyond the written instructional materials, such training shall be made available for the evaluation. The instruments shall be returned to the manufacturer upon completion of the evaluation.

D. The department's evaluation process will require at least 120 days from the receipt of the written request and all needed materials from the manufacturer.

E. The department will use commonly encountered street drug preparations to examine those field tests submitted for evaluation. In order to be approved, the ~~field~~ presumptive chemical test must correctly react in a clearly observable fashion to the naked eye~~,~~ and perform in accordance with manufacturers' instructions and claims. In order to be approved, the presumptive mobile instrument must perform in accordance with the manufacturer's instructions and advertised claims and offer convenience and efficiency in operation as determined by the department.

6VAC40-30-40. Notice of decision.

The department will notify each manufacturer in writing of the approval or disapproval of each field test for which evaluation was requested. Should any field test not be approved, the manufacturer may resubmit ~~their~~ its request for evaluation of that field test according to the previously outlined procedures. Resubmitted requests for approval shall be accompanied by a detailed explanation of all modifications or changes to the field test, the field test instructions, or the manufacturer's claims since the department's most recent evaluation of the field test.

6VAC40-30-50. Maintenance of approved status.

The department may require that ~~this evaluation~~ a reevaluation be done as often as annually for routine purposes. If any modifications are made to ~~an~~ any approved field test by the manufacturer, other than additions to the compounds in a presumptive mobile instrument's library, the department shall be notified in writing ~~of the changes~~. These modifications shall include any chemical, procedural, instructional, or firmware or software modifications made to the field test. The department may require reevaluation of any approved field test upon receiving notification of any such modifications.

If unreported modifications are discovered by the department, the department may require ~~that all evaluations be repeated for the particular manufacturer's~~ a reevaluation of the approved field ~~tests~~ test at any time. The department shall notify the manufacturer in writing of this requirement. ~~Any modified field test must be approved before it can be used in accordance with § 19.2-188.1 of the Code of Virginia. These changes shall include, but are not limited to any chemical, procedural or instructional modifications made to the field test.~~

6VAC40-30-70. Liability.

A. The department assumes no liability as to the safety of these field tests ~~or field test kits~~, any chemicals contained therein, or the procedures and instructions by which they are used.

B. The department further assumes no responsibility for any incorrect results or interpretations obtained from these ~~presumptive chemical~~ field tests.

Part III
Fees

6VAC40-30-80. Fees.

~~Manufacturers~~ For presumptive chemical tests, manufacturers shall pay the actual cost of ~~the~~ each street drug preparation and will be charged a fee of $50 for each drug for which individual evaluation is requested. For presumptive mobile instruments, manufacturers shall pay the actual cost of each street drug preparation and a fee of $2,500 for each model of the presumptive mobile instrument for which evaluation is requested. The department will review the manufacturer's request and notify the manufacturer in writing of the amount due before the evaluation begins. Manufacturers who wish to withdraw a request for evaluation shall immediately notify the

department in writing. The department's assessment of the amount of payment required will be based upon a detailed review of the manufacturer's request, and that amount will be final. The evaluation process will not be initiated before full payment is made to the Treasurer of Virginia.

VA.R. Doc. No. R18-5420; Filed August 6, 2020, 12:29 p.m.

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 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 or the appropriation act where no agency discretion is involved. The State Council of Higher Education for Virginia will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **8VAC40-31. Regulations Governing Certification of Certain Institutions to Confer Degrees, Diplomas and Certificates (amending 8VAC40-31-160).**

Statutory Authority: §§ 23.1-203 and 23.1-215 of the Code of Virginia.

Effective Date: September 30, 2020.

Agency Contact: Beverly Rebar, Senior Associate for Academic and Legislative Affairs, State Council of Higher Education for Virginia, 101 North 14th Street, 9th Floor, Monroe Building, Richmond, VA 23219, telephone (804) 371-0571, or email beverlyrebar@schev.edu.

Summary:

Pursuant to Chapter 1135 of the 2020 Acts of Assembly, the amendments prohibit conditioning the enrollment of a student on entering into an agreement that requires the student to (i) arbitrate any dispute between the student and the school, regardless of whether the agreement permits the student to opt out of the requirement to arbitrate any such dispute in the future or (ii) resolve a dispute on an individual basis and waive the right to class or group actions.

8VAC40-31-160. Certification criteria for all postsecondary schools.

A. The criteria in this section shall apply to all postsecondary schools for which certification is required. With regard to postsecondary schools that are accredited by an accrediting agency recognized by the U.S. Department of Education, the council may apply a presumption of compliance with criteria in this section if the school has complied with an accreditation standard directed to the same subject matter as the criteria. The council need not apply this presumption if the accreditation standard is deficient in satisfying an identifiable goal of the council. The council shall articulate reasons that the accreditation standard is deficient.

B. The postsecondary school shall have a clear, accurate, and comprehensive written statement, which shall be available to the public upon request. The statement minimally shall include the following items:

1. The history and development of the postsecondary school;

2. An identification of any persons, entities, or institutions that have a controlling ownership or interest in the postsecondary school;

3. The purpose of the postsecondary school, including a statement of the relative degree of emphasis on instruction, research, and public service as well as a statement demonstrating that the school's proposed offerings are consistent with its stated purpose;

4. A description of the postsecondary school's activities, including telecommunications activities away from its principal location, and a list of all program areas in which courses are offered away from the principal location;

5. A list of all locations in Virginia at which the postsecondary school offers courses and a list of the degree and nondegree programs currently offered or planned to be offered in Virginia;

6. For each Virginia location, and for the most recent academic year, the total number of students who were enrolled as well as the total number and percentage of students who were enrolled in each program offered;

7. For each Virginia location, the total number of students who completed or graduated from the school as of the end of the last academic year and the total number and percentage of students who completed or graduated from each program offered by the school as of the end of the last academic year; and

8. For unaccredited institutions of higher education and career-technical schools only, the total number of students who report employment in their field of study within (i) six months of completion or graduation and (ii) one year of completion or graduation.

C. The postsecondary school or branch shall have a current, written document available to students and the general public upon request that accurately states the powers, duties, and responsibilities of:

1. The governing board or owners of the school;

2. The chief operating officer, president, or director at that branch in Virginia;

3. The principal administrators and their credentials at that branch in Virginia; and

4. The students, if students participate in school governance.

D. The postsecondary school shall have, maintain, and provide to all applicants a policy document accurately defining the minimum requirements for eligibility for admission to the school and for acceptance at the specific degree level or into all specific degree programs offered by the postsecondary school that are relevant to the school's admissions standards. In addition, the document shall explain:

1. The standards for academic credit or course completion given for experience;

2. The criteria for acceptance of transfer credit where applicable;

3. The criteria for refunds of tuition and fees;

4. Students' rights, privileges, and responsibilities; and

5. The established grievance process of the school, which shall indicate that students should follow this process and may contact council staff to file a complaint about the school as a last resort. The written policy shall include a provision that students will not be subjected to adverse actions by any school officials as a result of initiating a complaint.

E. The postsecondary school shall maintain records on all enrolled students. At a minimum, these records shall include:

1. Each student's application for admission and admissions records containing information regarding the educational qualifications of each regular student admitted that are relevant to the postsecondary school's admissions standards. Each student record must reflect the requirements and justification for admission of the student to the postsecondary school. Admissions records must be maintained by the school, its successors, or its assigns for a minimum of three years after the student's last date of attendance.

2. An original agreement titled "Student Enrollment Agreement" signed by the student and an authorized representative of the school. The use of electronic signatures is permissible so long as the use complies with the Uniform Electronic Transactions Act (§ 59.1-479 et seq. of the Code of Virginia).

a. (Reserved.)

b. (Reserved.)

c. No postsecondary school shall condition the enrollment of a student on:

(1) Entering into an agreement that requires the student to arbitrate any dispute between the student and the school, regardless of whether the agreement permits the student to opt out of the requirement to arbitrate any such dispute in the future; or

(2) Entering into an agreement that requires the student to resolve a dispute on an individual basis and waive the right to class or group actions.

~~2.~~ 3. A transcript of the student's academic or course work at the school, which shall be retained permanently in either hard copy forms or in an electronic database with backup by the school, its successors, or its assigns.

~~3.~~ 4. A record of student academic or course progress at the school including programs of study, dates of enrollment, courses taken and completed, grades, and indication of the student's current status (graduated, probation, etc.) must be retained permanently. Any changes or alterations to student records must be accurately documented and signed by an appropriate school official.

~~4.~~ 5. A record of all financial transactions between each individual student and the school including payments from the student, payments from other sources on the student's behalf, and refunds. Fiscal records must be maintained for a minimum of three years after the student's last date of attendance. When tuition and fees are paid by the student in installments, a clear disclosure of truth-in-lending statement must be provided to and signed by the student.

~~5.~~ 6. The school shall make the documents referenced in subdivisions 1 through 4 of this subsection available to the student upon request. Academic transcripts shall be provided upon request if the student is in good financial standing.

F. Each school shall provide or make available to students, prospective students, and other interested persons a catalog, bulletin, brochure, or electronic media containing, at a minimum, the following information:

1. The number of students enrolled in each program offered.

2. For each Virginia location, the total number of students who completed or graduated from the school as of the end of the last academic year and the total number and percentage of students who completed or graduated from each program offered by the school as of the end of the last academic year.

3. A description of any financial aid offered by the school including repayment obligations, standards of academic progress required for continued participation in the program, sources of loans or scholarships, the percentage of students receiving federal financial aid (if applicable) and the average student indebtedness at graduation.

4. A broad description, including academic or career-technical objectives of each program offered, the number of hours of instruction in each subject and total number of hours required for course completion, course descriptions, and a statement of the type of credential awarded.

5. A statement of tuition and fees and other charges related to enrollment, such as deposits, fees, books and supplies, tools and equipment, and any other charges for which a student may be responsible.

6. The school's refund policy for tuition and fees pursuant to subsection N of this section.

7. The school's procedures for handling complaints, including procedures to ensure that a student will not be

subject to unfair actions as a result of his initiation of a complaint proceeding.

8. The name and address of the school's accrediting body, if applicable.

9. The minimum requirements for satisfactory completion of each degree level and degree program, or nondegree certificates or diplomas.

10. A statement that accurately describes the transferability of any courses.

11. A statement that accurately represents the transferability of any diplomas, certificates, or degrees offered by the school.

12. If the institution offers programs leading to the Associate of Applied Science or Associate of Occupational Science degree, a statement that these programs are terminal occupational or technical programs and that credits generally earned in these programs are not applicable to other degrees.

13. The academic or course work schedule for the period covered by the publication.

14. A statement that accurately details the type and amount of career advising and placement services offered by the school.

15. The name, location, and address of the main campus, branch, or instructional site operating in Virginia.

G. The school must have a clearly defined process by which the curriculum is established, reviewed, and evaluated. Evaluation of school effectiveness must be completed on a regular basis and must include~~, but not be limited to~~:

1. An explanation of how each program is consistent with the mission of the school.

2. An explanation of the written process for evaluating each degree level and program, or career-technical program, once initiated and an explanation of the procedures for assessing the extent to which the educational goals are being achieved.

3. Documented use of the results of these evaluations to improve the degree and career-technical programs offered by the school.

H. Pursuant to § 23-276.3 B of the Code of Virginia, the school must maintain records that demonstrate it is financially sound; exercises proper management, financial controls and business practices; and can fulfill its commitments for education or training. The school's financial resources should be characterized by stability, which indicates the school is capable of maintaining operational continuity for an extended period of time. The stability indicator that will be used is the USDOE Financial Ratio (composite score).

1. Institutions of higher education shall provide the results of an annual audited, reviewed or compiled financial statement. Career-technical schools shall provide the results of an annual audited, reviewed or compiled financial statement or the school may elect to provide financial information on forms provided by council staff. The financial report shall be prepared in accordance with generally accepted accounting principles (GAAP) currently in effect. The financial report shall cover the most recent annual accounting period completed.

2. The USDOE composite score range is -1.0 to 3.0. Schools with a score of 1.5 to 3.0 meet fully the stability requirement in subsection I of this section; scores between 1.0 and 1.4 meet the minimum expectations; and scores less than 1.0 do not meet the requirement and shall be immediately considered for audit.

I. Pursuant to § 23-276.3 B of the Code of Virginia, the school shall have and maintain a surety instrument issued by a surety company or banking institution authorized to transact business in Virginia that is adequate to provide refunds to students for the unearned non-Title IV portion of tuition and fees for any given semester, quarter or term and to cover the administrative cost associated with the instrument claim. The instrument shall be based on the non-Title IV funds that have been received from students or agencies for which the education has not yet been delivered. This figure shall be indicated in an audited financial statement as a Current (non-Title IV) Tuition Liability. A school certified under this regulation shall be exempt from the surety instrument requirement if it can demonstrate a USDOE composite financial responsibility score of 1.5 or greater on its current financial statement; or if it can demonstrate a composite score between 1.0 and 1.4 on its current financial statement and has scored at least 1.5 on a financial statement in either of the prior two years. The school's eligibility for the surety waiver shall be determined annually, at the time of recertification.

1. Public postsecondary schools originating in a state other than Virginia that are operating a branch campus or instructional site in the Commonwealth of Virginia are exempt from the surety bond requirement.

2. New schools and unaccredited existing schools must complete at least five calendar years of academic instruction or certification to qualify for the surety waiver or exemption.

3. Existing schools seeking a waiver of the surety instrument requirement must submit an audited financial statement for the most recent fiscal year end that reflects the appropriate composite score as indicated in this subsection.

J. The school shall have a current written policy on faculty accessibility that shall be distributed to all students. The school shall ensure that instructional faculty are accessible to students for academic or course advising at stated times outside a course's regularly scheduled class hours at each branch and throughout the period during which the course is offered.

K. All recruitment personnel must provide prospective students with current and accurate information on the school through the use of written and electronic materials and in oral admissions interviews:

1. The school shall be responsible and liable for the acts of its admissions personnel.

2. No school, agent, or admissions personnel shall knowingly make any statement or representation that is false, inaccurate or misleading regarding the school.

L. All programs offered via telecommunications or distance education must be comparable in content, faculty, and resources to those offered in residence and must include regular student-faculty interaction by computer, telephone, mail, or face-to-face meetings. Telecommunication programs and courses shall adhere to the following minimum standards:

1. The educational objectives for each program or course shall be clearly defined, simply stated, and of such a nature that they can be achieved through telecommunications.

2. Instructional materials and technology methods must be appropriate to meet the stated objectives of the program or course. The school must consider and implement basic online navigation of any course or program, an information exchange privacy and safety policy, a notice of minimum technology specification for students and faculty, proper system monitoring, and technology infrastructure capabilities sufficient to meet the demands of the programs being offered.

3. The school shall provide faculty and student training and support services specifically related to telecommunication activities.

4. The school shall provide for methods for timely interaction between students and faculty.

5. The school shall develop standards that ensure that accepted students have sufficient background, knowledge, and technical skills to successfully undertake a telecommunications program.

M. The school shall maintain and ensure that students have access to a library with a collection, staff, services, equipment, and facilities that are adequate and appropriate for the purpose and enrollment of the school. Library resources shall be current, well distributed among fields in which the institution offers instructions, cataloged, logically organized, and readily located. The school shall maintain a continuous plan for library resource development and support, including objectives and selections of materials. Current and formal written agreements with other libraries or with other entities may be used. Institutions offering graduate work shall provide access to library resources that include basic reference and bibliographic works and major journals in each discipline in which the graduate program is offered. Career-technical schools shall provide adequate and appropriate resources for completion of course work.

N. In accordance with § 23-276.3 B of the Code of Virginia, the school shall establish a tuition refund policy and communicate it to students. Each school shall establish, disclose, and utilize a system of tuition and fee charges for each program of instruction. These charges shall be applied uniformly to all similarly circumstanced students. This requirement does not apply to group tuition rates to business firms, industry, or governmental agencies that are documented by written agreements between the school and the respective organization.

1. The school shall adopt a minimum refund policy relative to the refund of tuition, fees, and other charges. All fees and payments, with the exception of the nonrefundable fee described in subdivision 2 of this subsection, remitted to the school by a prospective student shall be refunded if the student is not admitted, does not enroll in the school, does not begin the program or course, withdraws prior to the start of the program, or is dismissed prior to the start of the program.

2. A school may require the payment of a reasonable nonrefundable initial fee, not to exceed $100, to cover expenses in connection with processing a student's enrollment, provided it retains a signed statement in which the parties acknowledge their understanding that the fee is nonrefundable. No other nonrefundable fees shall be allowed prior to enrollment.

3. The school shall provide a period of at least three business days, excluding weekends and holidays, during which a student applicant may cancel his enrollment without financial obligation other than the nonrefundable fee described in subdivision 2 of this subsection.

4. Following the period described in subdivision 3 of this subsection, a student applicant (one who has applied for admission to a school) may cancel, by written notice, his enrollment at any time prior to the first class day of the session for which application was made. When cancellation is requested under these circumstances, the school is required to refund all tuition paid by the student, less a maximum tuition fee of 15% of the stated costs of the course or program or $100, whichever is less. A student applicant will be considered a student as of the first day of classes.

5. The date of the institution's determination that the student withdrew should be no later than 14 calendar days after the student's last date of attendance as determined by the institution from its attendance records. The institution is not required to administratively withdraw a student who has been absent for 14 calendar days. However, after 14 calendar days, the institution is expected to have determined whether the student intends to return to classes or to withdraw. In addition, if the student is eventually determined to have withdrawn, the end of the 14-day period begins the timeframe for calculating the refunds. In the event that a written notice is submitted, the effective date of termination shall be the date of the written notice. The school may require that written notice be transmitted via registered or certified mail, or by electronic transmission provided that such a stipulation is contained in the written enrollment contract. The school is required to submit refunds to individuals who have terminated their status as

students within 45 days after receipt of a written request or the date the student last attended classes whichever is sooner. An institution that provides the majority of its program offerings through distance learning shall have a plan for student termination, which shall be provided to council staff for review with its annual or recertification application.

6. In the case of a prolonged illness or accident, death in the family, or other special circumstances that make attendance impossible or impractical, a leave of absence may be granted to the student if requested in writing by the student or designee. No monetary charges or accumulated absences may be assessed to the student during a leave of absence. A school need not treat a leave of absence as a withdrawal if it is an approved leave of absence. A leave of absence is an approved leave of absence if:

a. The school has a formal, published policy regarding leaves of absence;

b. The student followed the institution's policy in requesting the leave of absence and submits a signed, dated request with the reasons for the leave of absence;

c. The school determines that there is a reasonable expectation that the student will return to the school;

d. The school approved the student's request in accordance with the published policy;

e. The school does not impose additional charges to the student as a result of the leave of absence;

f. The leave of absence does not exceed 180 days in any 12-month period; and

g. Upon the student's return from the leave of absence, the student is permitted to complete the coursework he began prior to the leave of absence.

7. If a student does not resume attendance at the institution on or before the end of an approved leave of absence, the institution must treat the student as a withdrawal, and the date that the leave of absence was approved should be considered the last date of attendance for refund purposes.

8. The minimum refund policy for a school that financially obligates the student for a quarter, semester, trimester or other period not exceeding 4-1/2 calendar months shall be as follows:

a. For schools that utilize an add/drop period, a student who withdraws during the add/drop period shall be entitled to 100% refund for the period.

b. For unaccredited schools and schools that do not utilize an add/drop period:

(1) A student who enters school but withdraws during the first 1/4 (25%) of the period is entitled to receive as a refund a minimum of 50% of the stated cost of the course or program for the period.

(2) A student who enters a school but withdraws after completing 1/4 (25%), but less than 1/2 (50%) of the period is entitled to receive as a refund a minimum of 25% of the stated cost of the course or program for the period.

(3) A student who withdraws after completing 1/2 (50%), or more than 1/2 (50%), of the period is not entitled to a refund.

9. The minimum refund policy for a school that financially obligates the student for the entire amount of tuition and fees for the entirety of a program or course shall be as follows:

a. A student who enters the school but withdraws or is terminated during the first quartile (25%) of the program shall be entitled to a minimum refund amounting to 75% of the cost of the program.

b. A student who withdraws or is terminated during the second quartile (more than 25% but less than 50%) of the program shall be entitled to a minimum refund amounting to 50% of the cost of the program.

c. A student who withdraws or is terminated during the third quartile (more than 50% but less than 75%) of the program shall be entitled to a minimum refund amounting to 25% of the cost of the program.

d. A student who withdraws after completing more than three quartiles (75%) of the program shall not be entitled to a refund.

10. The minimum refund policy for a school that offers its programs completely via telecommunications or distance education shall be as follows:

a. For a student canceling after the 5th calendar day following the date of enrollment but prior to receipt by the school of the first completed lesson assignment, all moneys paid to the school shall be refunded, except the nonrefundable fee described in subdivision 2 of this subsection.

b. If a student enrolls and withdraws or is discontinued after submission of the first completed lesson assignment, but prior to the completion of the program, minimum refunds shall be calculated as follows:

(1) A student who starts the program but withdraws up to and including completion of the first quartile (25%) of the program is entitled to receive as a refund a minimum of 75% of the stated cost of the course or program for the period.

(2) A student who starts the program but withdraws after completing up to the second quartile (more than 25%, but less than 50%) of the program is entitled to receive as a refund a minimum of 50% of the stated cost of the course or program for the period.

(3) A student who starts the program but withdraws after completing up to the third quartile (more than 50%, but less than 75%) of the program is entitled to receive as a refund a minimum of 25% of the stated cost of the course or program for the period.

(4) A student who withdraws after completing the third quartile (75%) or more of the program is not entitled to a refund.

c. The percentage of the program completed shall be determined by comparing the number of completed lesson assignments received by the school to the total number of lesson assignments required in the program.

d. If the school uses standard enrollment terms, such as semesters or quarters, to measure student progress, the school may use the appropriate refund policy as provided in subdivision 8 or 9 of this subsection.

11. Fractions of credit for courses completed shall be determined by dividing the total amount of time required to complete the period or the program by the amount of time the student actually spent in the program or the period, or by the number of correspondence course lessons completed, as described in the contract.

12. Expenses incurred by students for instructional supplies, tools, activities, library, rentals, service charges, deposits, and all other charges are not required to be considered in tuition refund computations when these expenses have been represented separately to the student in the enrollment contract and catalogue, or other documents, prior to enrollment in the course or program. The school shall adopt and adhere to reasonable policies regarding the handling of these expenses when calculating the refund.

13. For programs longer than one year, the policy outlined in subdivisions 9, 10, and 11 of this subsection shall apply separately for each academic year or portion thereof.

14. Schools shall comply with the cancellation and settlement policy outlined in this section, including promissory notes or contracts for tuition or fees sold to third parties.

15. When notes, contracts or enrollment agreements are sold to third parties, the school shall continue to have the responsibility to provide the training specified regardless of the source of any tuition, fees, or other charges that have been remitted to the school by the student or on behalf of the student.

O. The school shall keep relevant academic transcripts for all teaching faculty to document that each has the appropriate educational credentials in the area of teaching responsibility. In the event teaching qualification is based on professional competencies or scholarly achievements, relevant documentation to support reported experience must be retained by the school.

P. If an internship, externship, or production work is necessary as a part of the school's education program, the school must adhere to the following:

1. When programs contain internships or externships, in any form, the professional training must:

a. Be identified as part of the approved curriculum of the school and be specified in terms of expected learning outcomes in a written training plan.

b. Be monitored by an instructor of record during the entire period of the internship.

c. Not be used to provide labor or as replacement for a permanent employee.

d. Be performed according to a specified schedule of time required for training including an expected completion date.

e. If the internship, externship, or production work is part of the course requirement, the student may not be considered as a graduate or issued a graduation credential until the internship, externship, or production work has been satisfactorily completed.

2. When receiving compensation for services provided by students as part of their education program, the school must clearly inform customers that services are performed by students by (i) posting a notice in plain view of the public or (ii) requiring students to wear nametags that identify them as students while performing services related to their training.

Q. An institution shall notify council staff of the following occurrences no later than 30 days prior to said occurrence:

1. Addition of new programs or modifications to existing program. Program names must adhere to the CIP taxonomy maintained by the National Center for Education Statistics.

2. Addition of a new branch location or instructional site.

3. Address change of a branch or instructional site in Virginia.

Notification of the above-referenced occurrences shall be submitted in writing on forms provided by and in a manner prescribed by the council.

R. An institution shall notify the council of the following occurrences no later than 30 days following said occurrence.

1. Naming of new school president.

2. Naming of new campus or branch director.

3. Naming of person responsible for the regulatory oversight of the institution.

VA.R. Doc. No. R21-6430; Filed August 12, 2020, 11:32 a.m.

VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY

Final Regulation

REGISTRAR'S NOTICE: Virginia Polytechnic Institute and State University is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 6 of the Code of Virginia, which exempts educational institutions operated by the Commonwealth.

Title of Regulation: **8VAC105-11. Parking and Traffic (amending 8VAC105-11-10).**

Statutory Authority: § 23.1-1301 of the Code of Virginia.

Effective Date: August 17, 2020.

Agency Contact: Lori Buchanan, Business Services Specialist, Vice President for Policy and Governance, 319 Burruss Hall, Blacksburg, VA 24061, telephone (540) 231-9512, or email lorib90@vt.edu.

Summary:

The amendment updates the university's parking regulations to reflect revised parking and traffic procedures.

8VAC105-11-10. Definitions.

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

"Parking and Traffic Procedures" means the Parking and Traffic Operational Manual, 2020-21 Academic Year, Volume 28, Virginia Tech ~~Parking~~ Transportation Services, ~~effective August 1, 2019~~ revised July 2020.

"Virginia Tech" means Virginia Polytechnic Institute and State University.

"University owned or leased property" means any property owned, leased, or controlled by Virginia Tech.

DOCUMENTS INCORPORATED BY REFERENCE (8VAC105-11)

~~Parking and Traffic Operational Manual, Volume 26, 2019-2020 Academic Year, Virginia Tech Division of Operations, Parking and Transportation (rev. 8/2019)~~

Parking and Traffic Operational Manual, 2020-21 Academic Year, Volume 28, Transportation Services, Virginia Tech (rev. 7/2020)

VA.R. Doc. No. R21-6481; Filed August 12, 2020, 3:15 p.m.

TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Fast-Track Regulation

Title of Regulation: **9VAC25-20. Fees for Permits and Certificates (amending 9VAC25-20-110, 9VAC25-20-120, 9VAC25-20-130, 9VAC25-20-142).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: September 30, 2020.

Effective Date: October 15, 2020.

Agency Contact: Melissa Porterfield, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (803) 698-4238, or email melissa.porterfield@deq.virginia.gov.

Basis: Section 62.1-44.15:6 of the Code of Virginia directs the State Water Control Board to adopt regulations to assess fees to issue, reissue, amend, or modify any permit or certificate.

Purpose: A periodic review was recently conducted for this regulation, and the result of the review was to amend the regulation to remove fees that are no longer needed. This amendment removes fees for municipal separate storm sewer system (MS4) and construction activity permitting fees from this regulation. Permit fees for MS4 and construction activities are assessed under the Virginia Stormwater Management Program (VSMP) Regulation (9VAC25-870) and are no longer needed in 9VAC25-20. Removal of the MS4 and construction activity fees will minimize confusion concerning the applicable permit fees. The amendments protect public health, safety, or welfare by removing incorrect permit fee information for MS4 and construction activities.

Rationale for Using Fast-Track Rulemaking Process: A periodic review was recently conducted for this regulation and the result of the review was to amend the regulation to remove fees that are no longer needed. This amendment removes fees for MS4 and construction activity permitting from this regulation. Permit fees for MS4 and construction activities are assessed under the Virginia Stormwater Management Program (VSMP) Regulation (9VAC25-870) and are no longer needed in 9VAC25-20 and therefore the changes are noncontroversial.

Substance: This amendment removes fees for MS4 and construction activity permitting from this regulation.

Issues: Removing fees for MS4 and construction activity permitting from this regulation will benefit the public and the agency. Removing these fees will minimize confusion concerning the applicable permit fees. There are no disadvantages to the public or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The State Water Control Board (Board) proposes to repeal obsolete text.

Background. The Virginia storm water management program has been administered by both the Department of Environmental Quality (DEQ) and the Department of Conservation and Recreation (DCR). DEQ administered the program through 9VAC25-750 General Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation for Discharges of Storm Water from Small Municipal Separate Storm Sewer Systems until the 2004 General Assembly adopted legislation (Chapter 372)[1] that transferred the storm water permitting responsibility from DEQ to DCR. The fees for the program regulated through 9VAC25-750 are in 9VAC25-20 Fees for Permits and Certificates. After the General Assembly transferred the storm water permitting responsibility from DEQ to DCR, the Board repealed 9VAC25-750,[2] but did not remove fee listings for storm water permits from 9 VAC 25-20. The Board now proposes to amend

certain sections of 9VAC 25-20 to remove the fees associated with storm water permits. Other fees will remain unchanged.

The 2013 Virginia Acts of Assembly (Chapters 756[3] and 793[4]) then transferred certain water quality programs from DCR to DEQ, including storm water. Consequently, a new DEQ regulation was promulgated: 9 VAC 25-870 Virginia Stormwater Management Program.[5] Storm water permit fees are included in 9 VAC 25-870.

Estimated Benefits and Costs. The fees concerning storm water permits listed in 9VAC25-20 are obsolete and have not been assessed since 2004. The proposed removal of these fees from the regulation would have no impact on fees charged or collected, but would be beneficial in that it would reduce the likelihood that readers of the regulation are misled.

Businesses and Other Entities Affected. The proposed repeal of text would affect readers of the regulation. No costs would be introduced.

Small Businesses[6] Affected. The proposed repeal of text does not appear to substantively affect small businesses.

Localities[7] Affected.[8] The proposed repeal of text does not appear to substantively affect localities and does not introduce costs for local governments.

Projected Impact on Employment. The proposed repeal of text does not affect total employment.

Effects on the Use and Value of Private Property. The proposed repeal of text does not appear to substantively affect the use and value of private property or real estate development costs.

[1]See http://leg1.state.va.us/cgi-bin/legp504.exe?041+ful+CHAP0372

[2]See https://townhall.virginia.gov/L/ViewAction.cfm?actionid=1872

[3]See http://leg1.state.va.us/cgi-bin/legp504.exe?131+ful+CHAP0756

[4]See http://leg1.state.va.us/cgi-bin/legp504.exe?131+ful+CHAP0793

[5]See https://townhall.virginia.gov/L/ViewAction.cfm?actionid=4069

[6]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."

[7]"Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

[8]§ 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

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

Summary:

As a result of a periodic review of 9VAC25-20, the amendments remove permitting fees for municipal separate storm sewer systems and construction activity, which are no longer administered under this chapter.

9VAC25-20-110. Fee schedules for individual VPDES and VPA new permit issuance, and individual VWP, SWW, and GWW new permit issuance and existing permit reissuance.

A. Virginia Pollutant Discharge Elimination System (VPDES) permits. The following fee schedules apply to applications for issuance of a new individual VPDES permit or certificate. (Note: All flows listed in the table below are facility "design" flows.)

VPDES Industrial Major	$24,000
VPDES Municipal Major	$21,300
~~VPDES Municipal Major Stormwater/MS4~~	~~$21,300~~
VPDES Industrial Minor/No Standard Limits	$10,200
VPDES Industrial Minor/Standard Limits	$3,300
VPDES Industrial Stormwater	$7,200
VPDES Municipal Minor/Greater Than 100,000 GPD	$7,500
VPDES Municipal Minor/10,001 GPD-100,000 GPD	$6,000
VPDES Municipal Minor/1,001 GPD-10,000 GPD	$5,400
VPDES Municipal Minor/1,000 GPD or less	$2,000
VPDES Municipal - The authorization for land application, distribution, or marketing of biosolids or land disposal of sewage sludge	$5,000*
~~VPDES Municipal Minor Stormwater/MS4~~	~~$2,000~~
*For a new VPDES permit that includes authorization for land application, distribution, or marketing of biosolids or land disposal of sewage sludge, the $5,000 biosolids permit fee will be paid in addition to the required VPDES permit fee.	

B. Virginia Pollution Abatement (VPA) permits. The following fee schedules apply to applications for issuance of a new individual VPA permit or certificate.

VPA Concentrated Animal Feeding Operation	(Reserved)
VPA Intensified Animal Feeding Operation	(Reserved)

VPA Industrial Wastewater Operation/Land Application of 10 or More Inches Per Year	$15,000
VPA Industrial Wastewater Operation/Land Application of Less Than 10 Inches Per Year	$10,500
VPA Industrial Sludge Operation	$7,500
VPA Combined Sludge Operation - Industrial Sludge (excluding water treatment plant residuals) and Municipal Biosolids	$7,500
VPA Municipal Wastewater Operation	$13,500
VPA Municipal Biosolids Operation	$5,000
All other operations not specified above	$750

C. Virginia Water Protection (VWP) permits. The following fee schedules apply to applications for issuance of a new individual and reissuance of an existing individual VWP permit or certificate. Only one permit application fee shall be assessed per application; for a permit application involving more than one of the operations described below, the governing fee shall be based upon the primary purpose of the proposed activity. (Note: Withdrawal amounts shown in the table below are maximum daily withdrawals.)

VWP Individual/Surface Water Impacts (Wetlands, Streams and/or Open Water)	$2,400 plus $220 for each 4,356 sq. ft. (1/10 acre) (or portion thereof) of incremental impact over 87,120 sq. ft. (two acres) ($60,000 maximum)
VWP Individual/Minimum Instream Flow - Withdrawals equal to or greater than 3,000,000 gallons on any day	$25,000
VWP Individual/Minimum Instream Flow - Withdrawals between 2,000,000 and 2,999,999 gallons on any day	$20,000
VWP Individual/Minimum Instream Flow - Withdrawals between 1,000,000 and 1,999,999 gallons on any day	$15,000
VWP Individual/Minimum Instream Flow - Withdrawals less than 1,000,000 gallons on any day that do not otherwise qualify for a general VWP permit for water withdrawals	$10,000
VWP Individual/Reservoir - Major	$35,000
VWP Individual/Reservoir - Minor	$25,000
VWP Individual/Nonmetallic Mineral Mining	$2,400 plus $220 for each 4,356 sq. ft. (1/10 acre) (or portion thereof) of incremental impact over 87,120 sq. ft. (two acres) ($7,500 maximum)

D. Surface Water Withdrawal (SWW) permits or certificates issued in response to Chapter 24 (§ 62.1-242 et seq.) of Title 62.1 of the Code of Virginia. The following fee schedules apply to applications for issuance of a new individual, and reissuance of an existing individual SWW permit or certificate.

Agricultural withdrawal not exceeding 150 million gallons in any single month	(Reserved)
Agricultural withdrawal greater than 150 million gallons but less than 300 million gallons in any single month	(Reserved)
Agricultural withdrawal of 300 million gallons or greater in any single month	(Reserved)
Surface Water Withdrawal	$12,000

E. Groundwater Withdrawal (GWW) permits issued in response to Chapter 25 (§ 62.1-254 et seq.) of Title 62.1 of the Code of Virginia. The following fee schedules apply to applications for issuance of a new individual, and reissuance of an existing individual GWW permit or certificate.

Agricultural withdrawal not exceeding 150 million gallons in any single month	(Reserved)
Agricultural withdrawal greater than 150 million gallons but less than 300 million gallons in any single month	(Reserved)
Agricultural withdrawal of 300 million gallons or greater in any single month	(Reserved)

Groundwater Withdrawal/Initial Permit for an Existing Withdrawal Based Solely on Historic Withdrawals	$1,200
Groundwater Withdrawal - effective through December 31, 2018	$6,000
Groundwater Withdrawal - effective January 1, 2019	$9,000

9VAC25-20-120. Fee schedules for major modification of individual permits or certificates requested by the permit or certificate holder.

The following fee schedules apply to applications for major modification of an individual permit or certificate requested by the permit or certificate holder:

1. Virginia Pollutant Discharge Elimination System (VPDES) permits. The application fees listed in the table below apply to a major modification that occurs (and becomes effective) before the stated permit expiration date. (Note: All flows listed in the table below are facility "design" flows.)

VPDES Industrial Major	$12,000
VPDES Municipal Major	$10,650
~~VPDES Municipal Major Stormwater/MS4~~	~~$5,150~~
VPDES Industrial Minor/No Standard Limits	$5,100
VPDES Industrial Minor/Standard Limits	$3,300
VPDES Industrial Stormwater	$3,600
VPDES Municipal Minor/Greater Than 100,000 GPD	$3,750
VPDES Municipal Minor/10,001 GPD - 100,000 GPD	$3,000
VPDES Municipal Minor/1,001 GPD - 10,000 GPD	$2,700
VPDES Municipal - modification relating to the authorization for land application, distribution, or marketing of biosolids or land disposal of sewage sludge	$1,000*
VPDES Municipal Minor/1,000 GPD or Less	$1,000
~~VPDES Municipal Minor Stormwater/MS4~~	~~$1,000~~

*The fee for modification of a VPDES permit due to changes relating to authorization for land application, distribution, or marketing of biosolids or land disposal of sewage sludge shall be $1,000, notwithstanding other modification fees incurred. The modification fee shall apply for any addition of land application sites to a permit.

2. Virginia Pollution Abatement (VPA) permits. The application fees listed in the table below apply to a major modification that occurs (and becomes effective) before the stated permit expiration date.

VPA Concentrated Animal Feeding Operation	(Reserved)
VPA Intensified Animal Feeding Operation	(Reserved)
VPA Industrial Wastewater Operation/Land Application of 10 or More Inches Per Year	$7,500
VPA Industrial Wastewater Operation/Land Application of Less Than 10 Inches Per Year	$5,250
VPA Industrial Sludge Operation	$3,750[1]
VPA Combined Sludge Operation - Industrial Sludges (excluding water treatment plant residuals) and Municipal Biosolids	$3,750[1]
VPA Municipal Wastewater Operation	$6,750
VPA Municipal Biosolids Operation	$1,000[1, 2]
All other operations not specified above	$375

[1] The modification fee shall apply for any addition of land application sites to a permit.

[2]When adding any industrial source (excluding water treatment plant residuals) to a permit that only authorizes the land application of municipal biosolids, the modification fee for a VPA combined sludge operation shall apply.

3. Virginia Water Protection (VWP) permits. (Note: Only one permit application fee shall be assessed per application; for a permit application involving more than one of the operations described below, the governing fee shall be based upon the primary purpose of the proposed activity.)

VWP Individual/Surface Water Impacts (Wetlands,	$1,200 plus $110 for each 4,356 sq. ft. (1/10 acre) (or portion thereof) of

Streams and/or Open Water)	incremental impact over 87,120 sq. ft. (two acres) ($30,000 maximum)
VWP Individual/Minimum Instream Flow	$5,000
VWP Individual/Reservoir (Major or Minor)	$12,500
VWP Individual/Nonmetallic Mineral Mining	$1,200 plus $110 for each 4,356 sq. ft. (1/10 acre) (or portion thereof) of incremental impact over 87,120 sq. ft. (two acres) ($3,750 maximum)

4. Surface Water Withdrawal (SWW) permits or certificates issued in response to Chapter 24 (§ 62.1-242 et seq.) of Title 62.1 of the Code of Virginia.

Agricultural withdrawal not exceeding 150 million gallons in any single month	(Reserved)
Agricultural withdrawal greater than 150 million gallons but less than 300 million gallons in any single month	(Reserved)
Agricultural withdrawal of 300 million gallons or greater in any single month	(Reserved)
Surface Water Withdrawal	$6,000

5. Groundwater Withdrawal (GWW) permits issued in response to Chapter 25 (§ 62.1-254 et seq.) of Title 62.1 of the Code of Virginia.

Agricultural withdrawal not exceeding 150 million gallons in any single month	(Reserved)
Agricultural withdrawal greater than 150 million gallons but less than 300 million gallons in any single month	(Reserved)
Agricultural withdrawal of 300 million gallons or greater in any single month	(Reserved)
Groundwater Withdrawal/Initial Permit for an Existing Withdrawal Based Solely on Historic Withdrawals	$600
Groundwater Withdrawal	$3,000

9VAC25-20-130. Fees for filing registration statements or applications for general permits issued by the board.

The following fees apply to filing of applications or registration statements for all general permits issued by the board, except:

1. The fee for filing a registration statement for coverage under 9VAC25-110 (General VPDES Permit for Domestic Sewage Discharges of Less Than or Equal to 1,000 GPD) is $0.

2. The fee for filing a registration statement for coverage under 9VAC25-120 (General VPDES Permit Regulation for Discharges ~~From~~ from Petroleum Contaminated Sites) is $0.

3. The fee for filing an application or registration statement for coverage under a VWP General Permit issued by the board shall be:

VWP General/Less Than 4,356 sq. ft. (1/10 acre) of Surface Water Impact (Wetlands, Streams and/or Open Water)	$0
VWP General/4,356 sq. ft. to 21,780 sq. ft. (1/10 acre to 1/2 acre) of Surface Water Impact (Wetlands, Streams and/or Open Water)	$600
VWP General/21,781 sq. ft. to 43,560 sq. ft. (greater than 1/2 acre to one acre) of Surface Water Impact (Wetlands, Streams and/or Open Water)	$1,200
VWP General/43,561 sq. ft. to 87,120 sq. ft. (greater than one acre to two acres) of Surface Water Impact (Wetlands, Streams and/or Open Water)	$1,200 plus $120 for each 4,356 sq. ft. (1/10 acre) (or portion thereof) of incremental impact over 43,560 sq. ft. (one acre) ($2,400 maximum)
VWP General/Minimum Instream Flow/Reservoir - Water withdrawals and/or pond construction	$2,400

4. ~~VPDES Storm Water General Permits.a. Except as specified in subdivision 4 b of this section, the~~ The fee for filing a registration statement for coverage under a VPDES ~~storm water general~~ general/industrial stormwater permit issued by the board shall be~~:~~ $500.

~~VPDES General/Industrial Storm Water Management~~	~~$500~~
~~VPDES General/Storm Water Management - Phase I Land Clearing (Large Construction Activity - Sites~~	~~$500~~

~~or common plans of development equal to or greater than 5 acres)~~	
~~VPDES General/Storm Water Management - Phase II Land Clearing (Small Construction Activity - Sites or common plans of development less than 5 acres)~~	~~$300~~

~~b. Owners of facilities that are covered under the Industrial Activity (VAR5) and Construction Site (VAR10) storm water general permits that expire on June 30, 2004, and who are reapplying for coverage under the new general permits that are effective on July 1, 2004, must submit an application fee of $600 to reapply.~~

5. Except as specified in subdivisions 1, 2, 3 and 4 of this section, the fee for filing an application or registration statement for coverage under any general permit issued by the board shall be $600.

9VAC25-20-142. Permit maintenance fees.

A. The following annual permit maintenance fees apply to each individual VPDES and VPA permit, including expired permits that have been administratively continued, except those exempted by 9VAC25-20-50 B or 9VAC25-20-60 A 4:

1. Base fee rate for Virginia Pollutant Discharge Elimination System (VPDES) permitted facilities. (Note: All flows listed in the table below are facility "design" flows.)

VPDES Industrial Major	$7,876
VPDES Municipal Major/Greater Than 10 MGD	$7,794
VPDES Municipal Major/2 MGD - 10 MGD	$7,138
VPDES Municipal Major/Less Than 2 MGD	$6,317
~~VPDES Municipal Major Stormwater/MS4~~	~~$6,235~~
VPDES Industrial Minor/No Standard Limits	$3,347
VPDES Industrial Minor/Standard Limits	$1,969
VPDES Industrial Minor/Water Treatment System	$1,969
VPDES Industrial Stormwater	$2,363
VPDES Municipal Minor/Greater Than 100,000 GPD	$2,461
VPDES Municipal Minor/10,001 GPD - 100,000 GPD	$1,969
VPDES Municipal Minor/1,001 GPD - 10,000 GPD	$1,772
VPDES Municipal Minor/1,000 GPD or Less	$656
~~VPDES Municipal Minor Stormwater/MS4~~	~~$656~~

2. Base fee rate for Virginia Pollution Abatement (VPA) permits.

VPA Industrial Wastewater Operation/Land Application of 10 or More Inches Per Year	$2,461
VPA Industrial Wastewater Operation/Land Application of Less Than 10 Inches Per Year	$1,723
VPA Industrial Sludge Operation	$1,231
VPA Combined Sludge Operation - Industrial Sludges (excluding water treatment plant residuals) and Municipal Biosolids	$1,231
VPA Municipal Wastewater Operation	$2,215
VPA Municipal Biosolids Operation	$100
VPA Concentrated Animal Feeding Operation	(Reserved)
VPA Intensified Animal Feeding Operation	(Reserved)
All other operations not specified above	$123

3. The amount of the annual permit maintenance fee due from the owner for VPDES and VPA permits for a specified year as required by 9VAC25-20-40 C shall be calculated according to the following formulae:

$$F = B \times C$$

$$C = 1 + \Delta CPI$$

$$\Delta CPI = \frac{CPI - 215.15}{215.15}$$

Where:

F = the permit maintenance fee amount due for the specified calendar year, expressed in dollars.

B = the base fee rate for the type of VPDES or VPA permit from subdivision 1 or 2 of this subsection, expressed in dollars.

C = the Consumer Price Index adjustment factor.

ΔCPI = the difference between CPI and 215.15 (the average of the Consumer Price Index values for all-urban consumers for the 12-month period ending on April 30, 2009), expressed as a proportion of 215.15.

CPI = the average of the Consumer Price Index values for all-urban consumers for the 12-month period ending on April 30 of the calendar year before the specified year for which the permit maintenance fee is due. (The Consumer Price Index for all-urban consumers is published by the U.S. Department of Labor, Bureau of Labor Statistics, U.S. All items, CUUR0000SA0).

For example, if calculating the 2010 permit maintenance fee (F) for a VPDES Industrial Major source:

CPI = 215.15 (the average of CPI values from May 1, 2008, to April 30, 2009, inclusive would be used for the 2010 permit maintenance fee calculation).

ΔCPI = zero for the 2010 permit maintenance fee calculation (i.e., (CPI - 215.15)/215.15 = (215.15 - 215.15)/215.15 = 0). (Note: ΔCPI for other years would not be zero.)

C = 1.0 for the 2010 permit maintenance fee calculation (i.e., 1 + ΔCPI = 1 + 0 = 1.0).

B = $7,876 (i.e. the value for a VPDES Industrial Major source, taken from subdivision 1 of this subsection).

F = $7,876 for the 2010 permit maintenance fee calculation for this VPDES Industrial Major source (i.e., $7,876 x 1.0 = $7,876).

4. Permit maintenance fees (F) calculated for each facility shall be rounded to the nearest dollar.

5. The total amount of permit fees collected by the board (permit maintenance fees plus permit application fees) shall not exceed 50% of direct costs for administration, compliance, and enforcement of VPDES and VPA permits. The director shall take whatever action is necessary to ensure that this limit is not exceeded.

B. Additional permit maintenance fees.

1. An additional permit maintenance fee of $1,000 shall be paid annually by permittees in a toxics management program. Any facility that performs acute or chronic biological testing for compliance with a limit or special condition requiring monitoring in a VPDES permit is included in the toxics management program.

2. An additional permit maintenance fee of $1,000 shall be paid annually by permittees that have more than five process wastewater discharge outfalls at a single facility (not including "internal" outfalls).

3. For a local government or public service authority with permits for multiple facilities in a single jurisdiction, the total permit maintenance fees for all permits held as of April 1, 2004, shall not exceed $32,818 per year.

C. If the category of a facility (as described in subdivision A 1 or A 2 of this section) changes as the result of a permit modification, the permit maintenance fee based upon the permit category as of April 1 shall be submitted by October 1.

D. Annual permit maintenance fees may be discounted for participants in the Environmental Excellence Program as described in 9VAC25-20-145.

VA.R. Doc. No. R21-5834; Filed August 10, 2020, 3:17 p.m.

Final Regulation

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

Title of Regulation: **9VAC25-31. Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (amending 9VAC25-31-10, 9VAC25-31-25, 9VAC25-31-40, 9VAC25-31-100, 9VAC25-31-120, 9VAC25-31-130, 9VAC25-31-170, 9VAC25-31-190, 9VAC25-31-200, 9VAC25-31-220, 9VAC25-31-280, 9VAC25-31-380, 9VAC25-31-800).**

Statutory Authority: § 62.1-44.15 of the Code of Virginia; § 402 of the federal Clean Water Act; 40 CFR Parts 122, 123, 124, 403, and 503.

Effective Date: October 1, 2020.

Agency Contact: Elleanore Daub, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4067, FAX (804) 698-4178, or email elleanore.daub@deq.virginia.gov.

Summary:

The amendments (i) incorporate the June 12, 2019, National Pollutant Discharge and Elimination System (NPDES) Applications and Program Updates rule that applies to 40 CFR 122.21 and 40 CFR 124, which modernizes and clarifies permit applications by including items such as email information and North American Industry Classification System (NAICS) codes; (ii) conform throughout the regulation "storm water" (two words) to "stormwater" (one word) to be consistent with the NPDES Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity; (iii) make two definitions consistent with 40 CFR 122.26; (iv) update the

40 CFR reference being incorporated to July 1, 2019; (v) include a reference to Virginia Environmental Laboratory Accredited Program requirements; (vi) update a reference to wastewater works operator license regulations; and (vii) correct citations throughout the regulation.

Part I

Definitions and General Program Requirements

9VAC25-31-10. Definitions.

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

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

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

"Applicable standards and limitations" means all state, interstate, and federal standards and limitations to which a discharge, a sewage sludge use or disposal practice, or a related activity is subject under the CWA (33 USC § 1251 et seq.) and the law, including effluent limitations, water quality standards, standards of performance, toxic effluent standards or prohibitions, best management practices, pretreatment standards, and standards for sewage sludge use or disposal under §§ 301, 302, 303, 304, 306, 307, 308, 403, and 405 of CWA.

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

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

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

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

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

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

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

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

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

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

"Class I sludge management facility" means any POTW identified under Part VII (9VAC25-31-730 et seq.) of this chapter as being required to have an approved pretreatment program and any other treatment works treating domestic sewage classified as a Class I sludge management facility by the regional administrator, in conjunction with the director, because of the potential for its sludge use or disposal practices to adversely affect public health and the environment.

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

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

a. 700 mature dairy cows, whether milked or dry;

b. 1,000 veal calves;

c. 1,000 cattle other than mature dairy cows or veal calves. Cattle includes ~~but is not limited to~~ heifers, steers, bulls and cow/calf pairs;

d. 2,500 swine each weighing 55 pounds or more;

e. 10,000 swine each weighing less than 55 pounds;

f. 500 horses;

g. 10,000 sheep or lambs;

h. 55,000 turkeys;

i. 30,000 laying hens or broilers, if the AFO uses a liquid manure handling system;

j. 125,000 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;

k. 82,000 laying hens, if the AFO uses other than a liquid manure handling system;

l. 30,000 ducks, if the AFO uses other than a liquid manure handling system; or

m. 5,000 ducks if the AFO uses a liquid manure handling system.

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

a. The type and number of animals that it stables or confines falls within any of the following ranges:

(1) 200 to 699 mature dairy cattle, whether milked or dry;

(2) 300 to 999 veal calves;

(3) 300 to 999 cattle other than mature dairy cows or veal calves. Cattle includes ~~but is not limited to~~ heifers, steers, bulls and cow/calf pairs;

(4) 750 to 2,499 swine each weighing 55 pounds or more;

(5) 3,000 to 9,999 swine each weighing less than 55 pounds;

(6) 150 to 499 horses;

(7) 3,000 to 9,999 sheep or lambs;

(8) 16,500 to 29,999 laying hens or broilers, if the AFO uses a liquid manure handling system;

(9) 37,500 to 124,999 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;

(10) 25,000 to 81,999 laying hens, if the AFO uses other than a liquid manure handling system;

(11) 10,000 to 29,999 ducks, if the AFO uses other than a liquid manure handling system;

(12) 1,500 to 4,999 ducks, if the AFO uses a liquid manure handling system; and

b. Either one of the following conditions are met:

(1) Pollutants are discharged into surface waters of the state through a man-made ditch, flushing system, or other similar man-made device; or

(2) Pollutants are discharged directly into surface waters of the state that originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

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

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

1. Cold water fish species or other cold water aquatic animals in ponds, raceways, or other similar structures which discharge at least 30 days per year but does not include:

a. Facilities which produce less than 9,090 harvest weight kilograms (approximately 20,000 pounds) of aquatic animals per year; and

b. Facilities which feed less than 2,272 kilograms (approximately 5,000 pounds) of food during the calendar month of maximum feeding; or

2. Warm water fish species or other warm water aquatic animals in ponds, raceways, or other similar structures which discharge at least 30 days per year, but does not include:

a. Closed ponds which discharge only during periods of excess run-off; or

b. Facilities which produce less than 45,454 harvest weight kilograms (approximately 100,000 pounds) of aquatic animals per year.

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

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

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

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

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

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

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

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

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

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

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

"Direct discharge" means the discharge of a pollutant.

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

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

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

"Discharge of a pollutant" means:

1. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Interference" means an indirect discharge ~~which~~ that, alone or in conjunction with an indirect discharge or discharges from other sources, both: (i) inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use, or disposal; and (ii) therefore is a cause of a violation of any requirement of the POTW's VPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of biosolids use or sewage sludge disposal in compliance with the following statutory provisions and regulations or permits issued thereunder (or more stringent state or local regulations): Section 405 of the Clean Water Act, the Solid Waste Disposal Act (SWDA) (including Title II, more commonly referred to as the Resource Conservation and Recovery Act (RCRA) (42 USC § 6901 et seq.), and including state regulations contained in any state sludge management plan prepared pursuant to Subtitle D of the SWDA) the Clean Air Act (42 USC § 701 et seq.), the Toxic Substances Control Act (15 USC § 2601 et seq.), and the Marine Protection, Research and Sanctuaries Act (33 USC § 1401 et seq.).

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

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

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

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

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

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

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

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

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

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

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

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

"Municipality" means a city, town, county, district, association, or other public body created by or under state law and having jurisdiction over disposal of sewage, industrial

wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under § 208 of the CWA.

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

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

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

1. From which there is or may be a discharge of pollutants;

2. That did not commence the discharge of pollutants at a particular site prior to August 13, 1979;

3. ~~Which~~ That is not a new source; and

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

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

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

1. After promulgation of standards of performance under § 306 of the CWA ~~which~~ that are applicable to such source; or

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

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

1. a. The building, structure, facility, or installation is constructed at a site at which no other source is located;

b. The building, structure, facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or

c. The production of wastewater generating processes of the building, structure, facility, or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source should be considered.

2. Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility, or installation meeting the criteria of subdivision 1 b or c of this definition but otherwise alters, replaces, or adds to existing process or production equipment.

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

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

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

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

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

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

"Owner" means the Commonwealth or any of its political subdivisions including~~, but not limited to,~~ sanitation district commissions and authorities, and any public or private institution, corporation, association, firm or company organized or existing under the laws of this or any other state or country, or any officer or agency of the United States, or any person or group of persons acting individually or as a group

that owns, operates, charters, rents, or otherwise exercises control over or is responsible for any actual or potential discharge of sewage, industrial wastes, or other wastes to state waters, or any facility or operation that has the capability to alter the physical, chemical, or biological properties of state waters in contravention of § 62.1-44.5 of the Code of Virginia.

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

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

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

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

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

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

1. Sewage from vessels; or

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

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

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

"Pretreatment requirements" means any requirements arising under Part VII (9VAC25-31-730 et seq.) of this chapter including the duty to allow or carry out inspections, entry or monitoring activities; any rules, regulations, or orders issued by the owner of a publicly owned treatment works; or any reporting requirements imposed by the owner of a publicly owned treatment works or by the regulations of the board. Pretreatment requirements do not include the requirements of a national pretreatment standard.

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

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

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

"Production area" means that part of an AFO that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas. The animal confinement area includes ~~but is not limited to~~ open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards,

medication pens, walkers, animal walkways, and stables. The manure storage area includes ~~but is not limited to~~ lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage areas ~~includes but is not limited to~~ include feed silos, silage bunkers, and bedding materials. The waste containment area includes ~~but is not limited to~~ settling basins, and areas within berms and diversions that separate uncontaminated ~~storm water~~ stormwater. Also included in the definition of production area is any egg washing or egg processing facility, and any area used in the storage, handling, treatment, or disposal of mortalities.

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

"Publicly owned treatment works" or "POTW" means a treatment works as defined by § 212 of the CWA, which is owned by a state or municipality (as defined by § 502(4) of the CWA). This definition includes any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes, and other conveyances only if they convey wastewater to a POTW treatment plant. The term also means the municipality as defined in § 502(4) of the CWA, which has jurisdiction over the indirect discharges to and the discharges from such a treatment works.

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

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

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

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

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

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

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

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

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

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

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

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

"Significant industrial user" or "SIU" means:

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

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

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

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

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

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

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

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

"Significant materials" means, but is not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under § 101(14) of CERCLA (42 USC § 9601(14)); any chemical the facility is required to report pursuant to § 313 of Title III of SARA (42 USC § 11023); fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with ~~storm water~~ stormwater discharges.

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

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

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

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

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

"State" means the Commonwealth of Virginia.

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

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

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

~~"Storm water~~ "Stormwater" discharge associated with industrial activity" means the discharge from any conveyance ~~which~~ that is used for collecting and conveying ~~storm water~~ stormwater and ~~which~~ that is directly related to manufacturing, processing~~,~~ or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the VPDES program under 9VAC25-31. For the categories of industries identified in this definition, the term includes~~, but is not limited to, storm water~~ stormwater discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or byproducts used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process wastewaters; sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and final products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to ~~storm water~~ stormwater. For the purposes of this definition, material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, byproduct, or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking ~~lots~~ lots, as long as the drainage from the excluded areas is not mixed with ~~storm water~~ stormwater drained from the above described areas. Industrial facilities (including industrial facilities that are federally, state, or municipally owned or operated that meet the description of the facilities listed in subdivisions 1 through 10 of this definition) include those facilities designated under the provisions of 9VAC25-31-120 A 1 c or under 9VAC25-31-120 A 7 a (1) or (2) of the VPDES Permit Regulation. The following categories of facilities are considered to be engaging in industrial activity for purposes of this subsection:

1. Facilities subject to ~~storm water~~ stormwater effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 CFR

Subchapter N (except facilities with toxic pollutant effluent standards that are exempted under category ~~10)~~ 10 of this definition);

2. Facilities classified as Standard Industrial Classifications (SIC) 24 (except 2434), 26 (except 265 and 267), 28 (except ~~283)~~ 283 and 285), 29, 311, 32 (except 323), 33, 3441, 373 (Office of Management and Budget (OMB) SIC Manual, 1987);

3. Facilities classified as ~~Standard Industrial Classifications~~ SIC 10 through 14 (mineral industry) (OMB SIC Manual, 1987) including active or inactive mining operations (except for areas of coal mining operations no longer meeting the definition of a reclamation area under 40 CFR 434.11(l) because the performance bond issued to the facility by the appropriate ~~SMCRA~~ Surface Mining Control and Reclamation Act of 1977 (SMCRA) (30 USC § 1201 et seq.) authority has been released, or except for areas of non-coal mining operations ~~which~~ that have been released from applicable state or federal reclamation requirements after December 17, 1990) and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge ~~storm water~~ stormwater contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, byproducts, or waste products located on the site of such ~~operations;~~ operations (inactive mining operations are mining sites that are not being actively mined, but which have an identifiable ~~owner/operator~~ owner or operator; inactive mining sites do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined materials, nor sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim);

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

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

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

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

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

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

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

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

"Surface waters" means:

1. All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters ~~which~~ that are subject to the ebb and flow of the tide;

2. All interstate waters, including interstate wetlands;

3. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

a. ~~Which~~ That are or could be used by interstate or foreign travelers for recreational or other purposes;

b. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

c. ~~Which~~ That are used or could be used for industrial purposes by industries in interstate commerce;

4. All impoundments of waters otherwise defined as surface waters under this definition;

5. Tributaries of waters identified in subdivisions 1 through 4 of this definition;

6. The territorial sea; and

7. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in subdivisions 1 through 6 of this definition.

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

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

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

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

"Treatment works" means any devices and systems used for the storage, treatment, recycling or reclamation of sewage or liquid industrial waste, or other waste or necessary to recycle or reuse water, including intercepting sewers, outfall sewers, sewage collection systems, individual systems, pumping, power and other equipment and their appurtenances; extensions, improvements, remodeling, additions, or alterations thereof; and any works, including land that will be an integral part of the treatment process or is used for ultimate disposal of residues resulting from such treatment; or any other method or system used for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste or industrial waste, including waste in combined sewer water and sanitary sewer systems.

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

"TWTDS" means treatment works treating domestic sewage.

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

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

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

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

"Virginia Pollutant Discharge Elimination System permit" or "VPDES permit" means a document issued by the board pursuant to this chapter authorizing, under prescribed conditions, the potential or actual discharge of pollutants from a point source to surface waters and the use of biosolids or disposal of sewage sludge. Under the approved state program, a VPDES permit is equivalent to an NPDES permit.

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

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

"Wastewater works operator" means any individual employed or appointed by any owner, and who is designated by such owner to be the person in responsible charge, such as a supervisor, a shift operator, or a substitute in charge, and whose duties include testing or evaluation to control wastewater works operations. Not included in this definition are superintendents or directors of public works, city engineers, or other municipal or industrial officials whose duties do not include the actual operation or direct supervision of wastewater works.

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

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

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

9VAC25-31-25. Applicability of incorporated references based on the dates that they became effective.

Except as noted, when a regulation of the U.S. Environmental Protection Agency set forth in Title 40 of the Code of Federal Regulations is referenced and incorporated in this chapter that regulation shall be as it exists and has been published in the July 1, ~~2017~~ 2019, update. ~~The final rules published in the Federal Register on July 5, 2017 (82 FR 30997), which corrects 40 CFR 441.30, and on August 28, 2017 (82 FR 40836), which amends 40 CFR Part 136, are also incorporated by reference in this chapter.~~

9VAC25-31-40. Exclusions.

The following discharges do not require VPDES permits:

1. Any discharge of sewage from vessels, effluent from properly functioning marine engines, laundry, shower, and galley sink wastes, or any other discharge incidental to the normal operation of a vessel. This exclusion does not apply to rubbish, trash, garbage, or other such materials discharged overboard; nor to other discharges when the vessel is operating in a capacity other than as a means of transportation such as when used as an energy or mining facility, a storage facility or a seafood processing facility, or when secured to a storage facility or a seafood processing facility, or when secured to the bed of the ocean, contiguous zone or surface waters for the purpose of mineral or oil exploration or development.

2. Discharges of dredged or fill material into surface waters which are regulated under § 404 of the CWA.

3. The introduction of sewage, industrial wastes or other pollutants into publicly owned treatment works by indirect dischargers. Plans or agreements to switch to this method of disposal in the future do not relieve dischargers of the obligation to have and comply with permits until all discharges of pollutants to surface waters are eliminated. This exclusion does not apply to the introduction of pollutants to privately owned treatment works or to other discharges through pipes, sewers, or other conveyances owned by a state, municipality, or other party not leading to treatment works.

4. Any discharge in compliance with the instructions of an on-scene coordinator pursuant to 40 CFR Part 300 (The National Oil and Hazardous Substances Pollution Contingency Plan) or 33 CFR 153.10(e) (Pollution by Oil and Hazardous Substances).

5. Any introduction of pollutants from nonpoint source agricultural and silvicultural activities, including ~~storm water~~ stormwater run-off from orchards, cultivated crops, pastures, range lands, and forest lands, but not discharges from concentrated animal feeding operations, discharges from concentrated aquatic animal production facilities, discharges to aquaculture projects, and discharges from silvicultural point sources.

6. Return flows from irrigated agriculture.

7. Discharges into a privately owned treatment works, except as the board may otherwise require.

Part II

Permit Applications and Special VPDES Permit Programs

9VAC25-31-100. Application for a permit.

A. Duty to apply. The following shall submit a complete application to the department in accordance with this section. The requirements for concentrated animal feeding operations are described in subdivisions C 1 and 2 of 9VAC25-31-130.

1. Any person who discharges or proposes to discharge pollutants; and

2. Any person who owns or operates a sludge-only facility whose biosolids use or sewage sludge disposal practice is regulated by 9VAC25-31-420 through 9VAC25-31-720 and who does not have an effective permit.

B. Exceptions. The following are not required to submit a complete application to the department in accordance with this section unless the board requires otherwise:

1. Persons covered by general permits;

2. Persons excluded from the requirement for a permit by this chapter; or

3. A user of a privately owned treatment works.

C. Who applies.

1. The owner of the facility or operation.

2. When a facility or activity is owned by one person but is operated by another person, it is the operator's duty to obtain a permit.

3. Notwithstanding the requirements of subdivision 2 of this subsection, biosolids land application by the operator may be authorized by the owner's permit.

D. Time to apply.

1. Any person proposing a new discharge shall submit an application at least 180 days before the date on which the discharge is to commence, unless permission for a later date has been granted by the board. Facilities proposing a new discharge of ~~storm water~~ stormwater associated with industrial activity shall submit an application 180 days before that facility commences industrial activity which may result in a discharge of ~~storm water~~ stormwater associated with that industrial activity. Different submittal dates may be required under the terms of applicable general permits. Persons proposing a new discharge are encouraged

to submit their applications well in advance of the ~~90 or 180 day requirements~~ 180-day requirement to avoid delay. New discharges composed entirely of ~~storm water~~ stormwater, other than those dischargers identified in 9VAC25-31-120 A 1, shall apply for and obtain a permit according to the application requirements in 9VAC25-31-120 B.

2. All TWTDS whose biosolids use or sewage sludge disposal practices are regulated by 9VAC25-31-420 through 9VAC25-31-720 must submit permit applications according to the applicable schedule in subdivision 2 a or b of this subsection.

a. A TWTDS with a currently effective VPDES permit must submit a permit application at the time of its next VPDES permit renewal application. Such information must be submitted in accordance with subsection D of this section.

b. Any other TWTDS not addressed under subdivision 2 a of this subsection must submit the information listed in subdivisions 2 b (1) through (5) of this subsection to the department within one year after publication of a standard applicable to its biosolids use or sewage sludge disposal practice or practices, using a form provided by the department. The board will determine when such TWTDS must submit a full permit application.

(1) The TWTDS's name, mailing address, location, and status as federal, state, private, public or other entity;

(2) The applicant's name, address, telephone number, electronic mail address, and ownership status;

(3) A description of the biosolids use or sewage sludge disposal practices. Unless the biosolids meets the requirements of subdivision Q 9 d of this section, the description must include the name and address of any facility where biosolids or sewage sludge is sent for treatment or disposal and the location of any land application sites;

(4) Annual amount of sewage sludge generated, treated, used or disposed (estimated dry weight basis); and

(5) The most recent data the TWTDS may have on the quality of the biosolids or sewage sludge.

c. Notwithstanding subdivision 2 a or b of this subsection, the board may require permit applications from any TWTDS at any time if the board determines that a permit is necessary to protect public health and the environment from any potential adverse effects that may occur from toxic pollutants in sewage sludge.

d. Any TWTDS that commences operations after promulgation of an applicable standard for biosolids use or sewage sludge disposal shall submit an application to the department at least 180 days prior to the date proposed for commencing operations.

E. Duty to reapply. All permittees with a currently effective permit shall submit a new application at least 180 days before the expiration date of the existing permit, unless permission for a later date has been granted by the board. The board shall not grant permission for applications to be submitted later than the expiration date of the existing permit.

F. Completeness.

1. The board shall not issue a permit before receiving a complete application for a permit except for VPDES general permits. An application for a permit is complete when the board receives an application form and any supplemental information which are completed to its satisfaction. The completeness of any application for a permit shall be judged independently of the status of any other permit application or permit for the same facility or activity.

2. No application for a VPDES permit to discharge sewage into or adjacent to state waters from a privately owned treatment works serving, or designed to serve, 50 or more residences shall be considered complete unless the applicant has provided the department with notification from the State Corporation Commission that the applicant is incorporated in the Commonwealth and is in compliance with all regulations and relevant orders of the State Corporation Commission.

3. No application for a new individual VPDES permit authorizing a new discharge of sewage, industrial wastes, or other wastes shall be considered complete unless it contains notification from the county, city, or town in which the discharge is to take place that the location and operation of the discharging facility are consistent with applicable ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2 of the Code of Virginia. The county, city, or town shall inform in writing the applicant and the board of the discharging facility's compliance or noncompliance not more than 30 days from receipt by the chief administrative officer, or his agent, of a request from the applicant. Should the county, city, or town fail to provide such written notification within 30 days, the requirement for such notification is waived. The provisions of this subsection shall not apply to any discharge for which a valid VPDES permit had been issued prior to March 10, 2000.

4. A permit application shall not be considered complete if the board has waived application requirements under subsection ~~J or P~~ K or Q of this section and ~~the~~ EPA has disapproved the waiver application. If a waiver request has been submitted to ~~the~~ EPA more than 210 days prior to permit expiration and ~~the~~ EPA has not disapproved the waiver application 181 days prior to permit expiration, the permit application lacking the information subject to the waiver application shall be considered complete.

5. Except as specified in subdivision 5 a of this subsection, a permit application shall not be considered complete unless all required quantitative data are collected in accordance with sufficiently sensitive analytical methods approved under 40 CFR Part 136 or required under 40 CFR Chapter I, Subchapter N (Effluent Guidelines and Standards) or O (Sewage Sludge).

a. For the purposes of this requirement, a method approved under 40 CFR Part 136 or required under 40 CFR Chapter I, Subchapter N or O is "sufficiently sensitive" when:

(1) The method minimum level (ML) is at or below the level of the applicable water quality criterion for the measured pollutant or pollutant parameter;

(2) The method ML is above the applicable water quality criterion, but the amount of the pollutant or pollutant parameter in a facility's discharge is high enough that the method detects and quantifies the level of the pollutant or pollutant parameter in the discharge; or

(3) The method has the lowest ML of the analytical methods approved under 40 CFR Part 136 or required under 40 CFR Chapter I, Subchapter N or O for the measured pollutant or pollutant parameter.

b. When there is no analytical method that has been approved under 40 CFR 136, required under 40 CFR Chapter I, Subchapter N or O, and is not otherwise required by the director, the applicant may use any suitable method but shall provide a description of the method. When selecting a suitable method, other factors such as a method's precision, accuracy, or resolution, may be considered when assessing the performance of the method.

~~5.~~ 6. In accordance with § 62.1-44.19:3 A of the Code of Virginia, no application for a permit or variance to authorize the storage of biosolids shall be complete unless it contains certification from the governing body of the locality in which the biosolids is to be stored that the storage site is consistent with all applicable ordinances. The governing body shall confirm or deny consistency within 30 days of receiving a request for certification. If the governing body does not so respond, the site shall be deemed consistent.

~~6.~~ 7. No application for a permit to land apply biosolids in accordance with Part VI (9VAC25-31-420 et seq.) of this chapter shall be complete unless it includes the written consent of the landowner to apply biosolids on his property.

G. Information requirements. All applicants for VPDES permits, other than POTWs and other TWTDS, shall provide the following information to the department, using the application form provided by the department (additional information required of applicants is set forth in subsections H through L and Q through R of this section).

1. The activities conducted by the applicant ~~which~~ that require it to obtain a VPDES permit;

2. Name, mailing address, and location of the facility for which the application is submitted;

3. Up to four SIC and NAICS codes ~~which~~ that best reflect the principal products or services provided by the facility;

4. The operator's name, address, telephone number, electronic mail address, ownership status, and status as federal, state, private, public, or other entity;

5. Whether the facility is located on Indian lands;

6. A listing of all permits or construction approvals received or applied for under any of the following programs:

a. Hazardous Waste Management program under RCRA (42 USC § 6921);

b. UIC program under SDWA (42 USC § 300h);

c. VPDES program under the CWA and the law;

d. Prevention of Significant Deterioration (PSD) program under the Clean Air Act (42 USC § 4701 et seq.);

e. Nonattainment program under the Clean Air Act (42 USC § 4701 et seq.);

f. National Emission Standards for Hazardous Pollutants (NESHAPS) preconstruction approval under the Clean Air Act (42 USC § 4701 et seq.);

g. Ocean dumping permits under the Marine Protection Research and Sanctuaries Act (33 USC § 14 et seq.);

h. Dredge or fill permits under § 404 of the CWA; and

i. Other relevant environmental permits, including state permits;

7. A topographic map (or other map if a topographic map is unavailable) extending one mile beyond the property boundaries of the source, depicting the facility and each of its intake and discharge structures; each of its hazardous waste treatment, storage, or disposal facilities; each well where fluids from the facility are injected underground; and those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant in the map area; ~~and~~

8. A brief description of the nature of the business;

9. An indication of whether the facility uses cooling water and the source of the cooling water; and

10. An indication of whether the facility is requesting any of the variances in subsection M of this section, if known at the time of application.

H. Application requirements for existing manufacturing, commercial, mining, and silvicultural dischargers. Existing manufacturing, commercial mining, and silvicultural dischargers applying for VPDES permits, except for those facilities subject to the requirements of subsection I of this section, shall provide the following information to the department, using application forms provided by the department.

1. The latitude and longitude of each outfall to the nearest 15 seconds and the name of the receiving water.

2. A line drawing of the water flow through the facility with a water balance, showing operations contributing wastewater to the effluent and treatment units. Similar processes, operations, or production areas may be indicated as a single unit, labeled to correspond to the more detailed identification under subdivision 3 of this subsection. The water balance must show approximate average flows at

intake and discharge points and between units, including treatment units. If a water balance cannot be determined (for example, for certain mining activities), the applicant may provide instead a pictorial description of the nature and amount of any sources of water and any collection and treatment measures.

3. A narrative identification of each type of process, operation, or production area ~~which~~ that contributes wastewater to the effluent for each outfall, including process wastewater, cooling water, and ~~storm water~~ stormwater run-off; the average flow which each process contributes; and a description of the treatment the wastewater receives, including the ultimate disposal of any solid or fluid wastes other than by discharge. Processes, operations, or production areas may be described in general terms (for example, dye-making reactor, distillation tower). For a privately owned treatment works, this information shall include the identity of each user of the treatment works. The average flow of point sources composed of ~~storm water~~ stormwater may be estimated. The basis for the rainfall event and the method of estimation must be indicated.

4. If any of the discharges described in subdivision 3 of this subsection are intermittent or seasonal, a description of the frequency, duration and flow rate of each discharge occurrence (except for ~~storm water~~ stormwater run-off, spillage or leaks).

5. If an effluent guideline promulgated under § 304 of the CWA applies to the applicant and is expressed in terms of production (or other measure of operation), a reasonable measure of the applicant's actual production reported in the units used in the applicable effluent guideline. The reported measure must reflect the actual production of the facility as required by 9VAC25-31-230 B 2.

6. If the applicant is subject to any present requirements or compliance schedules for construction, upgrading or operation of waste treatment equipment, an identification of the abatement requirement, a description of the abatement project, and a listing of the required and projected final compliance dates.

7. Information on the discharge of pollutants specified in this subdivision (except information on ~~storm water~~ stormwater discharges ~~which~~ that is to be provided as specified in 9VAC25-31-120).

a. When quantitative data for a pollutant are required, the applicant must collect a sample of effluent and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR Part 136 unless use of another method is required under 40 CFR Subchapter N or O. When no analytical method is approved, the applicant may use any suitable method but must provide a description of the method. When an applicant has two or more outfalls with substantially identical effluents, the board may allow the applicant to test only one outfall and report that the quantitative data also apply to the substantially identical outfalls. The requirements in subdivisions 7 e and f of this subsection that an applicant must provide quantitative data for certain pollutants known or believed to be present do not apply to pollutants present in a discharge solely as the result of their presence in intake water; however, an applicant must report such pollutants as present. ~~Grab samples must be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform, and fecal streptococcus.~~ When this subdivision requires analysis of pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform (including E. coli) and Enterococci (previously known as fecal streptococcus at 40 CFR 122.26 (d)(2)(iii)(A)(3)), or volatile organics, grab samples must be collected for those pollutants. For all other pollutants, a 24-hour composite ~~samples~~ sample, using a minimum of four grab samples, must be used unless specified otherwise at 40 CFR 136. However, a minimum of one grab sample may be taken for effluents from holding ponds or other impoundments with a retention period greater than 24 hours. In addition, for discharges other than ~~storm water~~ stormwater discharges, the board may waive composite sampling for any outfall for which the applicant demonstrates that the use of an automatic sampler is infeasible and that the minimum of four grab samples will be a representative sample of the effluent being discharged. Results of analyses of individual grab samples for any parameter may be averaged to obtain the daily average. Grab samples that are not required to be analyzed immediately (see Table II at 40 CFR 136.3 (e)) may be composited in the laboratory, provided that container, preservation, and holding time requirements are met (see Table II at 40 CFR 136.3(e)) and that sample integrity is not compromised by compositing.

b. For ~~storm water~~ stormwater discharges, all samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inch and at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. Where feasible, the variance in the duration of the event and the total rainfall of the event should not exceed 50% from the average or median rainfall event in that area. For all applicants, a flow-weighted composite shall be taken for either the entire discharge or for the first three hours of the discharge. The flow-weighted composite sample for a ~~storm water~~ stormwater discharge may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of 15 minutes (applicants submitting permit applications for ~~storm water~~ stormwater discharges under 9VAC25-31-120 C may collect flow-weighted composite samples using different protocols with respect to the time duration between the collection of sample aliquots, subject to the

approval of the board). However, a minimum of one grab sample may be taken for ~~storm water~~ stormwater discharges from holding ponds or other impoundments with a retention period greater than 24 hours. For a flow-weighted composite sample, only one analysis of the composite of aliquots is required. For ~~storm water~~ stormwater discharge samples taken from discharges associated with industrial activities, quantitative data must be reported for the grab sample taken during the first 30 minutes (or as soon thereafter as practicable) of the discharge for all pollutants specified in 9VAC25-31-120 B 1. For all ~~storm water~~ stormwater permit applicants taking flow-weighted composites, quantitative data must be reported for all pollutants specified in 9VAC25-31-120 except pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform, and fecal streptococcus. The board may allow or establish appropriate site-specific sampling procedures or requirements, including sampling locations, the season in which the sampling takes place, the minimum duration between the previous measurable storm event and the storm event sampled, the minimum or maximum level of precipitation required for an appropriate storm event, the form of precipitation sampled (snow melt or rain fall), protocols for collecting samples under 40 CFR Part 136, and additional time for submitting data on a case-by-case basis. An applicant is expected to know or have reason to believe that a pollutant is present in an effluent based on an evaluation of the expected use, production, or storage of the pollutant, or on any previous analyses for the pollutant. (For example, any pesticide manufactured by a facility may be expected to be present in contaminated ~~storm water~~ stormwater run-off from the facility.)

c. Every applicant must report quantitative data for every outfall for the following pollutants:

(1) Biochemical oxygen demand (BOD_5);

(2) Chemical oxygen demand;

(3) Total organic carbon;

(4) Total suspended solids;

(5) Ammonia (as N);

(6) Temperature (both winter and summer); and

(7) pH.

d. The board may waive the reporting requirements for individual point sources or for a particular industry category for one or more of the pollutants listed in subdivision 7 c of this subsection if the applicant has demonstrated that such a waiver is appropriate because information adequate to support issuance of a permit can be obtained with less stringent requirements.

e. Each applicant with processes in one or more primary industry category (see 40 CFR Part 122 Appendix A) contributing to a discharge must report quantitative data for the following pollutants in each outfall containing process wastewater, except as indicated in subdivisions ~~7 c (3)~~, 7 e (3), (4), and (5) of this subsection:

(1) The organic toxic pollutants in the fractions designated in Table I of 40 CFR Part 122 Appendix D for the applicant's industrial category or categories unless the applicant qualifies as a small business under subdivision 8 of this subsection. Table II of 40 CFR Part 122 Appendix D lists the organic toxic pollutants in each fraction. The fractions result from the sample preparation required by the analytical procedure which uses gas chromatography/mass spectrometry. A determination that an applicant falls within a particular industrial category for the purposes of selecting fractions for testing is not conclusive as to the applicant's inclusion in that category for any other purposes.

(2) The pollutants listed in Table III of 40 CFR Part 122 Appendix D (the toxic metals, cyanide, and total phenols).

(3) Subdivision H 7 e (1) of this section and the corresponding portions of the VPDES Application Form 2C are suspended as they apply to coal mines.

(4) Subdivision H 7 e (1) of this section and the corresponding portions of Item V-C of the VPDES Application Form 2C are suspended as they apply to:

(a) Testing and reporting for all four organic fractions in the Greige Mills Subcategory of the Textile Mills industry (subpart C-Low water use processing of 40 CFR Part 410), and testing and reporting for the pesticide fraction in all other subcategories of this industrial category.

(b) Testing and reporting for the volatile, base/neutral and pesticide fractions in the Base and Precious Metals Subcategory of the Ore Mining and Dressing industry ~~(subpart B of 40~~ (40 CFR Part ~~440)~~ 440, Subpart B) and testing and reporting for all four fractions in all other subcategories of this industrial category.

(c) Testing and reporting for all four GC/MS fractions in the Porcelain Enameling industry.

(5) Subdivision H 7 e (1) of this section and the corresponding portions of Item V-C of the VPDES Application Form 2C are suspended as they apply to:

(a) Testing and reporting for the pesticide fraction in the Tall Oil Rosin Subcategory (subpart D) and Rosin-Based Derivatives Subcategory (subpart F) of the Gum and Wood Chemicals industry (40 CFR Part 454), and testing and reporting for the pesticide and base-neutral fractions in all other subcategories of this industrial category.

(b) Testing and reporting for the pesticide fraction in the leather tanning and finishing, paint and ink formulation, and photographic supplies industrial categories.

(c) Testing and reporting for the acid, base/neutral, and pesticide fractions in the petroleum refining industrial category.

(d) Testing and reporting for the pesticide fraction in the Papergrade Sulfite Subcategories (subparts J and U) of the Pulp and Paper industry (40 CFR Part 430); testing and reporting for the base/neutral and pesticide fractions in the following subcategories: Deink (subpart Q), Dissolving Kraft (subpart F), and Paperboard from Waste Paper (subpart E); testing and reporting for the volatile, base/neutral, and pesticide fractions in the following subcategories: BCT Bleached Kraft (subpart H), Semi-Chemical (subparts B and C), and Nonintegrated-Fine Papers (subpart R); and testing and reporting for the acid, base/neutral, and pesticide fractions in the following subcategories: Fine Bleached Kraft (subpart I), Dissolving Sulfite Pulp (subpart K), Groundwood-Fine Papers (subpart O), Market Bleached Kraft (subpart G), Tissue from Wastepaper (subpart T), and Nonintegrated-Tissue Papers (subpart S).

(e) Testing and reporting for the base/neutral fraction in the Once-Through Cooling Water, Fly Ash and Bottom Ash Transport Water process waste streams of the Steam Electric Power Plant industrial category.

f. Each applicant must indicate whether it knows or has reason to believe that any of the pollutants in Table IV of 40 CFR Part 122 Appendix D (certain conventional and nonconventional pollutants) is discharged from each outfall. If an applicable effluent limitations guideline either directly limits the pollutant or, by its express terms, indirectly limits the pollutant through limitations on an indicator, the applicant must report quantitative data. For every pollutant discharged ~~which~~ that is not so limited in an effluent limitations guideline, the applicant must either report quantitative data or briefly describe the reasons the pollutant is expected to be discharged.

g. Each applicant must indicate whether it knows or has reason to believe that any of the pollutants listed in Table II or Table III of 40 CFR Part 122 Appendix D (the toxic pollutants and total phenols) for which quantitative data are not otherwise required under subdivision 7 e of this subsection, is discharged from each outfall. For every pollutant expected to be discharged in concentrations of 10 ppb or greater the applicant must report quantitative data. For acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4,6 dinitrophenol, where any of these four pollutants are expected to be discharged in concentrations of 100 ppb or greater the applicant must report quantitative data. For every pollutant expected to be discharged in concentrations less than 10 ppb, or in the case of acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4,6 dinitrophenol, in concentrations less than 100 ppb, the applicant must either submit quantitative data or briefly describe the reasons the pollutant is expected to be discharged. An applicant qualifying as a small business under subdivision 8 of this subsection is not required to analyze for pollutants listed in Table II of 40 CFR Part 122 Appendix D (the organic toxic pollutants).

h. Each applicant must indicate whether it knows or has reason to believe that any of the pollutants in Table V of 40 CFR Part 122 Appendix D (certain hazardous substances and asbestos) are discharged from each outfall. For every pollutant expected to be discharged, the applicant must briefly describe the reasons the pollutant is expected to be discharged, and report any quantitative data it has for any pollutant.

i. Each applicant must report qualitative data, generated using a screening procedure not calibrated with analytical standards, for 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) if it:

(1) Uses or manufactures 2,4,5-trichlorophenoxy acetic acid (2,4,5,-T); 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5,-TP); 2-(2,4,5-trichlorophenoxy) ethyl, 2,2-dichloropropionate (Erbon); O,O-dimethyl O-(2,4,5-trichlorophenyl) phosphorothioate (Ronnel); 2,4,5-trichlorophenol (TCP); or hexachlorophene (HCP); or

(2) Knows or has reason to believe that TCDD is or may be present in an effluent.

j. Where quantitative data are required in subdivisions H 7 a through i of this section, existing data may be used, if available, in lieu of sampling done solely for the purpose of the application, provided that all data requirements are met; sampling was performed, collected, and analyzed no more than four and one-half years prior to submission; all data are representative of the discharge; and all available representative data are considered in the values reported.

8. An applicant which qualifies as a small business under one of the following criteria is exempt from the requirements in subdivision 7 e (1) or 7 f of this subsection to submit quantitative data for the pollutants listed in Table II of 40 CFR Part 122 Appendix D (the organic toxic pollutants):

a. For coal mines, a probable total annual production of less than 100,000 tons per year; or

b. For all other applicants, gross total annual sales averaging less than $100,000 per year (in second quarter 1980 dollars).

9. A listing of any toxic pollutant ~~which~~ that the applicant currently uses or manufactures as an intermediate or final product or byproduct. The board may waive or modify this requirement for any applicant if the applicant demonstrates that it would be unduly burdensome to identify each toxic pollutant and the board has adequate information to issue the permit.

10. Reserved.

11. An identification of any biological toxicity tests ~~which~~ that the applicant knows or has reason to believe have been made within the last three years on any of the applicant's discharges or on a receiving water in relation to a discharge.

12. If a contract laboratory or consulting firm performed any of the analyses required by subdivision 7 of this subsection,

the identity of each laboratory or firm and the analyses performed.

13. In addition to the information reported on the application form, applicants shall provide to the board, at its request, such other information, including pertinent plans, specifications, maps and such other relevant information as may be required, in scope and details satisfactory to the board, as the board may reasonably require to assess the discharges of the facility and to determine whether to issue a VPDES permit. The additional information may include additional quantitative data and bioassays to assess the relative toxicity of discharges to aquatic life and requirements to determine the cause of the toxicity.

I. Application requirements for manufacturing, commercial, mining and silvicultural facilities which discharge only nonprocess wastewater. Except for ~~storm water~~ stormwater discharges, all manufacturing, commercial, mining, and silvicultural dischargers applying for VPDES permits ~~which~~ that discharge only nonprocess wastewater not regulated by an effluent limitations guideline or new source performance standard shall provide the following information to the department using application forms provided by the department:

1. Outfall number, latitude and longitude to the nearest 15 seconds, and the name of the receiving water;

2. Date of expected commencement of discharge;

3. An identification of the general type of waste discharged, or expected to be discharged upon commencement of operations, including sanitary wastes, restaurant or cafeteria wastes, or noncontact cooling water. An identification of cooling water additives (if any) that are used or expected to be used upon commencement of operations, along with their composition if existing composition is available;

4. a. Quantitative data for the pollutants or parameters listed below, unless testing is waived by the board. The quantitative data may be data collected over the past 365 days, if they remain representative of current operations, and must include maximum daily value, average daily value, and number of measurements taken. The applicant must collect and analyze samples in accordance with 40 CFR Part 136. ~~Grab samples must be used for pH, temperature, oil and grease, total residual chlorine, and fecal coliform. For all other pollutants, 24-hour composite samples must be used.~~ When analysis of pH, temperature, residual chlorine, oil and grease, or fecal coliform (including E. coli), and Enterococci (previously known as fecal streptococcus) and volatile organics is required in subdivisions I 4 a (1) through (11) of this section, grab samples must be collected for those pollutants. For all other pollutants, a 24-hour composite sample, using a minimum of four grab samples, must be used unless specified otherwise at 40 CFR Part 136. For a composite sample, only one analysis of the composite of aliquots is required. New dischargers must include estimates for the pollutants or parameters listed below instead of actual sampling data, along with the source of each estimate. All levels must be reported or estimated as concentration and as total mass, except for flow, pH, and temperature.

(1) Biochemical oxygen demand (BOD_5).

(2) Total suspended solids (TSS).

(3) Fecal coliform (if believed present or if sanitary waste is or will be discharged).

(4) Total residual chlorine (if chlorine is used).

(5) Oil and grease.

(6) Chemical oxygen demand (COD) (if noncontact cooling water is or will be discharged).

(7) Total organic carbon (TOC) (if noncontact cooling water is or will be discharged).

(8) Ammonia (as N).

(9) Discharge flow.

(10) pH.

(11) Temperature (winter and summer).

b. The board may waive the testing and reporting requirements for any of the pollutants or flow listed in subdivision 4 a of this subsection if the applicant submits a request for such a waiver before or with his application ~~which~~ that demonstrates that information adequate to support issuance of a permit can be obtained through less stringent requirements.

c. If the applicant is a new discharger, he must submit the information required in subdivision 4 a of this subsection by providing quantitative data in accordance with that section no later than two years after commencement of discharge. However, the applicant need not submit testing results ~~which~~ that he has already performed and reported under the discharge monitoring requirements of his VPDES permit.

d. The requirements of subdivisions 4 a and 4 c of this subsection that an applicant must provide quantitative data or estimates of certain pollutants do not apply to pollutants present in a discharge solely as a result of their presence in intake water. However, an applicant must report such pollutants as present. Net credit may be provided for the presence of pollutants in intake water if the requirements of 9VAC25-31-230 G are met;

5. A description of the frequency of flow and duration of any seasonal or intermittent discharge (except for ~~storm water~~ stormwater run-off, leaks, or spills);

6. A brief description of any treatment system used or to be used;

7. Any additional information the applicant wishes to be considered, such as influent data for the purpose of obtaining net credits pursuant to 9VAC25-31-230 G;

8. Signature of certifying official under 9VAC25-31-110; and

9. Pertinent plans, specifications, maps and such other relevant information as may be required, in scope and details satisfactory to the board.

J. Application requirements for new and existing concentrated animal feeding operations and aquatic animal production facilities. New and existing concentrated animal feeding operations and concentrated aquatic animal production facilities shall provide the following information to the department, using the application form provided by the department:

1. For concentrated animal feeding operations:

a. The name of the owner or operator;

b. The facility location and mailing address;

c. Latitude and longitude of the production area (entrance to the production area);

d. A topographic map of the geographic area in which the CAFO is located showing the specific location of the production area, in lieu of the requirements of subdivision G 7 of this section;

e. Specific information about the number and type of animals, whether in open confinement or housed under roof (beef cattle, broilers, layers, swine weighing 55 pounds or more, swine weighing less than 55 pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, turkeys, other);

f. The type of containment and storage (anaerobic lagoon, roofed storage shed, storage ponds, underfloor pits, above ground storage tanks, below ground storage tanks, concrete pad, impervious soil pad, other) and total capacity for manure, litter, and process wastewater storage (tons/gallons);

g. The total number of acres under control of the applicant available for land application of manure, litter, or process wastewater;

h. Estimated amounts of manure, litter, and process wastewater generated per year (tons/gallons); and

i. For CAFOs required to seek coverage under a permit after December 31, 2009, a nutrient management plan that at a minimum satisfies the requirements specified in subsection E of 9VAC25-31-200 and subdivision C 5 of 9VAC25-31-130, including, for all CAFOs subject to 40 CFR Part 412 Subpart C or Subpart D, the requirements of 40 CFR 412.4(c), as applicable.

2. For concentrated aquatic animal production facilities:

a. The maximum daily and average monthly flow from each outfall;

b. The number of ponds, raceways, and similar structures;

c. The name of the receiving water and the source of intake water;

d. For each species of aquatic animals, the total yearly and maximum harvestable weight;

e. The calendar month of maximum feeding and the total mass of food fed during that month; and

f. Pertinent plans, specifications, maps and such other relevant information as may be required, in scope and details satisfactory to the board.

K. Application requirements for new and existing POTWs and treatment works treating domestic sewage. Unless otherwise indicated, all POTWs and other dischargers designated by the board must provide to the department, at a minimum, the information in this subsection using an application form provided by the department. Permit applicants must submit all information available at the time of permit application. The information may be provided by referencing information previously submitted to the department. The board may waive any requirement of this subsection if it has access to substantially identical information. The board may also waive any requirement of this subsection that is not of material concern for a specific permit, if approved by the regional administrator. The waiver request to the regional administrator must include the board's justification for the waiver. A regional administrator's disapproval of the board's proposed waiver does not constitute final agency action but does provide notice to the board and permit ~~applicant(s)~~ applicant that ~~the~~ EPA may object to any board-issued permit issued in the absence of the required information.

1. All applicants must provide the following information:

a. Name, mailing address, and location of the facility for which the application is submitted;

b. Name, mailing address, ~~and~~ telephone number, and electronic mail address of the applicant and indication as to whether the applicant is the facility's owner, operator, or both;

c. Identification of all environmental permits or construction approvals received or applied for (including dates) under any of the following programs:

(1) Hazardous Waste Management program under the Resource Conservation and Recovery Act (RCRA), Subpart C;

(2) Underground Injection Control program under the Safe Drinking Water Act (SDWA);

(3) NPDES program under the Clean Water Act (CWA);

(4) Prevention of Significant Deterioration (PSD) program under the Clean Air Act;

(5) Nonattainment program under the Clean Air Act;

(6) National Emission Standards for Hazardous Air Pollutants (NESHAPS) preconstruction approval under the Clean Air Act;

(7) Ocean dumping permits under the Marine Protection Research and Sanctuaries Act;

(8) Dredge or fill permits under § 404 of the CWA; and

(9) Other relevant environmental permits, including state permits;

d. The name and population of each municipal entity served by the facility, including unincorporated connector districts. Indicate whether each municipal entity owns or maintains the collection system and whether the collection system is separate sanitary or combined storm and sanitary, if known;

e. Information concerning whether the facility is located in Indian country and whether the facility discharges to a receiving stream that flows through Indian country;

f. The facility's design flow rate (the wastewater flow rate the plant was built to handle), annual average daily flow rate, and maximum daily flow rate for each of the previous three years;

g. Identification of ~~type(s)~~ types of collection ~~system(s)~~ systems used by the treatment works (i.e., separate sanitary sewers or combined storm and sanitary sewers) and an estimate of the percent of sewer line that each type comprises; ~~and~~

h. The following information for outfalls to surface waters and other discharge or disposal methods:

(1) For effluent discharges to surface waters, the total number and types of outfalls (e.g., treated effluent, combined sewer overflows, bypasses, constructed emergency overflows);

(2) For wastewater discharged to surface impoundments:

(a) The location of each surface impoundment;

(b) The average daily volume discharged to each surface impoundment; and

(c) Whether the discharge is continuous or intermittent;

(3) For wastewater applied to the land:

(a) The location of each land application site;

(b) The size of each land application site, in acres;

(c) The average daily volume applied to each land application site, in gallons per day; and

(d) Whether land application is continuous or intermittent;

(4) For effluent sent to another facility for treatment prior to discharge:

(a) The means by which the effluent is transported;

(b) The name, mailing address, contact person, ~~and~~ phone number, and electronic mail address of the organization transporting the discharge, if the transport is provided by a party other than the applicant;

(c) The name, mailing address, contact person, phone number, electronic mail address, and VPDES permit number (if any) of the receiving facility; and

(d) The average daily flow rate from this facility into the receiving facility, in millions of gallons per day; and

(5) For wastewater disposed of in a manner not included in subdivisions 1 h (1) through (4) of this subsection (e.g., underground percolation, underground injection):

(a) A description of the disposal method, including the location and size of each disposal site, if applicable;

(b) The annual average daily volume disposed of by this method, in gallons per day; and

(c) Whether disposal through this method is continuous or intermittent; and

i. An indication of whether applicant is operating under or requesting to operate under a variance as specified in subsection N of this section, if known at the time of application.

2. All applicants with a design flow greater than or equal to 0.1 mgd must provide the following information:

a. The current average daily volume of inflow and infiltration, in gallons per day, and steps the facility is taking to minimize inflow and infiltration;

b. A topographic map (or other map if a topographic map is unavailable) extending at least one mile beyond property boundaries of the treatment plant, including all unit processes, and showing:

(1) Treatment plant area and unit processes;

(2) The major pipes or other structures through which wastewater enters the treatment plant and the pipes or other structures through which treated wastewater is discharged from the treatment plant. Include outfalls from bypass piping, if applicable;

(3) Each well where fluids from the treatment plant are injected underground;

(4) Wells, springs, and other surface water bodies listed in public records or otherwise known to the applicant within 1/4 mile of the treatment works' property boundaries;

(5) Sewage sludge management facilities (including on-site treatment, storage, and disposal sites); and

(6) Location at which waste classified as hazardous under RCRA enters the treatment plant by truck, rail, or dedicated pipe;

c. Process flow diagram or schematic:

(1) A diagram showing the processes of the treatment plant, including all bypass piping and all backup power sources or redundancy in the system. This includes a water balance showing all treatment units, including disinfection, and showing daily average flow rates at influent and discharge points, and approximate daily flow rates between treatment units; and

(2) A narrative description of the diagram; and

d. The following information regarding scheduled improvements:

(1) The outfall number of each outfall affected;

(2) A narrative description of each required improvement;

(3) Scheduled or actual dates of completion for the following:

(a) Commencement of construction;

(b) Completion of construction;

(c) Commencement of discharge; and

(d) Attainment of operational level; and

(4) A description of permits and clearances concerning other federal or state requirements.

3. Each applicant must provide the following information for each outfall, including bypass points, through which effluent is discharged, as applicable:

a. The following information about each outfall:

(1) Outfall number;

(2) State, county, and city or town in which outfall is located;

(3) Latitude and longitude, to the nearest second;

(4) Distance from shore and depth below surface;

(5) Average daily flow rate, in million gallons per day;

(6) The following information for each outfall with a seasonal or periodic discharge:

(a) Number of times per year the discharge occurs;

(b) Duration of each discharge;

(c) Flow of each discharge; and

(d) Months in which discharge occurs; and

(7) Whether the outfall is equipped with a diffuser and the type (e.g., high-rate) of diffuser used.

b. The following information, if known, for each outfall through which effluent is discharged to surface waters:

(1) Name of receiving water;

(2) Name of watershed/river/stream system and United States Soil Conservation Service 14-digit watershed code;

(3) Name of State Management/River Basin and United States Geological Survey 8-digit hydrologic cataloging unit code; and

(4) Critical flow of receiving stream and total hardness of receiving stream at critical low flow (if applicable).

c. The following information describing the treatment provided for discharges from each outfall to surface waters:

(1) The highest level of treatment (e.g., primary, equivalent to secondary, secondary, advanced, other) that is provided for the discharge for each outfall and:

(a) Design biochemical oxygen demand (BOD_5 or $CBOD_5$) removal (percent);

(b) Design suspended solids (SS) removal (percent); and, where applicable;

(c) Design phosphorus (P) removal (percent);

(d) Design nitrogen (N) removal (percent); and

(e) Any other removals that an advanced treatment system is designed to achieve.

(2) A description of the type of disinfection used, and whether the treatment plant dechlorinates (if disinfection is accomplished through chlorination).

4. Effluent monitoring for specific parameters.

a. As provided in subdivisions 4 b through 4 k of this subsection, all applicants must submit to the department effluent monitoring information for samples taken from each outfall through which effluent is discharged to surface waters, except for CSOs. The board may allow applicants to submit sampling data for only one outfall on a case-by-case basis, where the applicant has two or more outfalls with substantially identical effluent. The board may also allow applicants to composite samples from one or more outfalls that discharge into the same mixing zone. For POTWs applying prior to commencement of discharge, data shall be submitted no later than 24 months after the commencement of discharge;

b. All applicants must sample and analyze for the following pollutants:

(1) Biochemical oxygen demand (BOD_5 or $CBOD_5$);

(2) Fecal coliform;

(3) Design flow rate;

(4) pH;

(5) Temperature; and

(6) Total suspended solids.

c. All applicants with a design flow greater than or equal to 0.1 mgd must sample and analyze for the following pollutants:

(1) Ammonia (as N);

(2) Chlorine (total residual, TRC);

(3) Dissolved oxygen;

(4) Nitrate/Nitrite;

(5) Kjeldahl nitrogen;

(6) Oil and grease;

(7) Phosphorus; and

(8) Total dissolved solids.

d. Facilities that do not use chlorine for disinfection, do not use chlorine elsewhere in the treatment process, and have no reasonable potential to discharge chlorine in their effluent may delete chlorine.

e. All POTWs with a design flow rate equal to or greater than one million gallons per day, all POTWs with approved pretreatment programs or POTWs required to develop a pretreatment program, and other POTWs, as required by the board must sample and analyze for the pollutants listed in Table 2 of 40 CFR Part 122 Appendix J, and for any other pollutants for which the board or EPA

have established water quality standards applicable to the receiving waters.

f. The board may require sampling for additional pollutants, as appropriate, on a case-by-case basis.

g. Applicants must provide data from a minimum of three samples taken within 4-1/2 years prior to the date of the permit application. Samples must be representative of the seasonal variation in the discharge from each outfall. Existing data may be used, if available, in lieu of sampling done solely for the purpose of this application. The board may require additional samples, as appropriate, on a case-by-case basis.

h. All existing data for pollutants specified in subdivisions 4 b through 4 f of this subsection that is collected within 4-1/2 years of the application must be included in the pollutant data summary submitted by the applicant. If, however, the applicant samples for a specific pollutant on a monthly or more frequent basis, it is only necessary, for such pollutant, to summarize all data collected within one year of the application.

i. Applicants must collect samples of effluent and analyze such samples for pollutants in accordance with analytical methods approved under 40 CFR Part 136 unless an alternative is specified in the existing VPDES permit. ~~Grab samples must be used for~~ When analysis of pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, ~~and~~ fecal coliform (including E. coli), or volatile organics is required in subdivisions K 4 b, c, and e of this section, grab samples must be collected for those pollutants. For all other pollutants, 24-hour composite samples must be used. For a composite sample, only one analysis of the composite of aliquots is required.

j. The effluent monitoring data provided must include at least the following information for each parameter:

(1) Maximum daily discharge, expressed as concentration or mass, based upon actual sample values;

(2) Average daily discharge for all samples, expressed as concentration or mass, and the number of samples used to obtain this value;

(3) The analytical method used; and

(4) The threshold level (i.e., method detection limit, minimum level, or other designated method endpoints) for the analytical method used.

k. Unless otherwise required by the board, metals must be reported as total recoverable.

5. Effluent monitoring for whole effluent toxicity.

a. All applicants must provide an identification of any whole effluent toxicity tests conducted during the 4-1/2 years prior to the date of the application on any of the applicant's discharges or on any receiving water near the discharge. For POTWs applying prior to commencement of discharge, data shall be submitted no later than 24 months after the commencement of discharge.

b. As provided in subdivisions 5 c through i of this subsection, the following applicants must submit to the department the results of valid whole effluent toxicity tests for acute or chronic toxicity for samples taken from each outfall through which effluent is discharged to surface waters, except for combined sewer overflows:

(1) All POTWs with design flow rates greater than or equal to one million gallons per day;

(2) All POTWs with approved pretreatment programs or POTWs required to develop a pretreatment program;

(3) Other POTWs, as required by the board, based on consideration of the following factors:

(a) The variability of the pollutants or pollutant parameters in the POTW effluent (based on chemical-specific information, the type of treatment plant, and types of industrial contributors);

(b) The ratio of effluent flow to receiving stream flow;

(c) Existing controls on point or nonpoint sources, including total maximum daily load calculations for the receiving stream segment and the relative contribution of the POTW;

(d) Receiving stream characteristics, including possible or known water quality impairment, and whether the POTW discharges to a coastal water, or a water designated as an outstanding natural resource water; or

(e) Other considerations (including~~, but not limited to,~~ the history of toxic impacts and compliance problems at the POTW) that the board determines could cause or contribute to adverse water quality impacts.

c. Where the POTW has two or more outfalls with substantially identical effluent discharging to the same receiving stream segment, the board may allow applicants to submit whole effluent toxicity data for only one outfall on a case-by-case basis. The board may also allow applicants to composite samples from one or more outfalls that discharge into the same mixing zone.

d. Each applicant required to perform whole effluent toxicity testing pursuant to subdivision 5 b of this subsection must provide:

(1) Results of a minimum of four quarterly tests for a year, from the year preceding the permit application; or

(2) Results from four tests performed at least annually in the 4-1/2 year period prior to the application, provided the results show no appreciable toxicity using a safety factor determined by the board.

e. Applicants must conduct tests with multiple species (no less than two species, e.g., fish, invertebrate, plant) and test for acute or chronic toxicity, depending on the range of receiving water dilution. The board recommends that applicants conduct acute or chronic testing based on the

following dilutions: (i) acute toxicity testing if the dilution of the effluent is greater than 100:1 at the edge of the mixing zone or (ii) chronic toxicity testing if the dilution of the effluent is less than or equal to 100:1 at the edge of the mixing zone.

f. Each applicant required to perform whole effluent toxicity testing pursuant to subdivision 5 b of this subsection must provide the number of chronic or acute whole effluent toxicity tests that have been conducted since the last permit reissuance.

g. Applicants must provide the results using the form provided by the department, or test summaries if available and comprehensive, for each whole effluent toxicity test conducted pursuant to subdivision 5 b of this subsection for which such information has not been reported previously to the department.

h. Whole effluent toxicity testing conducted pursuant to subdivision 5 b of this subsection must be conducted using methods approved under 40 CFR Part 136, as directed by the board.

i. For whole effluent toxicity data submitted to the department within 4-1/2 years prior to the date of the application, applicants must provide the dates on which the data were submitted and a summary of the results.

j. Each POTW required to perform whole effluent toxicity testing pursuant to subdivision 5 b of this subsection must provide any information on the cause of toxicity and written details of any toxicity reduction evaluation conducted, if any whole effluent toxicity test conducted within the past 4-1/2 years revealed toxicity.

6. Applicants must submit the following information about industrial discharges to the POTW:

a. Number of significant industrial users (SIUs) and nonsignificant categorical industrial users ~~(CIUs) discharging to the POTW~~ (NSCIUs), including SIUs and NSCIUs that truck or haul waste, discharging to the POTW; and

b. POTWs with one or more SIUs shall provide the following information for each SIU, as defined in 9VAC25-31-10, that discharges to the POTW:

(1) Name and mailing address;

(2) Description of all industrial processes that affect or contribute to the SIU's discharge;

(3) Principal products and raw materials of the SIU that affect or contribute to the SIU's discharge;

(4) Average daily volume of wastewater discharged, indicating the amount attributable to process flow and nonprocess flow;

(5) Whether the SIU is subject to local limits;

(6) Whether the SIU is subject to categorical standards and, if so, under which category and subcategory; and

(7) Whether any problems at the POTW (e.g., upsets, pass through, interference) have been attributed to the SIU in the past 4-1/2 years.

c. The information required in subdivisions 6 a and b of this subsection may be waived by the board for POTWs with pretreatment programs if the applicant has submitted either of the following that contain information substantially identical to that required in subdivisions 6 a and b of this subsection:

(1) An annual report submitted within one year of the application; or

(2) A pretreatment program.

7. Discharges from hazardous waste generators and from waste cleanup or remediation sites. POTWs receiving Resource Conservation and Recovery Act (RCRA), Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), or RCRA Corrective Action wastes or wastes generated at another type of cleanup or remediation site must provide the following information:

a. If the POTW receives, or has been notified that it will receive, by truck, rail, or dedicated pipe any wastes that are regulated as RCRA hazardous wastes pursuant to 40 CFR Part 261, the applicant must report the following:

(1) The method by which the waste is received (i.e., whether by truck, rail, or dedicated pipe); and

(2) The hazardous waste number and amount received annually of each hazardous waste.

b. If the POTW receives, or has been notified that it will receive, wastewaters that originate from remedial activities, including those undertaken pursuant to CERCLA and § 3004(u) or 3008(h) of RCRA, the applicant must report the following:

(1) The identity and description of the site or facility at which the wastewater originates;

(2) The identities of the wastewater's hazardous constituents, as listed in Appendix VIII of 40 CFR Part 261, if known; and

(3) The extent of treatment, if any, the wastewater receives or will receive before entering the POTW.

c. Applicants are exempt from the requirements of subdivision 7 b of this subsection if they receive no more than 15 kilograms per month of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e).

8. Each applicant with combined sewer systems must provide the following information:

a. The following information regarding the combined sewer system:

(1) A map indicating the location of the following:

(a) All CSO discharge points;

(b) Sensitive use areas potentially affected by CSOs (e.g., beaches, drinking water supplies, shellfish beds, sensitive aquatic ecosystems, and outstanding national resource waters); and

(c) Waters supporting threatened and endangered species potentially affected by CSOs; and

(2) A diagram of the combined sewer collection system that includes the following information:

(a) The location of major sewer trunk lines, both combined and separate sanitary;

(b) The locations of points where separate sanitary sewers feed into the combined sewer system;

(c) In-line and off-line storage structures;

(d) The locations of flow-regulating devices; and

(e) The locations of pump stations.

b. The following information for each CSO discharge point covered by the permit application:

(1) The following information on each outfall:

(a) Outfall number;

(b) State, county, and city or town in which outfall is located;

(c) Latitude and longitude, to the nearest second;

(d) Distance from shore and depth below surface;

(e) Whether the applicant monitored any of the following in the past year for this CSO: (i) rainfall, (ii) CSO flow volume, (iii) CSO pollutant concentrations, (iv) receiving water quality, or (v) CSO frequency; and

(f) The number of storm events monitored in the past year;

(2) The following information about CSO overflows from each outfall:

(a) The number of events in the past year;

(b) The average duration per event, if available;

(c) The average volume per CSO event, if available; and

(d) The minimum rainfall that caused a CSO event, if available, in the last year;

(3) The following information about receiving waters:

(a) Name of receiving water;

(b) Name of watershed/stream system and the United States Soil Conservation Service watershed (14-digit) code, if known; and

(c) Name of State Management/River Basin and the United States Geological Survey hydrologic cataloging unit (8-digit) code, if known; and

(4) A description of any known water quality impacts on the receiving water caused by the CSO (e.g., permanent or intermittent beach closings, permanent or intermittent shellfish bed closings, fish kills, fish advisories, other recreational loss, or exceedance of any applicable state water quality standard).

9. All applicants must provide the name, mailing address, telephone number, electronic mail address, and responsibilities of all contractors responsible for any operational or maintenance aspects of the facility.

10. All applications must be signed by a certifying official in compliance with 9VAC25-31-110.

11. Pertinent plans, specifications, maps and such other relevant information as may be required, in scope and details satisfactory to the board.

L. Application requirements for new sources and new discharges. New manufacturing, commercial, mining and silvicultural dischargers applying for VPDES permits (except for new discharges of facilities subject to the requirements of subsection ~~H~~ I of this section or new discharges of ~~storm water~~ stormwater associated with industrial activity ~~which~~ that are subject to the requirements of 9VAC25-31-120 B 1 and this subsection) shall provide the following information to the department, using the application forms provided by the department:

1. The expected outfall location in latitude and longitude to the nearest 15 seconds and the name of the receiving water;

2. The expected date of commencement of discharge;

3. a. Description of the treatment that the wastewater will receive, along with all operations contributing wastewater to the effluent, average flow contributed by each operation, and the ultimate disposal of any solid or liquid wastes not discharged;

b. A line drawing of the water flow through the facility with a water balance as described in subdivision H 2;

c. If any of the expected discharges will be intermittent or seasonal, a description of the frequency, duration and maximum daily flow rate of each discharge occurrence (except for ~~storm water~~ stormwater run-off, spillage, or leaks);

4. If a new source performance standard promulgated under § 306 of the CWA or an effluent limitation guideline applies to the applicant and is expressed in terms of production (or other measure of operation), a reasonable measure of the applicant's expected actual production reported in the units used in the applicable effluent guideline or new source performance standard for each of the first three years. Alternative estimates may also be submitted if production is likely to vary;

5. The requirements in ~~subdivisions H~~ subdivisions I 4 a, b, and c of this section that an applicant must provide estimates of certain pollutants expected to be present do not apply to pollutants present in a discharge solely as a result of their presence in intake water; however, an applicant must report such pollutants as present. Net credits may be provided for the presence of pollutants in intake water if the requirements of 9VAC25-31-230 G are met. All levels (except for discharge flow, temperature, and pH) must be estimated as concentration and as total mass.

a. Each applicant must report estimated daily maximum, daily average, and source of information for each outfall for the following pollutants or parameters. The board may waive the reporting requirements for any of these pollutants and parameters if the applicant submits a request for such a waiver before or with his application which demonstrates that information adequate to support issuance of the permit can be obtained through less stringent reporting requirements:

(1) Biochemical oxygen demand (BOD).

(2) Chemical oxygen demand (COD).

(3) Total organic carbon (TOC).

(4) Total suspended solids (TSS).

(5) Flow.

(6) Ammonia (as N).

(7) Temperature (winter and summer).

(8) pH.

b. Each applicant must report estimated daily maximum, daily average, and source of information for each outfall for the following pollutants, if the applicant knows or has reason to believe they will be present or if they are limited by an effluent limitation guideline or new source performance standard either directly or indirectly through limitations on an indicator pollutant: all pollutants in Table IV of 40 CFR Part 122 Appendix D (certain conventional and nonconventional pollutants).

c. Each applicant must report estimated daily maximum, daily average and source of information for the following pollutants if he knows or has reason to believe that they will be present in the discharges from any outfall:

(1) The pollutants listed in Table III of 40 CFR Part 122 Appendix D (the toxic metals, in the discharge from any outfall, Total cyanide, and total phenols);

(2) The organic toxic pollutants in Table II of 40 CFR Part 122 Appendix D (except bis (chloromethyl) ether, dichlorofluoromethane and trichlorofluoromethane). This requirement is waived for applicants with expected gross sales of less than $100,000 per year for the next three years, and for coal mines with expected average production of less than 100,000 tons of coal per year.

d. The applicant is required to report that 2,3,7,8 Tetrachlorodibenzo-P-Dioxin (TCDD) may be discharged if he uses or manufactures one of the following compounds, or if he knows or has reason to believe that TCDD will or may be present in an effluent:

(1) 2,4,5-trichlorophenoxy acetic acid (2,4,5-T) (CAS #93-76-5);

(2) 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5-TP) (CAS #93-72-1);

(3) 2-(2,4,5-trichlorophenoxy) ethyl 2,2-dichloropropionate (Erbon) (CAS #136-25-4);

(4) 0,0-dimethyl 0-(2,4,5-trichlorophenyl) phosphorothioate (Ronnel) (CAS #299-84-3);

(5) 2,4,5-trichlorophenol (TCP) (CAS #95-95-4); or

(6) Hexachlorophene (HCP) (CAS #70-30-4);

e. Each applicant must report any pollutants listed in Table V of 40 CFR Part 122 Appendix D (certain hazardous substances) if he believes they will be present in any outfall (no quantitative estimates are required unless they are already available).

f. No later than ~~two years~~ 24 months after the commencement of discharge from the proposed facility, the applicant is required to submit the information required in subsection ~~G~~ H of this section. However, the applicant need not complete those portions of subsection ~~G~~ H of this section requiring tests ~~which he has~~ that have already been performed and reported under the discharge monitoring requirements of ~~his~~ the VPDES permit;

6. Each applicant must report the existence of any technical evaluation concerning his wastewater treatment, along with the name and location of similar plants of which he has knowledge;

7. Any optional information the permittee wishes to have considered;

8. Signature of certifying official under 9VAC25-31-110; and

9. Pertinent plans, specifications, maps, and such other relevant information as may be required, in scope and details satisfactory to the board.

M. Variance requests by non-POTWs. A discharger which is not a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations under any of the following statutory or regulatory provisions within the times specified in this subsection:

1. Fundamentally different factors.

a. A request for a variance based on the presence of fundamentally different factors from those on which the effluent limitations guideline was based shall be filed as follows:

(1) For a request from best practicable control technology currently available (BPT), by the close of the public comment period for the draft permit; or

(2) For a request from best available technology economically achievable (BAT) ~~and/or~~ or best conventional pollutant control technology (BCT), by no later than:

(a) July 3, 1989, for a request based on an effluent limitation guideline promulgated before February 4, 1987, to the extent July 3, 1989, is not later than that provided under previously promulgated regulations; or

(b) 180 days after the date on which an effluent limitation guideline is published in the Federal Register for a request

based on an effluent limitation guideline promulgated on or after February 4, 1987.

b. The request shall explain how the requirements of the applicable regulatory or statutory criteria have been met.

2. A request for a variance from the BAT requirements for CWA § 301(b)(2)(F) pollutants (commonly called nonconventional pollutants) pursuant to § 301(c) of the CWA because of the economic capability of the owner or operator, or pursuant to § 301(g) of the CWA (provided however that a § 301(g) variance may only be requested for ammonia; chlorine; color; iron; total phenols (when determined by the administrator to be a pollutant covered by § 301(b)(2)(F) of the CWA) and any other pollutant which the administrator lists under § 301(g)(4) of the CWA) must be made as follows:

a. For those requests for a variance from an effluent limitation based upon an effluent limitation guideline by:

(1) Submitting an initial request to the regional administrator, as well as to the department, stating the name of the discharger, the permit number, the outfall ~~number(s)~~ number, the applicable effluent guideline, and whether the discharger is requesting a § 301(c) or 301(g) of the CWA modification, or both. This request must have been filed not later than 270 days after promulgation of an applicable effluent limitation guideline; and

(2) Submitting a completed request no later than the close of the public comment period for the draft permit demonstrating that: (i) all reasonable ascertainable issues have been raised and all reasonably available arguments and materials supporting their position have been submitted; and (ii) that the applicable requirements of 40 CFR Part 125 have been met. Notwithstanding this provision, the complete application for a request under § 301(g) of the CWA shall be filed 180 days before EPA must make a decision (unless the Regional Division Director establishes a shorter or longer period); or

b. For those requests for a variance from effluent limitations not based on effluent limitation guidelines, the request need only comply with subdivision 2 a (2) of this subsection and need not be preceded by an initial request under subdivision 2 a (1) of this subsection.

3. A modification under § 302(b)(2) of the CWA of requirements under § 302(a) of the CWA for achieving water quality related effluent limitations may be requested no later than the close of the public comment period for the draft permit on the permit from which the modification is sought.

4. A variance for alternate effluent limitations for the thermal component of any discharge must be filed with a timely application for a permit under this section, except that if thermal effluent limitations are established on a case-by-case basis or are based on water quality standards the request for a variance may be filed by the close of the public comment period for the draft permit. A copy of the request shall be sent simultaneously to the department.

N. Variance requests by POTWs. A discharger which is a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations under any of the following statutory provisions as specified in this paragraph:

1. A request for a modification under § 301(h) of the CWA of requirements of § 301(b)(1)(B) of the CWA for discharges into marine waters must be filed in accordance with the requirements of 40 CFR Part 125, Subpart G.

2. A modification under § 302(b)(2) of the CWA of the requirements under § 302(a) of the CWA for achieving water quality based effluent limitations shall be requested no later than the close of the public comment period for the draft permit on the permit from which the modification is sought.

O. Expedited variance procedures and time extensions.

1. Notwithstanding the time requirements in subsections M and N of this section, the board may notify a permit applicant before a draft permit is issued that the draft permit will likely contain limitations which are eligible for variances. In the notice the board may require the applicant as a condition of consideration of any potential variance request to submit a request explaining how the requirements of 40 CFR Part 125 applicable to the variance have been met and may require its submission within a specified reasonable time after receipt of the notice. The notice may be sent before the permit application has been submitted. The draft or final permit may contain the alternative limitations ~~which~~ that may become effective upon final grant of the variance.

2. A discharger who cannot file a timely complete request required under subdivisions M 2 a (2) or M 2 b of this section may request an extension. The extension may be granted or denied at the discretion of the board. Extensions shall be no more than six months in duration.

P. Recordkeeping. Except for information required by subdivision D 2 of this section, which shall be retained for a period of at least five years from the date the application is signed (or longer as required by Part VI (9VAC25-31-420 et seq.) of this chapter), applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under this section for a period of at least three years from the date the application is signed.

Q. Sewage sludge management. All TWTDS subject to subdivision D 2 a of this section must provide the information in this subsection to the department using an application form approved by the department. New applicants must submit all information available at the time of permit application. The information may be provided by referencing information previously submitted to the department. The board may waive any requirement of this subsection if it has access to substantially identical information. The board may also waive

any requirement of this subsection that is not of material concern for a specific permit, if approved by the regional administrator. The waiver request to the regional administrator must include the board's justification for the waiver. A regional administrator's disapproval of the board's proposed waiver does not constitute final agency action, but does provide notice to the board and the permit applicant that ~~the~~ EPA may object to any board issued permit issued in the absence of the required information.

1. All applicants must submit the following information:

a. The name, mailing address, and location of the TWTDS for which the application is submitted;

b. Whether the facility is a Class I Sludge Management Facility;

c. The design flow rate (in million gallons per day);

d. The total population served;

e. The TWTDS's status as federal, state, private, public, or other entity;

f. The name, mailing address, ~~and~~ telephone number, and electronic mail address of the applicant; and

g. Indication whether the applicant is the owner, operator, or both.

2. All applicants must submit the facility's VPDES permit number, if applicable, and a listing of all other federal, state, and local permits or construction approvals received or applied for under any of the following programs:

a. Hazardous Waste Management program under the Resource Conservation and Recovery Act (RCRA);

b. UIC program under the Safe Drinking Water Act (SDWA);

c. NPDES program under the Clean Water Act (CWA);

d. Prevention of Significant Deterioration (PSD) program under the Clean Air Act;

e. Nonattainment program under the Clean Air Act;

f. National Emission Standards for Hazardous Air Pollutants (NESHAPS) preconstruction approval under the Clean Air Act;

g. Dredge or fill permits under § 404 of the CWA;

h. Other relevant environmental permits, including state or local permits.

3. All applicants must identify any generation, treatment, storage, land application of biosolids, or disposal of sewage sludge that occurs in Indian country.

4. All applicants must submit a topographic map (or other map if a topographic map is unavailable) extending one mile beyond property boundaries of the facility and showing the following information:

a. All sewage sludge management facilities, including on-site treatment, storage, and disposal sites; and

b. Wells, springs, and other surface water bodies that are within 1/4 mile of the property boundaries and listed in public records or otherwise known to the applicant.

5. All applicants must submit a line drawing ~~and/or~~ or a narrative description that identifies all sewage sludge management practices employed during the term of the permit, including all units used for collecting, dewatering, storing, or treating sewage sludge; the ~~destination(s)~~ destination of all liquids and solids leaving each such unit; and all processes used for pathogen reduction and vector attraction reduction.

6. All applicants must submit an odor control plan that contains at minimum:

a. Methods used to minimize odor in producing biosolids;

b. Methods used to identify malodorous biosolids before land application (at the generating facility);

c. Methods used to identify and abate malodorous biosolids that have been delivered to the field, prior to land application; and

d. Methods used to abate malodor from biosolids if land applied.

7. The applicant must submit biosolids monitoring data for the pollutants for which limits in biosolids have been established in Part VI (9VAC25-31-420 et seq.) of this chapter for the applicant's use or disposal practices on the date of permit application with the following conditions:

a. When applying for authorization to land apply a biosolids source not previously included in a VPDES or Virginia Pollution Abatement Permit, the biosolids shall be sampled and analyzed for PCBs. The sample results shall be submitted with the permit application or request to add the source.

b. The board may require sampling for additional pollutants, as appropriate, on a case-by-case basis.

c. Applicants must provide data from a minimum of three samples taken within 4-1/2 years prior to the date of the permit application. Samples must be representative of the biosolids and should be taken at least one month apart. Existing data may be used in lieu of sampling done solely for the purpose of this application.

d. Applicants must collect and analyze samples in accordance with analytical methods specified in 9VAC25-31-490, 40 CFR Part 503 (March 26, 2007), and 40 CFR Part 136 (March 26, 2007).

e. The monitoring data provided must include at least the following information for each parameter:

(1) Average monthly concentration for all samples (mg/kg dry weight), based upon actual sample values;

(2) The analytical method used; and

(3) The method detection level.

8. If the applicant is a person who prepares biosolids or sewage sludge, as defined in 9VAC25-31-500, the applicant must provide the following information:

a. If the applicant's facility generates biosolids or sewage sludge, the total dry metric tons per 365-day period generated at the facility.

b. If the applicant's facility receives biosolids or sewage sludge from another facility, the following information for each facility from which biosolids or sewage sludge is received:

(1) The name, mailing address, and location of the other facility;

(2) The total dry metric tons per 365-day period received from the other facility; and

(3) A description of any treatment processes occurring at the other facility, including blending activities and treatment to reduce pathogens or vector attraction characteristics.

c. If the applicant's facility changes the quality of biosolids or sewage sludge through blending, treatment, or other activities, the following information:

(1) Whether the Class A pathogen reduction requirements in 9VAC25-31-710 A or the Class B pathogen reduction requirements in 9VAC25-31-710 B are met, and a description of any treatment processes used to reduce pathogens in sewage sludge;

(2) Whether any of the vector attraction reduction options of 9VAC25-31-720 B 1 through 8 are met, and a description of any treatment processes used to reduce vector attraction properties in sewage sludge; and

(3) A description of any other blending, treatment, or other activities that change the quality of sewage sludge.

d. If biosolids from the applicant's facility meets the ceiling concentrations in 9VAC25-31-540 B Table 1, the pollutant concentrations in 9VAC25-31-540 B Table 3, the Class A pathogen requirements in 9VAC25-31-710 A, and one of the vector attraction reduction requirements in 9VAC25-31-720 B 1 through 8, and if the biosolids is applied to the land, the applicant must provide the total dry metric tons per 365-day period of sewage sludge subject to this subsection that is applied to the land.

e. If biosolids from the applicant's facility is sold or given away in a bag or other container for application to the land, and the biosolids is not subject to subdivision 8 d of this subsection, the applicant must provide the following information:

(1) The total dry metric tons per 365-day period of biosolids subject to this subsection that is sold or given away in a bag or other container for application to the land; and

(2) A copy of all labels or notices that accompany the biosolids being sold or given away.

f. If biosolids or sewage sludge from the applicant's facility is provided to another person who prepares biosolids, as defined in 9VAC25-31-500, and the biosolids is not subject to subdivision 8 d of this subsection, the applicant must provide the following information for each facility receiving the biosolids or sewage sludge:

(1) The name ~~and~~, mailing address, and electronic mail address of the receiving facility;

(2) The total dry metric tons per 365-day period of biosolids or sewage sludge subject to this subsection that the applicant provides to the receiving facility;

(3) A description of any treatment processes occurring at the receiving facility, including blending activities and treatment to reduce pathogens or vector attraction characteristic;

(4) A copy of the notice and necessary information that the applicant is required to provide the receiving facility under 9VAC25-31-530 G; and

(5) If the receiving facility places biosolids in bags or containers for sale or give-away for application to the land, a copy of any labels or notices that accompany the biosolids.

9. If biosolids from the applicant's facility is applied to the land in bulk form and is not subject to subdivision 8 d, e, or f of this subsection, the applicant must provide the following information:

a. Written permission of landowners on the most current form approved by the board.

b. The total dry metric tons per 365-day period of biosolids subject to this subsection that is applied to the land.

c. If any land application sites are located in states other than the state where the biosolids is prepared, a description of how the applicant will notify the permitting authority for the ~~state(s)~~ state where the land application sites are located.

d. The following information for each land application site that has been identified at the time of permit application:

(1) The DEQ control number, if previously assigned, identifying the land application field or site. If a DEQ control number has not been assigned, provide the site identification code used by the permit applicant to report activities and the site's location;

(2) The site's latitude and longitude in decimal degrees to three decimal places and method of determination;

(3) A legible topographic map and aerial photograph, including legend, of proposed application areas to scale as needed to depict the following features:

(a) Property boundaries;

(b) Surface water courses;

(c) Water supply wells and springs;

(d) Roadways;

(e) Rock outcrops;

(f) Slopes;

(g) Frequently flooded areas (National Resources Conservation Service (NRCS) designation);

(h) Occupied dwellings within 400 feet of the property boundaries and all existing extended dwelling and property line setback distances;

(i) Publicly accessible properties and occupied buildings within 400 feet of the property boundaries and the associated extended setback distances; and

(j) The gross acreage of the fields where biosolids will be applied;

(4) County map or other map of sufficient detail to show general location of the site and proposed transport vehicle haul routes to be utilized from the treatment plant;

(5) County tax maps labeled with Tax Parcel ID or IDs for each farm to be included in the permit, which may include multiple fields, to depict properties within 400 feet of the field boundaries;

(6) A USDA soil survey map, if available, of proposed sites for land application of biosolids;

(7) The name, mailing address, ~~and~~ telephone number, and electronic mail address of each site owner, if different from the applicant;

(8) The name, mailing address, ~~and~~ telephone number, and electronic mail address of the person who applies biosolids to the site, if different from the applicant;

(9) Whether the site is agricultural land, forest, a public contact site, or a reclamation site, as such site types are defined in 9VAC25-31-500;

(10) Description of agricultural practices including a list of proposed crops to be grown;

(11) Whether either of the vector attraction reduction options of 9VAC25-31-720 B 9 or 10 is met at the site, and a description of any procedures employed at the time of use to reduce vector attraction properties in biosolids;

(12) Pertinent calculations justifying storage and land area requirements for biosolids application including an annual biosolids balance incorporating such factors as precipitation, evapotranspiration, soil percolation rates, wastewater loading, and monthly storage (input and drawdown); and

(13) Other information that describes how the site will be managed, as specified by the board.

e. The following information for each land application site that has been identified at the time of permit application, if the applicant intends to apply bulk biosolids subject to the cumulative pollutant loading rates in 9VAC25-31-540 B Table 2 to the site:

(1) Whether the applicant has contacted the permitting authority in the state where the bulk biosolids subject to 9VAC25-31-540 B Table 2 will be applied, to ascertain whether bulk biosolids subject to 9VAC25-31-540 B Table 2 has been applied to the site on or since July 20, 1993, and if so, the name of the permitting authority and the name ~~and~~, phone number, and electronic mail address, if available, of a contact person at the permitting authority; and

(2) Identification of facilities other than the applicant's facility that have sent, or are sending, biosolids subject to the cumulative pollutant loading rates in 9VAC25-31-540 B Table 2 to the site since July 20, 1993, if, based on the inquiry in subdivision 9 e (1) of this subsection, bulk biosolids subject to cumulative pollutant loading rates in 9VAC25-31-540 B Table 2 has been applied to the site since July 20, 1993.

10. Biosolids storage facilities not located at the site of the wastewater treatment plant. Plans and specifications for biosolids storage facilities not located at the site of the wastewater treatment plant generating the biosolids, including routine and on-site storage, shall be submitted for issuance of a certificate to construct and a certificate to operate in accordance with the Sewage Collection and Treatment Regulations (9VAC25-790) and shall depict the following information:

a. Site layout on a recent 7.5 minute topographic quadrangle or other appropriate scaled map;

b. Location of any required soil, geologic, and hydrologic test holes or borings;

c. Location of the following field features within 0.25 miles of the site boundary (indicate on map) with the approximate distances from the site boundary:

(1) Water wells (operating or abandoned);

(2) Surface waters;

(3) Springs;

(4) Public water supplies;

(5) Sinkholes;

(6) Underground and surface mines;

(7) Mine pool (or other) surface water discharge points;

(8) Mining spoil piles and mine dumps;

(9) Quarries;

(10) Sand and gravel pits;

(11) Gas and oil wells;

(12) Diversion ditches;

(13) Occupied dwellings, including industrial and commercial establishments;

(14) Landfills and dumps;

(15) Other unlined impoundments;

(16) Septic tanks and drainfields; and

(17) Injection wells;

d. Topographic map (10-foot contour preferred) of sufficient detail to clearly show the following information:

(1) Maximum and minimum percent slopes;

(2) Depressions on the site that may collect water;

(3) Drainage ways that may attribute to rainfall run-on to or run-off from this site; and

(4) Portions of the site, if any, that are located within the 100-year floodplain;

e. Data and specifications for the liner proposed for seepage control;

f. Scaled plan view and cross-sectional view of the facilities showing inside and outside slopes of all embankments and details of all appurtenances;

g. Calculations justifying impoundment capacity; and

h. Groundwater monitoring plans for the facilities if required by the department. The groundwater monitoring plan shall include pertinent geohydrological data to justify upgradient and downgradient well location and depth.

11. Staging. Generic plans are required for staging of biosolids.

12. A biosolids management plan shall be provided that includes the following minimum site specific information at the time of permit application:

a. A comprehensive, general description of the operation shall be provided, including biosolids source or sources, quantities, flow diagram illustrating treatment works biosolids flows and solids handling units, site description, methodology of biosolids handling for application periods, including storage and nonapplication period storage, and alternative management methods when storage is not provided.

b. A nutrient management plan approved by the Department of Conservation and Recreation as required for application sites prior to board authorization under the following conditions:

(1) Sites operated by an owner or lessee of a confined animal feeding operation, as defined in subsection A of § 62.1-44.17:1 of the Code of Virginia, or confined poultry feeding operation, as defined in subsection A of § 62.1-44.17:1.1 of the Code of Virginia;

(2) Sites where land application is proposed more frequently than once every three years at greater than 50% of the annual agronomic rate;

(3) Mined or disturbed land sites where land application is proposed at greater than agronomic rates; or

(4) Other sites based on site-specific conditions that increase the risk that land application may adversely impact state waters.

13. Biosolids transport.

a. General description of transport vehicles to be used;

b. Procedures for biosolids offloading at the biosolids facilities and the land application site together with spill prevention, cleanup (including vehicle cleaning), field reclamation, and emergency spill notification and cleanup measures; and

c. Voucher system used for documentation and recordkeeping.

14. Field operations.

a. Storage.

(1) Routine storage at facilities not located at the site of the wastewater treatment plant – supernatant handling and disposal, biosolids handling, and loading of transport vehicles, equipment cleaning, freeboard maintenance, and inspections for structural integrity;

(2) On-site storage – procedures for department/board approval and implementation;

(3) Staging – procedures to be followed including either designated site locations provided in the "Design Information" or the specific site criteria for such locations including the liner/cover requirements and the time limit assigned to such use; and

(4) Field reestablishment of offloading (staging) areas.

b. Application methodology.

(1) Description and specifications on spreader vehicles;

(2) Procedures for calibrating equipment for various biosolids contents to ensure uniform distribution and appropriate loading rates on a day-to-day basis; and

(3) Procedures used to ensure that operations address the following constraints: application of biosolids to frozen ground, pasture/hay fields, crops for direct human consumption and saturated or ice-covered or snow-covered ground; establishment of setback distances, slopes, prohibited access for beef and dairy animals, and soil pH requirements; and proper site specific biosolids loading rates on a field-by-field basis.

15. An applicant for a permit authorizing the land application of biosolids shall provide to the department, and to each locality in which the applicant proposes to land apply biosolids, written evidence of financial responsibility. Evidence of financial responsibility shall be provided in accordance with requirements specified in Article 6 (9VAC25-32-770 et seq.) of Part IX (9VAC25-32-303 et seq.) of the Virginia Pollution Abatement (VPA) Permit Regulation.

16. If sewage sludge from the applicant's facility is placed on a surface disposal site, the applicant must provide the following information:

a. The total dry metric tons of sewage sludge from the applicant's facility that is placed on surface disposal sites per 365-day period.

b. The following information for each surface disposal site receiving sewage sludge from the applicant's facility that the applicant does not own or operate:

(1) The site name or number, contact person, mailing address, ~~and~~ telephone number, and electronic mail address for the surface disposal site; and

(2) The total dry metric tons from the applicant's facility per 365-day period placed on the surface disposal site.

c. The following information for each active sewage sludge unit at each surface disposal site that the applicant owns or operates:

(1) The name or number and the location of the active sewage sludge unit;

(2) The unit's latitude and longitude to the nearest second, and method of determination;

(3) If not already provided, a topographic map (or other map if a topographic map is unavailable) that shows the unit's location;

(4) The total dry metric tons placed on the active sewage sludge unit per 365-day period;

(5) The total dry metric tons placed on the active sewage sludge unit over the life of the unit;

(6) A description of any liner for the active sewage sludge unit, including whether it has a maximum permeability of 1×10^{-7} cm/sec;

(7) A description of any leachate collection system for the active sewage sludge unit, including the method used for leachate disposal, and any federal, state, and local permit number(s) for leachate disposal;

(8) If the active sewage sludge unit is less than 150 meters from the property line of the surface disposal site, the actual distance from the unit boundary to the site property line;

(9) The remaining capacity (dry metric tons) for the active sewage sludge unit;

(10) The date on which the active sewage sludge unit is expected to close, if such a date has been identified;

(11) The following information for any other facility that sends sewage sludge to the active sewage sludge unit:

(a) The name, contact person, ~~and~~ mailing address, and electronic mail address of the facility; and

(b) Available information regarding the quality of the sewage sludge received from the facility, including any treatment at the facility to reduce pathogens or vector attraction characteristics;

(12) Whether any of the vector attraction reduction options of 9VAC25-31-720 B 9 through 11 is met at the active sewage sludge unit, and a description of any procedures employed at the time of disposal to reduce vector attraction properties in sewage sludge;

(13) The following information, as applicable to any groundwater monitoring occurring at the active sewage sludge unit:

(a) A description of any groundwater monitoring occurring at the active sewage sludge unit;

(b) Any available groundwater monitoring data, with a description of the well locations and approximate depth to groundwater;

(c) A copy of any groundwater monitoring plan that has been prepared for the active sewage sludge unit;

(d) A copy of any certification that has been obtained from a qualified groundwater scientist that the aquifer has not been contaminated; and

(14) If site-specific pollutant limits are being sought for the sewage sludge placed on this active sewage sludge unit, information to support such a request.

17. If sewage sludge from the applicant's facility is fired in a sewage sludge incinerator, the applicant must provide the following information:

a. The total dry metric tons of sewage sludge from the applicant's facility that is fired in sewage sludge incinerators per 365-day period.

b. The following information for each sewage sludge incinerator firing the applicant's sewage sludge that the applicant does not own or operate:

(1) The name ~~and/or~~ or number, contact person, mailing address, ~~and~~ telephone number, and electronic mail address of the sewage sludge incinerator; and

(2) The total dry metric tons from the applicant's facility per 365-day period fired in the sewage sludge incinerator.

18. If sewage sludge from the applicant's facility is sent to a municipal solid waste landfill (MSWLF), the applicant must provide the following information for each MSWLF to which sewage sludge is sent:

a. The name, contact person, mailing address, electronic mail address, location, and all applicable permit numbers of the MSWLF;

b. The total dry metric tons per 365-day period sent from this facility to the MSWLF;

c. A determination of whether the sewage sludge meets applicable requirements for disposal of sewage sludge in a MSWLF, including the results of the paint filter liquids test and any additional requirements that apply on a site-specific basis; and

d. Information, if known, indicating whether the MSWLF complies with criteria set forth in the Solid Waste Management Regulations, 9VAC20-81.

19. All applicants must provide the name, mailing address, telephone number, electronic mail address, and responsibilities of all contractors responsible for any operational or maintenance aspects of the facility related to

biosolids or sewage sludge generation, treatment, use, or disposal.

20. At the request of the board, the applicant must provide any other information necessary to determine the appropriate standards for permitting under Part VI (9VAC25-31-420 et seq.) of this chapter, and must provide any other information necessary to assess the biosolids use and sewage sludge disposal practices, determine whether to issue a permit, or identify appropriate permit requirements; and pertinent plans, specifications, maps and such other relevant information as may be required, in scope and details satisfactory to the board.

21. All applications must be signed by a certifying official in compliance with 9VAC25-31-110.

R. Applications for facilities with cooling water intake structures.

1. Application requirements. New facilities with new or modified cooling water intake structures. New facilities with cooling water intake structures as defined in 9VAC25-31-165 must report the information required under subdivisions 2, 3, and 4 of this subsection and under 9VAC25-31-165. Requests for alternative requirements under 9VAC25-31-165 must be submitted with the permit application.

2. Source water physical data. These include:

a. A narrative description and scaled drawings showing the physical configuration of all source water bodies used by the facility, including area dimensions, depths, salinity and temperature regimes, and other documentation that supports the determination of the water body type where each cooling water intake structure is located;

b. Identification and characterization of the source water body's hydrological and geomorphologic features, as well as the methods used to conduct any physical studies to determine the intake's area of influence within the water body and the results of such studies; and

c. Location maps.

3. Cooling water intake structure data. These include:

a. A narrative description of the configuration of each cooling water intake structure and where it is located in the water body and in the water column;

b. Latitude and longitude in degrees, minutes, and seconds for each cooling water intake structure;

c. A narrative description of the operation of each cooling water intake structure, including design intake flow, daily hours of operation, number of days of the year in operation and seasonal changes, if applicable;

d. A flow distribution and water balance diagram that includes all sources of water to the facility, recirculation flows and discharges; and

e. Engineering drawings of the cooling water intake structure.

4. Source water baseline biological characterization data. This information is required to characterize the biological community in the vicinity of the cooling water intake structure and to characterize the operation of the cooling water intake structures. The department may also use this information in subsequent permit renewal proceedings to determine if the design and construction technology plan as required in 9VAC25-31-165 should be revised. This supporting information must include existing data if available. Existing data may be supplemented with data from newly conducted field studies. The information must include:

a. A list of the data in subdivisions 4 b through 4 f of this subsection that is not available and efforts made to identify sources of the data;

b. A list of species (or relevant taxa) for all life stages and their relative abundance in the vicinity of the cooling water intake structure;

c. Identification of the species and life stages that would be most susceptible to impingement and entrainment. Species evaluated should include the forage base as well as those most important in terms of significance to commercial and recreational fisheries;

d. Identification and evaluation of the primary period of reproduction, larval recruitment, and period of peak abundance for relevant taxa;

e. Data representative of the seasonal and daily activities (e.g., feeding and water column migration) of biological organisms in the vicinity of the cooling water intake structure;

f. Identification of all threatened, endangered, and other protected species that might be susceptible to impingement and entrainment at the cooling water intake structures;

g. Documentation of any public participation or consultation with federal or state agencies undertaken in development of the plan; and

h. If information requested in this subdivision 4 is supplemented with data collected using field studies, supporting documentation for the source water baseline biological characterization must include a description of all methods and quality assurance procedures for sampling, and data analysis including a description of the study area; taxonomic identification of sampled and evaluated biological assemblages (including all life stages of fish and shellfish); and sampling and data analysis methods. The sampling and/or data analysis methods used must be appropriate for a quantitative survey and based on consideration of methods used in other biological studies performed within the same source water body. The study area should include, at a minimum, the area of influence of the cooling water intake structure.

9VAC25-31-120. ~~Storm water~~ Stormwater discharges.

A. Permit requirements.

1. Prior to October 1, 1994, discharges composed entirely of ~~storm water~~ stormwater shall not be required to obtain a VPDES permit except:

a. A discharge with respect to which a permit has been issued prior to February 4, 1987;

b. A discharge associated with industrial activity; or

c. A discharge which either the board or the regional administrator determines to contribute to a violation of a water quality standard or is a significant contributor of pollutants to surface waters. This designation may include a discharge from any conveyance or system of conveyances used for collecting and conveying ~~storm water~~ stormwater run-off, except for those discharges from conveyances which do not require a permit under subdivision 2 of this subsection or agricultural ~~storm water~~ stormwater run-off which is exempted from the definition of point source.

2. The board may not require a permit for discharges of ~~storm water~~ stormwater run-off from mining operations or oil and gas exploration, production, processing or treatment operations, or transmission facilities, composed entirely of flows which are from conveyances or systems of conveyances (including ~~but not limited to~~ pipes, conduits, ditches, and channels) used for collecting and conveying precipitation run-off and which are not contaminated by contact with or that has not come into contact with, any overburden, raw material, intermediate products, finished product, by-product or waste products located on the site of such operations.

3. In addition to meeting the requirements of subsection B of this section, an operator of a ~~storm water~~ stormwater discharge associated with industrial activity which discharges through a large or medium municipal separate storm sewer system shall submit, to the operator of the municipal separate storm sewer system receiving the discharge no later than May 15, 1991, or 180 days prior to commencing such discharge: the name of the facility; a contact person and phone number; the location of the discharge; a description, including Standard Industrial Classification, which best reflects the principal products or services provided by each facility; and any existing VPDES permit number.

4. For ~~storm water~~ stormwater discharges associated with industrial activity from point sources which discharge through a nonmunicipal or nonpublicly owned separate storm sewer system, the board, in its discretion, may issue: a single VPDES permit, with each discharger a co-permittee to a permit issued to the operator of the portion of the system that discharges into surface waters; or, individual permits to each discharger of ~~storm water~~ stormwater associated with industrial activity through the nonmunicipal conveyance system.

a. All ~~storm water~~ stormwater discharges associated with industrial activity that discharge through a ~~storm water~~ stormwater discharge system that is not a municipal separate storm sewer must be covered by an individual permit, or a permit issued to the operator of the portion of the system that discharges to surface waters, with each discharger to the nonmunicipal conveyance a co-permittee to that permit.

b. Where there is more than one operator of a single system of such conveyances, all operators of ~~storm water~~ stormwater discharges associated with industrial activity must submit applications.

c. Any permit covering more than one operator shall identify the effluent limitations, or other permit conditions, if any, that apply to each operator.

5. Conveyances that discharge ~~storm water~~ stormwater run-off combined with municipal sewage are point sources that must obtain VPDES permits in accordance with the procedures of 9VAC25-31-100 and are not subject to the provisions of this section.

6. Whether a discharge from a municipal separate storm sewer is or is not subject to VPDES regulation shall have no bearing on whether the owner or operator of the discharge is eligible for funding under Title II, Title III or Title VI of the CWA.

7. a. On and after October 1, 1994, for discharges composed entirely of ~~storm water,~~ stormwater, that are not required by subdivision 1 of this subsection to obtain a permit, operators shall be required to obtain a VPDES permit only if:

(1) The board or the EPA regional administrator determines that ~~storm water~~ stormwater controls are needed for the discharge based on wasteload allocations that are part of "total maximum daily loads" (TMDLs) that address the pollutant(s) of concern; or

(2) The board or the EPA regional administrator determines that the discharge, or category of discharges within a geographic area, contributes to a violation of a water quality standard or is a significant contributor of pollutants to surface waters.

b. Operators of nonmunicipal sources designated pursuant to subdivisions 7 a (1) and (2) of this subsection shall seek coverage under a VPDES permit in accordance with subdivision B 1 of this section.

c. Operators of ~~storm water~~ stormwater discharges designated pursuant to subdivisions 7 a (1) and (2) of this subsection shall apply to the board for a permit within 180 days of receipt of notice, unless permission for a later date is granted by the board.

B. Application requirements for ~~storm water~~ stormwater discharges associated with industrial activity.

1. Dischargers of ~~storm water~~ stormwater associated with industrial activity are required to apply for an individual permit or seek coverage under a promulgated ~~storm water~~ stormwater general permit. Facilities that are required to obtain an individual permit, or any discharge of ~~storm water~~ stormwater which the board is evaluating for designation under subdivision A 1 c of this section, shall submit a VPDES application in accordance with the requirements of 9VAC25-31-100 as modified and supplemented by the provisions of this subsection.

a. Except as provided in subdivisions 1 b and c of this subsection, the operator of a ~~storm water~~ stormwater discharge associated with industrial activity subject to this section shall provide:

(1) A site map showing topography (or indicating the outline of drainage areas served by the outfall or outfalls covered in the application if a topographic map is unavailable) of the facility including: each of its drainage and discharge structures; the drainage area of each ~~storm water~~ stormwater outfall; paved areas and buildings within the drainage area of each ~~storm water~~ stormwater outfall, each past or present area used for outdoor storage or disposal of significant materials, each existing structural control measure to reduce pollutants in ~~storm water~~ stormwater run-off, materials loading and access areas, areas where pesticides, herbicides, soil conditioners and fertilizers are applied, each of its hazardous waste treatment, storage or disposal facilities (including each area not required to have a RCRA permit ~~which~~ that is used for accumulating hazardous waste under 40 CFR 262.34); each well where fluids from the facility are injected underground; springs, and other surface water bodies which receive ~~storm water~~ stormwater discharges from the facility;

(2) An estimate of the area of impervious surfaces (including paved areas and building roofs) and the total area drained by each outfall (within a mile radius of the facility) and a narrative description of the following: Significant materials that in the three years prior to the submittal of this application have been treated, stored or disposed in a manner to allow exposure to ~~storm water~~ stormwater; method of treatment, storage or disposal of such materials; materials management practices employed, in the three years prior to the submittal of this application, to minimize contact by these materials with ~~storm water~~ stormwater runoff; materials loading and access areas; the location, manner and frequency in which pesticides, herbicides, soil conditioners and fertilizers are applied; the location and a description of existing structural and nonstructural control measures to reduce pollutants in ~~storm water~~ stormwater runoff; and a description of the treatment the ~~storm water~~ stormwater receives, including the ultimate disposal of any solid or fluid wastes other than by discharge;

(3) A certification that all outfalls that should contain ~~storm water~~ stormwater discharges associated with industrial activity have been tested or evaluated for the presence of ~~nonstorm water~~ nonstormwater discharges ~~which~~ that are not covered by a VPDES permit; tests for such ~~nonstorm water~~ nonstormwater discharges may include smoke tests, fluorometric dye tests, analysis of accurate schematics, as well as other appropriate tests. The certification shall include a description of the method used, the date of any testing, and the onsite drainage points that were directly observed during a test;

(4) Existing information regarding significant leaks or spills of toxic or hazardous pollutants at the facility that have taken place within the three years prior to the submittal of this application;

(5) Quantitative data based on samples collected during storm events and collected in accordance with 9VAC25-31-100 of this part from all outfalls containing a ~~storm water~~ stormwater discharge associated with industrial activity for the following parameters:

(a) Any pollutant limited in an effluent guideline to which the facility is subject;

(b) Any pollutant listed in the facility's VPDES permit for its process wastewater (if the facility is operating under an existing VPDES permit);

(c) Oil and grease, pH, BOD_5, COD, TSS, total phosphorus, total Kjeldahl nitrogen, and nitrate plus nitrite nitrogen;

(d) Any information on the discharge required under 9VAC25-31-100 G 7 f and g;

(e) Flow measurements or estimates of the flow rate, and the total amount of discharge for the storm event or events sampled, and the method of flow measurement or estimation; and

(f) The date and duration (in hours) of the storm event or events sampled, rainfall measurements or estimates of the storm event (in inches) which generated the sampled run-off and the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event (in hours);

(6) Operators of a discharge which is composed entirely of ~~storm water~~ stormwater are exempt from the requirements of 9VAC25-31-100 G 2, G 3, G 4, G 5, G 7 c, G 7 d, G 7 e, and G 7 h; and

(7) Operators of new sources or new discharges ~~which~~ that are composed in part or entirely of ~~storm water~~ stormwater must include estimates for the pollutants or parameters listed in subdivision 1 a (5) of this subsection instead of actual sampling data, along with the source of each estimate. Operators of new sources or new discharges composed in part or entirely of ~~storm water~~ stormwater must provide quantitative data for the parameters listed in subdivision 1 a (5) of this subsection within two years after

commencement of discharge, unless such data has already been reported under the monitoring requirements of the VPDES permit for the discharge. Operators of a new source or new discharge ~~which~~ that is composed entirely of ~~storm water~~ stormwater are exempt from the requirements of 9VAC25-31-100 K 3 b, K 3 c, and K 5.

b. The operator of an existing or new discharge composed entirely of ~~storm water~~ stormwater from an oil or gas exploration, production, processing, or treatment operation, or transmission facility is not required to submit a permit application in accordance with subdivision 1 a of this subsection, unless the facility:

(1) Has had a discharge of ~~storm water~~ stormwater resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 117.21 or 40 CFR 302.6 at any time since November 16, 1987;

(2) Has had a discharge of ~~storm water~~ stormwater resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 110.6 at any time since November 16, 1987; or

(3) Contributes to a violation of a water quality standard.

c. The operator of an existing or new discharge composed entirely of ~~storm water~~ stormwater from a mining operation is not required to submit a permit application unless the discharge has come into contact with any overburden, raw material, intermediate products, finished product, byproduct, or waste products located on the site of such operations.

d. Applicants shall provide such other information the board may reasonably require to determine whether to issue a permit.

2. No application for a VPDES permit authorizing direct or indirect discharge of stormwater runoff from a new municipal solid waste landfill into a local watershed protection district established and designated as such by city ordinance prior to January 1, 2006, shall be considered complete unless it contains certification from the local governing body of the city in which the discharge is to take place, that the discharge is consistent with the city's ordinance establishing and designating the local watershed protection district. This requirement shall apply to applications for new or modified individual VPDES permits and for new or modified coverage under general VPDES permits. This requirement does not apply to any municipal solid waste landfill in operation on or before January 1, 2006.

C. Application deadlines. Any operator of a point source required to obtain a permit under this section that does not have an effective VPDES permit authorizing discharges from its ~~storm water~~ stormwater outfalls shall submit an application in accordance with the following deadlines:

1. Individual applications.

a. Except as provided in subdivision 1 b of this subsection, for any ~~storm water~~ stormwater discharge associated with industrial activity as defined in this chapter which is not authorized by a ~~storm water~~ stormwater general permit, a permit application made pursuant to subsection B of this section shall be submitted to the department by October 1, 1992;

b. For any ~~storm water~~ stormwater discharge associated with industrial activity from a facility that is owned or operated by a municipality with a population of less than 100,000 that is not authorized by a general or individual permit, other than an airport, powerplant, or uncontrolled sanitary landfill, permit applications must be submitted to the department by March 10, 2003;

2. A permit application shall be submitted to the department within 180 days of notice, unless permission for a later date is granted by the board, for:

a. A ~~storm water~~ stormwater discharge which either the board or the regional administrator, determines that the discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to surface waters; or

b. A ~~storm water~~ stormwater discharge subject to subdivision B 1 d of this section;

3. Facilities with existing VPDES permits for ~~storm water~~ stormwater discharges associated with industrial activity shall maintain existing permits. Facilities with permits for ~~storm water~~ stormwater discharges associated with industrial activity which expire on or after May 18, 1992, shall submit a new application in accordance with the requirements of 9VAC25-31-100 and 9VAC25-31-120 B (Form 1, Form 2F, and other applicable forms) 180 days before the expiration of such permits.

D. Petitions.

1. Any person may petition the board to require a VPDES permit for a discharge ~~which~~ that is composed entirely of ~~storm water~~ stormwater which contributes to a violation of a water quality standard or is a significant contributor of pollutants to surface waters.

2. The board shall make a final determination on any petition received under this section within 90 days after receiving the petition.

E. Conditional exclusion for no exposure of industrial activities and materials to ~~storm water.~~ stormwater. Discharges composed entirely of ~~storm water~~ stormwater are not ~~storm water~~ stormwater discharges associated with industrial activity if there is no exposure of industrial materials and activities to rain, snow, snowmelt or run-off and the discharger satisfies the conditions in subdivisions 1 through 4 of this subsection. No exposure means that all industrial materials and activities are protected by a storm resistant shelter to prevent exposure to rain, snow, snowmelt, and run-off. Industrial materials or activities include~~, but are not limited to,~~ material handling

equipment or activities, industrial machinery, raw materials, intermediate products, by-products, final products, or waste products. Material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product or waste product.

1. To qualify for this exclusion, the operator of the discharge must:

a. Provide a storm resistant shelter to protect industrial materials and activities from exposure to rain, snow, snow melt, and run-off;

b. Complete and sign (according to 9VAC25-31-110) a certification that there are no discharges of ~~storm water~~ stormwater contaminated by exposure to industrial materials and activities from the entire facility, except as provided in subdivision 2 of this subsection;

c. Submit the signed certification to the department once every five years. As of the start date in Table 1 of 9VAC25-31-1020, all certifications submitted in compliance with this section shall be submitted electronically by the owner or operator to the department in compliance with this section and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-31-110, and Part XI (9VAC25-31-950 et seq.) of this chapter. Part XI of this chapter is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part XI of this chapter, owners or operators may be required to report electronically if specified by a particular permit;

d. Allow the department to inspect the facility to determine compliance with the no exposure conditions;

e. Allow the department to make any no exposure inspection reports available to the public upon request; and

f. For facilities that discharge through an MS4, upon request, submit a copy of the certification of no exposure to the MS4 operator, as well as allow inspection and public reporting by the MS4 operator.

2. Storm resistant shelter is not required for:

a. Drums, barrels, tanks, and similar containers that are tightly sealed, provided those containers are not deteriorated and do not leak ("sealed" means banded or otherwise secured and without operational taps or valves);

b. Adequately maintained vehicles used in material handling; and

c. Final products, other than products that would be mobilized in ~~storm water~~ stormwater discharge (e.g., rock salt).

3. a. This conditional exclusion from the requirement for a VPDES permit is available on a facility-wide basis only, not for individual outfalls. If a facility has some discharges of ~~storm water~~ stormwater that would otherwise be no exposure discharges, individual permit requirements should be adjusted accordingly.

b. If circumstances change and industrial materials or activities become exposed to rain, snow, snow melt, or run-off, the conditions for this exclusion no longer apply. In such cases, the discharge becomes subject to enforcement for unpermitted discharge. Any conditionally exempt discharger who anticipates changes in circumstances should apply for and obtain permit authorization prior to the change of circumstances.

c. Notwithstanding the provisions of this subsection, the board retains the authority to require permit authorization (and deny this exclusion) upon making a determination that the discharge causes, has a reasonable potential to cause, or contributes to an instream excursion above an applicable water quality standard, including designated uses.

4. The no exposure certification requires the submission of the following information, at a minimum, to aid the board in determining if the facility qualifies for the no exposure exclusion:

a. The legal name, address, and phone number of the discharger.

b. The facility name and address, the county name and the latitude and longitude where the facility is located.

c. Certification that indicates that none of the following materials or activities are, or will be in the foreseeable future, exposed to precipitation:

(1) Using, storing, or cleaning industrial machinery or equipment, and areas where residuals from using, storing, or cleaning industrial machinery or equipment remain and are exposed to ~~storm water~~ stormwater;

(2) Materials or residuals on the ground or in ~~storm water~~ stormwater inlets from spills/leaks;

(3) Materials or products from past industrial activity;

(4) Material handling equipment (except adequately maintained vehicles);

(5) Materials or products during loading/unloading or transporting activities;

(6) Materials or products stored outdoors (except final products intended for outside use, e.g., new cars, where exposure to ~~storm water~~ stormwater does not result in the discharge of pollutants);

(7) Materials contained in open, deteriorated or leaking storage drums, barrels, tanks, and similar containers;

(8) Materials or products handled/stored on roads or railways owned or maintained by the discharger;

(9) Waste material (except waste in covered, nonleaking containers, e.g., dumpsters);

(10) Application or disposal of process wastewater (unless otherwise permitted); and

(11) Particulate matter or visible deposits of residuals from roof stacks/vents not otherwise regulated, i.e., under an air quality control permit, and evident in the ~~storm water~~ stormwater outflow.

d. All no exposure certifications must include the following certification statement and be signed in accordance with the signatory requirements of 9VAC25-31-110: "I certify under penalty of law that I have read and understand the eligibility requirements for claiming a condition of no exposure and obtaining an exclusion from VPDES ~~storm water~~ stormwater permitting; and that there are no discharges of ~~storm water~~ stormwater contaminated by exposure to industrial activities or materials from the industrial facility identified in this document (except as allowed under 9VAC25-31-120 E 2). I understand that I am obligated to submit a no exposure certification form once every five years to the Department of Environmental Quality and, if requested, to the operator of the local MS4 into which this facility discharges (where applicable). I understand that I must allow the department, or MS4 operator where the discharge is into the local MS4, to perform inspections to confirm the condition of no exposure and to make such inspection reports publicly available upon request. I understand that I must obtain coverage under a VPDES permit prior to any point source discharge of ~~storm water~~ stormwater associated with industrial activity from the facility. I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based upon my inquiry of the person or persons who manage the system, or those persons directly involved in gathering the information, the information submitted is to the best of my knowledge and belief true, accurate and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

9VAC25-31-130. Concentrated animal feeding operations.

A. Permit requirement for CAFOs.

1. Concentrated animal feeding operations as defined in 9VAC25-31-10 or designated in accordance with subsection B of this section are point sources that require VPDES permits for discharges. Once an operation is defined as a CAFO, the VPDES requirements for CAFOs apply with respect to all animals in confinement at the operation and all manure, litter and process wastewater generated by those animals or the production of those animals, regardless of the type of animal.

2. Two or more animal feeding operations under common ownership are considered, for the purposes of this chapter, to be a single animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of wastes.

B. Case-by-case designations. The board may designate any animal feeding operation as a concentrated animal feeding operation upon determining that it is a significant contributor of pollution to surface waters.

1. In making this designation the board shall consider the following factors:

a. The size of the animal feeding operation and the amount of wastes reaching surface waters;

b. The location of the animal feeding operation relative to surface waters;

c. The means of conveyance of animal wastes and process wastewaters into surface waters;

d. The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes and process wastewaters into surface waters; and

e. Other relevant factors.

2. No animal feeding operation with less than the numbers of animals set forth in the definition of Medium CAFO in this regulation shall be designated as a concentrated animal feeding operation unless:

a. Pollutants are discharged into surface waters through a manmade ditch, flushing system, or other similar manmade device; or

b. Pollutants are discharged directly into surface waters which originate outside of the facility and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

3. A permit application shall not be required from a concentrated animal feeding operation designated under this subsection until the board has conducted an on-site inspection of the operation and determined that the operation should and could be regulated under the VPDES permit program.

C. VPDES permit authorization.

1. Permit requirement. The owners or operators of a CAFO shall not discharge unless the discharge is authorized by a VPDES permit. In order to obtain authorization under a VPDES permit, the CAFO owner or operator shall either apply for an individual VPDES permit or apply for coverage under a VPDES general permit. The owners or operators of a CAFO must have obtained authorization under the VPDES permit at the time that the CAFO discharges.

2. Information to submit with permit application. A permit application for an individual permit must include the information specified in 9VAC25-31-100 J. A notice of intent for a general permit must include the information specified in 9VAC25-31-100 J and 9VAC25-31-170.

3. Land application discharges from a CAFO are subject to VPDES requirements. The discharge of manure, litter or

process wastewater to surface waters from a CAFO as the result of the application of that manure, litter or process wastewater by the CAFO to land areas under its control is a discharge from that CAFO subject to VPDES requirements, except where it is an agricultural ~~storm water~~ stormwater discharge as provided in 33 USC § 1362(14). For purposes of this subdivision, where the manure, litter or process wastewater has been applied in accordance with a nutrient management plan approved by the Department of Conservation and Recreation and in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater, as specified in subdivisions E 1 f through i of 9VAC25-31-200, a precipitation-related discharge of manure, litter or process wastewater from land areas under the control of a CAFO is an agricultural ~~storm water~~ stormwater discharge.

a. For unpermitted Large CAFOs, a precipitation-related discharge of manure, litter, or process wastewater from land areas under the control of a CAFO shall be considered an agricultural stormwater discharge only where the manure, litter, or process wastewater has been land applied in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater, as specified in subdivisions E 1 f through i of 9VAC25-31-200.

b. Unpermitted Large CAFOs shall maintain documentation specified in subdivision E 1 i of 9VAC25-31-200 either on site or at a nearby office, or otherwise make such documentation readily available to department staff upon request.

4. Procedures for CAFOs seeking coverage under a general permit. CAFO owners or operators shall submit a registration statement when seeking authorization to discharge under a general permit in accordance with subsection B of 9VAC25-31-170. The board will review registration statements submitted by CAFO owners or operators to ensure that the registration statement includes the information required by subsection J of 9VAC25-31-100, including a nutrient management plan that meets the requirements of subsection E of 9VAC25-31-200 and applicable effluent limitations and standards, including those specified in 40 CFR Part 412. When additional information is necessary to complete the registration statement or clarify, modify, or supplement previously submitted material, the board may request such information from the owner or operator. If the board makes a preliminary determination that the registration statement meets the requirements of subsection J of 9VAC25-31-100 and subsection E of 9VAC25-31-200, the board will notify the public of the board's proposal to grant coverage under the permit to the CAFO and make available for public review and comment the registration statement submitted by the CAFO, including the CAFO's nutrient management plan, and the draft terms of the nutrient management plan to be incorporated into the permit. The process for submitting public comments and public hearing requests, and the public hearing process if a request for a public hearing is granted, shall follow the procedures applicable to draft permits set forth in 9VAC25-31-300, 9VAC25-31-310, and 40 CFR 124.13. The board may establish, either by regulation or in the general permit, an appropriate period of time for the public to comment and request a public hearing that differs from the time period specified in 9VAC25-31-290. The board's response to significant comments received during the comment period is governed by 9VAC25-31-320, and, if necessary, the board will require the CAFO owner or operator to revise the nutrient management plan in order to be granted permit coverage. When the board authorizes coverage for the CAFO owner or operator under the general permit, the terms of the nutrient management plan shall become incorporated as terms and conditions of the permit for the CAFO. The board will notify the CAFO owner or operator and inform the public that coverage has been authorized and of the terms of the nutrient management plan incorporated as terms and conditions of the permit applicable to the CAFO.

5. Changes to a nutrient management plan. Any permit issued to a CAFO shall require the following procedures to apply when a CAFO owner or operator makes changes to the CAFO's nutrient management plan previously submitted to the board:

a. The CAFO owner or operator shall provide the board with the most current version of the CAFO's nutrient management plan and identify changes from the previous version, except that the results of calculations made in accordance with the requirements of subdivisions E 5 a (2) and E 5 b (4) of 9VAC25-31-200 are not subject to the requirements of this subdivision 5.

b. The board will review the revised nutrient management plan to ensure that it meets the requirements of this section and applicable effluent limitations and standards, including those specified in 40 CFR Part 412, and will determine whether the changes to the nutrient management plan necessitate revision to the terms of the nutrient management plan incorporated into the permit issued to the CAFO. If revision to the terms of the nutrient management plan is not necessary, the board will notify the CAFO owner or operator and upon such notification the CAFO may implement the revised nutrient management plan. If revision to the terms of the nutrient management plan is necessary, the board will determine whether such changes are substantial changes as described in subdivision 5 c of this subsection.

(1) If the board determines that the changes to the terms of the nutrient management plan are not substantial, the board will make the revised nutrient management plan publicly available and include it in the permit record,

revise the terms of the nutrient management plan incorporated into the permit, and notify the owner or operator and inform the public of any changes to the terms of the nutrient management plan that are incorporated into the permit.

(2) If the board determines that the changes to the terms of the nutrient management plan are substantial, the board will notify the public and make the proposed changes and the information submitted by the CAFO owner or operator available for public review and comment. The process for public comments, public hearing requests, and the public hearing process if a public hearing is held shall follow the procedures applicable to draft permits set forth in 9VAC25-31-300, 9VAC25-31-310, and 40 CFR 124.13. The board may establish, either by regulation or in the CAFO's permit, an appropriate period of time for the public to comment and request a public hearing on the proposed changes that differs from the time period specified in 9VAC25-31-290. The board will respond to all significant comments received during the comment period as provided in 9VAC25-31-320, and require the CAFO owner or operator to further revise the nutrient management plan if necessary, in order to approve the revision to the terms of the nutrient management plan incorporated into the CAFO's permit. Once the board incorporates the revised terms of the nutrient management plan into the permit, the board will notify the owner or operator and inform the public of the final decision concerning revisions to the terms and conditions of the permit.

c. Substantial changes to the terms of a nutrient management plan incorporated as terms and conditions of a permit include~~, but are not limited to~~:

(1) Addition of new land application areas not previously included in the CAFO's nutrient management plan. Except that if the land application area that is being added to the nutrient management plan is covered by terms of a nutrient management plan incorporated into an existing VPDES permit in accordance with the requirements of subdivision E 5 of 9VAC25-31-200, and the CAFO owner or operator applies manure, litter, or process wastewater on the newly added land application area in accordance with the existing field-specific permit terms applicable to the newly added land application area, such addition of new land would be a change to the new CAFO owner or operator's nutrient management plan but not a substantial change for purposes of this section;

(2) Any changes to the field-specific maximum annual rates for land application, as set forth in subdivision E 5 a of 9VAC25-31-200, and to the maximum amounts of nitrogen and phosphorus derived from all sources for each crop, as set forth in subdivision E 5 b of 9VAC25-31-200;

(3) Addition of any crop or other uses not included in the terms of the CAFO's nutrient management plan and corresponding field-specific rates of application expressed in accordance with subdivision E 5 of 9VAC25-31-200; and

(4) Changes to site-specific components of the CAFO's nutrient management plan, where such changes are likely to increase the risk of nitrogen and phosphorus transport to state waters.

6. Causes for modification of nutrient management plans. The incorporation of the terms of a CAFO's nutrient management plan into the terms and conditions of a general permit when a CAFO obtains coverage under a general permit in accordance with subdivision C 4 of 9VAC25-31-130 and 9VAC25-31-170 is not a cause for modification pursuant to the requirements of 9VAC25-31-370.

9VAC25-31-170. General permits.

A. The board may issue a general permit in accordance with the following:

1. The general permit shall be written to cover one or more categories or subcategories of discharges or sludge use or disposal practices or facilities described in the permit under subdivision 2 b of this subsection, except those covered by individual permits, within a geographic area. The area should correspond to existing geographic or political boundaries, such as:

a. Designated planning areas under §§ 208 and 303 of the CWA;

b. Sewer districts or sewer authorities;

c. City, county, or state political boundaries;

d. State highway systems;

e. Standard metropolitan statistical areas as defined by the Office of Management and Budget;

f. Urbanized areas as designated by the Bureau of the Census according to criteria in 30 FR 15202 (May 1, 1974); or

g. Any other appropriate division or combination of boundaries.

2. The general permit may be written to regulate one or more categories or subcategories of discharges or sludge use or disposal practices or facilities, within the area described in subdivision 1 of this subsection, where the sources within a covered subcategory of discharges are either:

a. ~~Storm water~~ Stormwater point sources; or

b. One or more categories or subcategories of point sources other than ~~storm water~~ stormwater point sources, or one or more categories or subcategories of treatment works treating domestic sewage, if the sources or treatment works treating domestic sewage within each category or subcategory all:

(1) Involve the same or substantially similar types of operations;

(2) Discharge the same types of wastes or engage in the same types of sludge use or disposal practices;

(3) Require the same effluent limitations, operating conditions, or standards for sewage sludge use or disposal;

(4) Require the same or similar monitoring; and

(5) In the opinion of the board, are more appropriately controlled under a general permit than under individual permits.

3. Where sources within a specific category of dischargers are subject to water quality-based limits imposed pursuant to 9VAC25-31-220, the sources in that specific category or subcategory shall be subject to the same water quality-based effluent limitations.

4. The general permit must clearly identify the applicable conditions for each category or subcategory of dischargers or treatment works treating domestic sewage covered by the permit.

5. The general permit may exclude specified sources or areas from coverage.

B. Administration.

1. General permits may be issued, modified, revoked and reissued, or terminated in accordance with applicable requirements of this chapter.

2. Authorization to discharge, or authorization to engage in sludge use and disposal practices.

a. Except as provided in subdivisions 2 e and 2 f of this subsection, dischargers (or treatment works treating domestic sewage) seeking coverage under a general permit shall submit to the department a written notice of intent to be covered by the general permit. A discharger (or treatment works treating domestic sewage) who fails to submit a notice of intent in accordance with the terms of the permit is not authorized to discharge, (or in the case of a sludge disposal permit, to engage in a sludge use or disposal practice), under the terms of the general permit unless the general permit, in accordance with subdivision 2 e of this subsection, contains a provision that a notice of intent is not required or the board notifies a discharger (or treatment works treating domestic sewage) that it is covered by a general permit in accordance with subdivision 2 f of this subsection. A complete and timely notice of intent (NOI) to be covered in accordance with general permit requirements fulfills the requirements for permit applications for the purposes of this chapter. As of the start date in Table 1 of 9VAC25-31-1020, all notices of intent submitted in compliance with this subsection shall be submitted electronically by the discharger (or treatment works treating domestic sewage) to the department in compliance with this subsection and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-31-110, and Part XI (9VAC25-31-950 et seq.) of this chapter. Part XI of this chapter is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part XI of this chapter, dischargers (or treatment works treating domestic sewage) may be required to report electronically if specified by a particular permit.

b. The contents of the notice of intent shall be specified in the general permit and shall require the submission of information necessary for adequate program implementation, including at a minimum, the legal name and address of the owner or operator, the facility name and address, type of facility or discharges, and the receiving stream or streams and other required data elements as identified in Appendix A to 40 CFR Part 127, as adopted by reference in 9VAC25-31-1030. General permits for ~~storm water~~ stormwater discharges associated with industrial activity from inactive mining, inactive oil and gas operations, or inactive landfills occurring on federal lands where an operator cannot be identified may contain alternative notice of intent requirements. Notices of intent for coverage under a general permit for concentrated animal feeding operations must include the information specified in 9VAC25-31-100 J 1, including a topographic map. All notices of intent shall be signed in accordance with 9VAC25-31-110.

c. General permits shall specify the deadlines for submitting notices of intent to be covered and the date or dates when a discharger is authorized to discharge under the permit.

d. General permits shall specify whether a discharger (or treatment works treating domestic sewage) that has submitted a complete and timely notice of intent to be covered in accordance with the general permit and that is eligible for coverage under the permit, is authorized to discharge, (or in the case of a sludge disposal permit, to engage in a sludge use or disposal practice), in accordance with the permit either upon receipt of the notice of intent by the department, after a waiting period specified in the general permit, on a date specified in the general permit, or upon receipt of notification of inclusion by the board. Coverage may be terminated or revoked in accordance with subdivision 3 of this subsection.

e. Discharges other than discharges from publicly owned treatment works, combined sewer overflows, primary industrial facilities, and ~~storm water~~ stormwater discharges associated with industrial activity, may, at the discretion of the board, be authorized to discharge under a general permit without submitting a notice of intent where the board finds that a notice of intent requirement would be inappropriate. In making such a finding, the board shall consider: the type of discharge; the expected nature of the discharge; the potential for toxic and conventional pollutants in the discharges; the expected volume of the discharges; other means of identifying discharges covered by the permit; and the estimated number of discharges to be covered by the permit. The board shall provide in the

public notice of the general permit the reasons for not requiring a notice of intent.

f. The board may notify a discharger (or treatment works treating domestic sewage) that it is covered by a general permit, even if the discharger (or treatment works treating domestic sewage) has not submitted a notice of intent to be covered. A discharger (or treatment works treating domestic sewage) so notified may request an individual permit under subdivision 3 c of this subsection.

g. A CAFO owner or operator may be authorized to discharge under a general permit only in accordance with the process described in subdivision C 4 of 9VAC25-31-130.

3. Requiring an individual permit.

a. The board may require any discharger authorized by a general permit to apply for and obtain an individual VPDES permit. Any interested person may request the board to take action under this subdivision. Cases where an individual VPDES permit may be required include the following:

(1) The discharger or treatment works treating domestic sewage is not in compliance with the conditions of the general VPDES permit;

(2) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source or treatment works treating domestic sewage;

(3) Effluent limitation guidelines are promulgated for point sources covered by the general VPDES permit;

(4) A water quality management plan containing requirements applicable to such point sources is approved;

(5) Circumstances have changed since the time of the request to be covered so that the discharger is no longer appropriately controlled under the general permit, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary;

(6) Standards for sewage sludge use or disposal have been promulgated for the sludge use and disposal practice covered by the general VPDES permit; or

(7) The ~~discharge(s)~~ discharge is a significant contributor of pollutants. In making this determination, the board may consider the following factors:

(a) The location of the discharge with respect to surface waters;

(b) The size of the discharge;

(c) The quantity and nature of the pollutants discharged to surface waters; and

(d) Other relevant factors.

b. Permits required on a case-by-case basis.

(1) The board may determine, on a case-by-case basis, that certain concentrated animal feeding operations, concentrated aquatic animal production facilities, ~~storm water~~ stormwater discharges, and certain other facilities covered by general permits that do not generally require an individual permit may be required to obtain an individual permit because of their contributions to water pollution.

(2) Whenever the board decides that an individual permit is required under this subsection, except as provided in subdivision 3 b (3) of this subsection, the board shall notify the discharger in writing of that decision and the reasons for it, and shall send an application form with the notice. The discharger must apply for a permit within 60 days of notice, unless permission for a later date is granted by the board. The question whether the designation was proper will remain open for consideration during the public comment period for the draft permit and in any subsequent public hearing.

(3) Prior to a case-by-case determination that an individual permit is required for a ~~storm water~~ stormwater discharge under this subsection, the board may require the discharger to submit a permit application or other information regarding the discharge under the law and § 308 of the CWA. In requiring such information, the board shall notify the discharger in writing and shall send an application form with the notice. The discharger must apply for a permit under 9VAC25-31-120 A 1 within 60 days of notice or under 9VAC25-31-120 A 7 within 180 days of notice, unless permission for a later date is granted by the board. The question whether the initial designation was proper will remain open for consideration during the public comment period for the draft permit and in any subsequent public hearing.

c. Any owner or operator authorized by a general permit may request to be excluded from the coverage of the general permit by applying for an individual permit. The owner or operator shall submit an application under 9VAC25-31-100 with reasons supporting the request. The request shall be processed under the applicable parts of this chapter. The request shall be granted by issuing of an individual permit if the reasons cited by the owner or operator are adequate to support the request.

d. When an individual VPDES permit is issued to an owner or operator otherwise subject to a general VPDES permit, the applicability of the general permit to the individual VPDES permittee is automatically terminated on the effective date of the individual permit.

e. A source excluded from a general permit solely because it already has an individual permit may request that the individual permit be revoked, and that it be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply to the source.

Part III
Permit Conditions

9VAC25-31-190. Conditions applicable to all permits.

The following conditions apply to all VPDES permits. Additional conditions applicable to VPDES permits are in 9VAC25-31-200. All conditions applicable to VPDES permits shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to this regulation must be given in the permit.

A. The permittee must comply with all conditions of the permit. Any permit noncompliance constitutes a violation of the law and the CWA, except that noncompliance with certain provisions of the permit may constitute a violation of the law but not the CWA. Permit noncompliance is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

The permittee shall comply with effluent standards or prohibitions established under § 307(a) of the CWA for toxic pollutants and with standards for sewage sludge use or disposal established under § 405(d) of the CWA within the time provided in the chapters that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if the permit has not yet been modified to incorporate the requirement.

B. If the permittee wishes to continue an activity regulated by the permit after the expiration date of the permit, the permittee must apply for and obtain a new permit.

C. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.

D. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of the permit which has a reasonable likelihood of adversely affecting human health or the environment.

E. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) ~~which~~ that are installed or used by the permittee to achieve compliance with the conditions of the permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems ~~which~~ that are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

F. Permits may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

G. Permits do not convey any property rights of any sort, or any exclusive privilege.

H. The permittee shall furnish to the department, within a reasonable time, any information ~~which~~ that the board may request to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. The board may require the permittee to furnish, upon request, such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from ~~his~~ the permittee's discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of the law. The permittee shall also furnish to the department upon request, copies of records required to be kept by the permit.

I. The permittee shall allow the director, or an authorized representative (including an authorized contractor acting as a representative of the administrator), upon presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of the permit;

2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under the permit; and

4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the CWA and the law, any substances or parameters at any location.

J. Monitoring and records.

1. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

2. Except for records of monitoring information required by the permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years (or longer as required by Part VI (9VAC25-31-420 et seq.) of this chapter), the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by the permit, and records of all data used to complete the application for the permit, for a period of at least three years from the date of the sample, measurement, report or application. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the board.

3. Records of monitoring information shall include:

a. The date, exact place, and time of sampling or measurements;

b. The individual ~~or individuals~~ who performed the sampling or measurements;

c. The date ~~or dates~~ analyses were performed;

d. The individual ~~or individuals~~ who performed the analyses;

e. The analytical techniques or methods used; and

f. The results of such analyses.

4. Monitoring results must be conducted according to test procedures approved under 40 CFR Part 136 or alternative EPA approved methods; or, in the case of sludge use or disposal, approved under 40 CFR Part 136 unless otherwise specified in Part VI of this chapter, unless other test procedures have been specified in the permit.

5. Samples taken shall be analyzed by a laboratory certified under 1VAC30-45, Certification for Noncommercial Environmental Laboratories, or 1VAC30-46, Accreditation for Commercial Environmental Laboratories.

K. All applications, reports, or information submitted to the department shall be signed and certified as required by 9VAC25-31-110.

L. Reporting requirements.

1. The permittee shall give notice to the department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

a. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 9VAC25-31-180 A;

b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under 9VAC25-31-200 A 1; or

c. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.

2. The permittee shall give advance notice to the department of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

3. Permits are not transferable to any person except after notice to the department. The board may require modification or revocation and reissuance of permits to change the name of the permittee and incorporate such other requirements as may be necessary under the law or the CWA.

4. Monitoring results shall be reported at the intervals specified in the permit.

a. Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms provided or specified by the department for reporting results of monitoring of sludge use or disposal practices. As of the start date in Table 1 of 9VAC25-31-1020, all reports and forms submitted in compliance with this subdivision 4 shall be submitted electronically by the permittee to the department in compliance with this subdivision 4 and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-31-110, and Part XI (9VAC25-31-950 et seq.) of this chapter. Part XI of this chapter is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part XI of this chapter, permittees may be required to report electronically if specified by a particular permit.

b. If the permittee monitors any pollutant specifically addressed by the permit more frequently than required by the permit using test procedures approved under 40 CFR Part 136 or, in the case of sludge use or disposal, approved under 40 CFR Part 136 unless otherwise specified in Part VI of this chapter, or as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the department.

c. Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in the permit.

5. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of the permit shall be submitted no later than 14 days following each schedule date.

6. If any unusual or extraordinary discharge including a bypass or upset should occur from a facility and such discharge enters or could be expected to enter state waters, the owner shall promptly notify, in no case later than 24 hours, the department by telephone after the discovery of such discharge. This notification shall provide all available details of the incident, including any adverse effects on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit it to the department within five days of discovery of the discharge in accordance with subdivision 7 a of this subsection. Unusual and extraordinary discharges include but are not limited to any discharge resulting from:

a. Unusual spillage of materials resulting directly or indirectly from processing operations;

b. Breakdown of processing or accessory equipment;

c. Failure or taking out of service of the treatment plant or auxiliary facilities (such as sewer lines or wastewater pump stations); and

d. Flooding or other acts of nature.

7. Twenty-four hour and five-day reporting.

a. The permittee shall report any noncompliance that may endanger health or the environment. Any information

shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A report in a format required by the department shall also be provided within five days of the time the permittee becomes aware of the circumstances. The five-day report shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

(1) For noncompliance events related to combined sewer overflows, sanitary sewer overflows, or bypass events, these reports must include the data described in subdivision 7 a of this subsection with the exception of time of discovery, as well as the type of event (i.e., combined sewer overflows, sanitary sewer overflows, or bypass events); type of sewer overflow structure (e.g., manhole, combine sewer overflow outfall); discharge volumes untreated by the treatment works treating domestic sewage; types of human health and environmental impacts of the sewer overflow event; and whether the noncompliance was related to wet weather.

(2) As of the start date in Table 1 of 9VAC25-31-1020, all reports related to combined sewer overflows, sanitary sewer overflows, or bypass events submitted in compliance with this subdivision 7 shall be submitted electronically by the permittee to the department in compliance with this subdivision 7 and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-31-110, and Part XI (9VAC25-31-950 et seq.) of this chapter. Part XI of this chapter is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part XI of this chapter, permittees may be required to electronically submit reports related to combined sewer overflows, sanitary sewer overflows, or bypass events under this subdivision by a particular permit.

(3) The director may also require permittees to electronically submit reports not related to combined sewer overflows, sanitary sewer overflows, or bypass events under this subdivision.

b. The following shall be reported within 24 hours under this subdivision:

(1) Any unanticipated bypass that exceeds any effluent limitation in the permit.

(2) Any upset that exceeds any effluent limitation in the permit.

(3) Violation of a maximum daily discharge limitation for any of the pollutants listed in the permit to be reported within 24 hours.

c. The board may waive the five-day report on a case-by-case basis for reports under this subdivision if the oral report has been received within 24 hours.

8. The permittee shall report all instances of noncompliance not reported under subdivisions 4, 5, 6, and 7 of this subsection, in a format required by the department at the time the next monitoring reports are submitted. The reports shall contain the information listed in subdivision 7 of this subsection.

a. For noncompliance events related to combined sewer overflows, sanitary sewer overflows, or bypass events, these reports shall contain the information described in subdivision 7 a of this subsection and the applicable required data in Appendix A to 40 CFR Part 127 as adopted by reference in 9VAC25-31-1030.

b. As of the start date in Table 1 of 9VAC25-31-1020, all reports related to combined sewer overflows, sanitary sewer overflows, or bypass events submitted in compliance with this subdivision 8 shall be submitted electronically by the permittee to the department in compliance with this subdivision 8 and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-31-110, and Part XI (9VAC25-31-950 et seq.) of this chapter. Part XI of this chapter is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part XI of this chapter, permittees may be required to electronically submit reports related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section by a particular permit.

c. The director may also require permittees to electronically submit reports not related to combined sewer overflows, sanitary sewer overflows, or bypass events under this section.

9. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the department, it shall promptly submit such facts or information.

10. The owner, operator, or the duly authorized representative of an VPDES-regulated entity is required to electronically submit the required information, as specified in Appendix A to 40 CFR Part 127 as adopted by reference in 9VAC25-31-1030, to the department.

M. Bypass.

1. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of subdivisions 2 and 3 of this subsection.

2. Notice.

a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least 10 days before the date of the bypass. As

of the start date in Table 1 of 9VAC25-31-1020, all notices submitted in compliance with this subdivision shall be submitted electronically by the permittee to the department in compliance with this subdivision and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-31-110, and Part XI (9VAC25-31-950 et seq.) of this chapter. Part XI of this chapter is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part XI of this chapter, permittees may be required to report electronically if specified by a particular permit.

b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in subdivision L 7 of this section. As of the start date in Table 1 of 9VAC25-31-1020, all notices submitted in compliance with this subdivision shall be submitted electronically by the permittee to the department in compliance with this subdivision and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-31-110, and Part XI (9VAC25-31-950 et seq.) of this chapter. Part XI of this chapter is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part XI of this chapter, permittees may be required to report electronically if specified by a particular permit.

3. Prohibition of bypass.

a. Bypass is prohibited, and the board may take enforcement action against a permittee for bypass, unless:

(1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(3) The permittee submitted notices as required under subdivision 2 of this subsection.

b. The board may approve an anticipated bypass, after considering its adverse effects, if the board determines that it will meet the three conditions listed above in subdivision 3 a of this subsection.

N. Upset.

1. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of subdivision 2 of this subsection are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

2. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

a. An upset occurred and that the permittee can identify the cause or causes of the upset;

b. The permitted facility was at the time being properly operated;

c. The permittee submitted notice of the upset as required in subdivision L 7 b (2) of this section (24-hour notice); and

d. The permittee complied with any remedial measures required under subsection D of this section.

3. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

9VAC25-31-200. Additional conditions applicable to specified categories of VPDES permits.

The following conditions, in addition to those set forth in 9VAC25-31-190, apply to all VPDES permits within the categories specified below:

A. Existing manufacturing, commercial, mining, and silvicultural dischargers. All existing manufacturing, commercial, mining, and silvicultural dischargers must notify the department as soon as they know or have reason to believe:

1. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant ~~which~~ that is not limited in the permit, if that discharge will exceed the highest of the following notification levels:

a. One hundred micrograms per liter (100 µg/l);

b. Two hundred micrograms per liter (200 µg/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;

c. Five times the maximum concentration value reported for that pollutant in the permit application; or

d. The level established by the board in accordance with 9VAC25-31-220 F.

2. That any activity has occurred or will occur which would result in any discharge, on a nonroutine or infrequent basis, of a toxic pollutant ~~which~~ that is not limited in the permit, if that discharge will exceed the highest of the following notification levels:

a. Five hundred micrograms per liter (500 µg/l);

b. One milligram per liter (1 mg/l) for antimony;

c. Ten times the maximum concentration value reported for that pollutant in the permit application; or

d. The level established by the board in accordance with 9VAC25-31-220 F.

B. Publicly and privately owned treatment works. All POTWs and PVOTWs must provide adequate notice to the department of the following:

1. Any new introduction of pollutants into the POTW or PVOTW from an indirect discharger ~~which~~ that would be subject to § 301 or 306 of the CWA and the law if it were directly discharging those pollutants; and

2. Any substantial change in the volume or character of pollutants being introduced into that POTW or PVOTW by a source introducing pollutants into the POTW or PVOTW at the time of issuance of the permit.

3. For purposes of this subsection, adequate notice shall include information on (i) the quality and quantity of effluent introduced into the POTW or PVOTW, and (ii) any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW or PVOTW.

4. When the monthly average flow influent to a POTW or PVOTW reaches 95% of the design capacity authorized by the VPDES permit for each month of any three-month period, the owner shall within 30 days notify the department in writing and within 90 days submit a plan of action for ensuring continued compliance with the terms of the permit.

a. The plan shall include the necessary steps and a prompt schedule of implementation for controlling any current problem, or any problem which could be reasonably anticipated, resulting from high influent flows.

b. Upon receipt of the owner's plan of action, the board shall notify the owner whether the plan is approved or disapproved. If the plan is disapproved, such notification shall state the reasons and specify the actions necessary to obtain approval of the plan.

c. Failure to timely submit an adequate plan shall be deemed a violation of the permit.

d. Nothing herein shall in any way impair the authority of the board to take enforcement action under § 62.1-44.15, 62.1-44.23, or 62.1-44.32 of the Code of Virginia.

C. Wastewater works operator requirements.

1. The permittee shall employ or contract at least one wastewater works operator who holds a current wastewater license appropriate for the permitted facility. The license shall be issued in accordance with Title 54.1 of the Code of Virginia and ~~the regulations of the Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals Regulations (18VAC160-20)~~ Waterworks and Wastewater Works Operators Licensing Regulations (18VAC160-30). Notwithstanding the foregoing requirement, unless the discharge is determined by the board on a case-by-case basis to be a potential contributor of pollution, no licensed operator is required for wastewater treatment works:

a. That have a design hydraulic capacity equal to or less than 0.04 mgd;

b. That discharge industrial waste or other waste from coal mining operations; or

c. That do not utilize biological or physical/chemical treatment.

2. In making this case-by-case determination, the board shall consider the location of the discharge with respect to state waters, the size of the discharge, the quantity and nature of pollutants reaching state waters and the treatment methods used at the wastewater works.

3. The permittee shall notify the department in writing whenever he is not complying, or has grounds for anticipating he will not comply with the requirements of subdivision 1 of this subsection. The notification shall include a statement of reasons and a prompt schedule for achieving compliance.

D. Lake level contingency plans. Any VPDES permit issued for a surface water impoundment whose primary purpose is to provide cooling water to power generators shall include a lake level contingency plan to allow specific reductions in the flow required to be released when the water level above the dam drops below designated levels due to drought conditions, and such plan shall take into account and minimize any adverse effects of any release reduction requirements on downstream users. This subsection shall not apply to any such facility that addresses releases and flow requirements during drought conditions in a Virginia Water Protection Permit.

E. Concentrated animal feeding operations (CAFOs). The activities of the CAFO shall not contravene the Water Quality Standards, as amended and adopted by the board, or any provision of the State Water Control Law. There shall be no point source discharge of manure, litter or process wastewater to surface waters of the state except in the case of an overflow caused by a storm event greater than the 25-year, 24-hour storm. Agricultural ~~storm water~~ stormwater discharges as defined in subdivision C 3 of 9VAC25-31-130 are permitted. Domestic sewage or industrial waste shall not be managed under the Virginia Pollutant Discharge Elimination System General Permit for CAFOs (9VAC25-191). Any permit issued to a CAFO shall include:

1. Requirements to develop, implement and comply with a nutrient management plan. At a minimum, a nutrient management plan shall include best management practices and procedures necessary to implement applicable effluent limitations and standards. Permitted CAFOs must have their nutrient management plans developed and implemented and be in compliance with the nutrient management plan as a requirement of the permit. The nutrient management plan must, to the extent applicable:

a. Ensure adequate storage of manure, litter, and process wastewater, including procedures to ensure proper operation and maintenance of the storage facilities;

b. Ensure proper management of mortalities (i.e., dead animals) to ensure that they are not disposed of in a liquid manure, ~~storm water~~ stormwater, or process wastewater storage or treatment system that is not specifically designed to treat animal mortalities;

c. Ensure that clean water is diverted, as appropriate, from the production area;

d. Prevent direct contact of confined animals with surface waters of the state;

e. Ensure that chemicals and other contaminants handled on site are not disposed of in any manure, litter, process wastewater, or stormwater storage or treatment system unless specifically designed to treat such chemicals and other contaminants;

f. Identify appropriate site specific conservation practices to be implemented, including as appropriate buffers or equivalent practices, to control runoff of pollutants to surface waters of the state;

g. Identify protocols for appropriate testing of manure, litter, process wastewater and soil;

h. Establish protocols to land apply manure, litter or process wastewater in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter or process wastewater; and

i. Identify specific records that will be maintained to document the implementation and management of the minimum elements described above.

2. Recordkeeping requirements. The permittee must create, maintain for five years, and make available to the director upon request the following records:

a. All applicable records identified pursuant to subdivision 1 i of this subsection;

b. In addition, all CAFOs subject to EPA Effluent Guidelines for Feedlots (40 CFR Part 412) must comply with recordkeeping requirements as specified in 40 CFR 412.37(b) and (c) and 40 CFR 412.47(b) and (c);

A copy of the CAFO's site-specific nutrient management plan must be maintained on site and made available to the director upon request.

3. Requirements relating to transfer of manure or process wastewater to other persons. Prior to transferring manure, litter or process wastewater to other persons, large CAFOs must provide the recipient of the manure, litter or process wastewater with the most current nutrient analysis. The analysis provided must be consistent with the requirements of EPA Effluent Guidelines for Feedlots (40 CFR Part 412). Large CAFOs must retain for five years records of the date, recipient name and address, and approximate amount of manure, litter, or process wastewater transferred to another person.

4. Annual reporting requirements for CAFOs. The permittee must submit an annual report to the director. As of the start date in Table 1 of 9VAC25-31-1020, all annual reports submitted in compliance with this subsection shall be submitted electronically by the permittee to the department in compliance with this subsection and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-31-110, and Part XI (9VAC25-31-950 et seq.) of this chapter. Part XI of this chapter is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part XI of this chapter, the permittee may be required to report electronically if specified by a particular permit. The annual report must include:

a. The number and type of animals, whether in open confinement or housed under roof (beef cattle, broilers, layers, swine weighing 55 pounds or more, swine weighing less than 55 pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, turkeys, other);

b. Estimated amount of total manure, litter and process wastewater generated by the CAFO in the previous 12 months (tons/gallons);

c. Estimated amount of total manure, litter and process wastewater transferred to other persons by the CAFO in the previous 12 months (tons/gallons);

d. Total number of acres for land application covered by the nutrient management plan developed in accordance with subdivision 1 of this subsection;

e. Total number of acres under control of the CAFO that were used for land application of manure, litter and process wastewater in the previous 12 months;

f. Summary of all manure, litter, and process wastewater discharges from the production area that occurred in the previous 12 months including for each discharge the date of discovery, duration of discharge, and approximate volume;

g. A statement indicating whether the current version of the CAFO's nutrient management plan was developed or approved by a certified nutrient management planner; and

h. The actual ~~crop(s)~~ crops planted and actual ~~yield(s)~~ yield for each field, the actual nitrogen and phosphorus content of the manure, litter, and process wastewater, the results of calculations conducted in accordance with subdivisions 5 a (2) and 5 b (4) of this subsection, and the amount of manure, litter, and process wastewater applied to each field during the previous 12 months; and, for any CAFO that implements a nutrient management plan that addresses rates of application in accordance with subdivision 5 b of this subsection, the results of any soil testing for nitrogen and phosphorus taken during the preceding 12 months, the data used in calculations conducted in accordance with subdivision 5 b (4) of this subsection, and the amount of any supplemental fertilizer applied during the previous 12 months.

5. Terms of the nutrient management plan. Any permit issued to a CAFO shall require compliance with the terms of the CAFO's site-specific nutrient management plan. The terms of the nutrient management plan are the information,

protocols, best management practices, and other conditions in the nutrient management plan determined by the board to be necessary to meet the requirements of subdivision 1 of this subsection. The terms of the nutrient management plan, with respect to protocols for land application of manure, litter, or process wastewater required by subdivision 4 h of this subsection and, as applicable, 40 CFR 412.4(c), shall include the fields available for land application; field-specific rates of application properly developed, as specified in subdivisions 5 a and b of this subsection, to ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater; and any timing limitations identified in the nutrient management plan concerning land application on the fields available for land application. The terms shall address rates of application using one of the following two approaches, unless the board specifies that only one of these approaches may be used:

a. Linear approach. An approach that expresses rates of application as pounds of nitrogen and phosphorus, according to the following specifications:

(1) The terms include maximum application rates from manure, litter, and process wastewater for each year of permit coverage, for each crop identified in the nutrient management plan, in chemical forms determined to be acceptable to the board, in pounds per acre, per year, for each field to be used for land application, and certain factors necessary to determine such rates. At a minimum, the factors that are terms shall include: the outcome of the field-specific assessment of the potential for nitrogen and phosphorus transport from each field; the crops to be planted in each field or any other uses of a field such as pasture or fallow fields; the realistic yield goal for each crop or use identified for each field; the nitrogen and phosphorus recommendations from sources specified by the board for each crop or use identified for each field; credits for all nitrogen in the field that will be plant available; consideration of multi-year phosphorus application; and accounting for all other additions of plant available nitrogen and phosphorus to the field. In addition, the terms include the form and source of manure, litter, and process wastewater to be land-applied; the timing and method of land application; and the methodology by which the nutrient management plan accounts for the amount of nitrogen and phosphorus in the manure, litter, and process wastewater to be applied.

(2) Large CAFOs that use this approach shall calculate the maximum amount of manure, litter, and process wastewater to be land applied at least once each year using the results of the most recent representative manure, litter, and process wastewater tests for nitrogen and phosphorus taken within 12 months of the date of land application; or

b. Narrative rate approach. An approach that expresses rates of application as a narrative rate of application that results in the amount, in tons or gallons, of manure, litter, and process wastewater to be land applied, according to the following specifications:

(1) The terms include maximum amounts of nitrogen and phosphorus derived from all sources of nutrients, for each crop identified in the nutrient management plan, in chemical forms determined to be acceptable to the board, in pounds per acre, for each field, and certain factors necessary to determine such amounts. At a minimum, the factors that are terms shall include: the outcome of the field-specific assessment of the potential for nitrogen and phosphorus transport from each field; the crops to be planted in each field or any other uses such as pasture or fallow fields (including alternative crops identified in accordance with subdivision 5 b (2) of this subsection); the realistic yield goal for each crop or use identified for each field; and the nitrogen and phosphorus recommendations from sources specified by the board for each crop or use identified for each field. In addition, the terms include the methodology by which the nutrient management plan accounts for the following factors when calculating the amounts of manure, litter, and process wastewater to be land applied: results of soil tests conducted in accordance with protocols identified in the nutrient management plan, as required by subdivision 1 g of this subsection; credits for all nitrogen in the field that will be plant available; the amount of nitrogen and phosphorus in the manure, litter, and process wastewater to be applied; consideration of multi-year phosphorus application; accounting for all other additions of plant available nitrogen and phosphorus to the field; the form and source of manure, litter, and process wastewater; the timing and method of land application; and volatilization of nitrogen and mineralization of organic nitrogen.

(2) The terms of the nutrient management plan include alternative crops identified in the CAFO's nutrient management plan that are not in the planned crop rotation. Where a CAFO includes alternative crops in its nutrient management plan, the crops shall be listed by field, in addition to the crops identified in the planned crop rotation for that field, and the nutrient management plan shall include realistic crop yield goals and the nitrogen and phosphorus recommendations from sources specified by the board for each crop. Maximum amounts of nitrogen and phosphorus from all sources of nutrients and the amounts of manure, litter, and process wastewater to be applied shall be determined in accordance with the methodology described in subdivision 5 b (1) of this subsection.

(3) For CAFOs using this approach, the following projections shall be included in the nutrient management plan submitted to the board, but are not terms of the nutrient management plan: the CAFO's planned crop rotations for each field for the period of permit coverage; the projected amount of manure, litter, or process wastewater to be applied; projected credits for all nitrogen

in the field that will be plant available; consideration of multi-year phosphorus application; accounting for all other additions of plant available nitrogen and phosphorus to the field; and the predicted form, source, and method of application of manure, litter, and process wastewater for each crop. Timing of application for each field, insofar as it concerns the calculation of rates of application, is not a term of the nutrient management plan.

(4) CAFOs that use this approach shall calculate maximum amounts of manure, litter, and process wastewater to be land applied at least once each year using the methodology required in subdivision 5 b (1) of this subsection before land applying manure, litter, and process wastewater and shall rely on the following data:

(a) A field-specific determination of soil levels of nitrogen and phosphorus, including, for nitrogen, a concurrent determination of nitrogen that will be plant available consistent with the methodology required by subdivision 5 b (1) of this subsection, and for phosphorus, the results of the most recent soil test conducted in accordance with soil testing requirements approved by the board; and

(b) The results of most recent representative manure, litter, and process wastewater tests for nitrogen and phosphorus taken within 12 months of the date of land application, in order to determine the amount of nitrogen and phosphorus in the manure, litter, and process wastewater to be applied.

9VAC25-31-220. Establishing limitations, standards, and other permit conditions.

In addition to the conditions established under 9VAC25-31-210 A, each VPDES permit shall include conditions meeting the following requirements when applicable.

A. 1. Technology-based effluent limitations and standards based on effluent limitations and standards promulgated under § 301 of the CWA, on new source performance standards promulgated under § 306 of CWA, on case-by-case effluent limitations determined under § 402(a)(1) of CWA, or a combination of the three. For new sources or new dischargers, these technology-based limitations and standards are subject to the provisions of 9VAC25-31-180 B (protection period).

2. The board may authorize a discharger subject to technology-based effluent limitations guidelines and standards in a VPDES permit to forego sampling of a pollutant found at 40 CFR Subchapter N if the discharger has demonstrated through sampling and other technical factors that the pollutant is not present in the discharge or is present only at background levels from intake water and without any increase in the pollutant due to activities of the discharger. This waiver is good only for the term of the permit and is not available during the term of the first permit issued to a discharger. Any request for this waiver must be submitted when applying for a reissued permit or modification of a reissued permit. The request must demonstrate through sampling or other technical information, including information generated during an earlier permit term, that the pollutant is not present in the discharge or is present only at background levels from intake water and without any increase in the pollutant due to activities of the discharger. Any grant of the monitoring waiver must be included in the permit as an express permit condition and the reasons supporting the grant must be documented in the permit's fact sheet or statement of basis. This provision does not supersede certification processes and requirements already established in existing effluent limitations guidelines and standards.

B. Other effluent limitations and standards.

1. Other effluent limitations and standards under §§ 301, 302, 303, 307, 318, and 405 of the CWA. If any applicable toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under § 307(a) of the CWA for a toxic pollutant and that standard or prohibition is more stringent than any limitation on the pollutant in the permit, the board shall institute proceedings under this chapter to modify or revoke and reissue the permit to conform to the toxic effluent standard or prohibition.

2. Standards for sewage sludge use or disposal under § 405(d) of the CWA and Part VI (9VAC25-31-420 et seq.) of this chapter unless those standards have been included in a permit issued under the appropriate provisions of Subtitle C of the Solid Waste Disposal Act (42 USC § 6901 et seq.), Part C of Safe Drinking Water Act (42 USC § 300f et seq.), the Marine Protection, Research, and Sanctuaries Act of 1972 (33 USC § 1401 et seq.), or the Clean Air Act (42 USC § 4701 et seq.), or in another permit issued by the Department of Environmental Quality or any other appropriate state agency under another permit program approved by the administrator. When there are no applicable standards for sewage sludge use or disposal, the permit may include requirements developed on a case-by-case basis to protect public health and the environment from any adverse effects which may occur from toxic pollutants in sewage sludge. If any applicable standard for sewage sludge use or disposal is promulgated under § 405(d) of the CWA and that standard is more stringent than any limitation on the pollutant or practice in the permit, the board may initiate proceedings under this chapter to modify or revoke and reissue the permit to conform to the standard for sewage sludge use or disposal.

3. Requirements applicable to cooling water intake structures at new facilities under § 316 (b) of the CWA, in accordance with 9VAC25-31-165.

C. Reopener clause. For any permit issued to a treatment works treating domestic sewage (including sludge-only facilities), the board shall include a reopener clause to incorporate any applicable standard for sewage sludge use or disposal promulgated under § 405(d) of the CWA. The board may promptly modify or revoke and reissue any permit containing the reopener clause required by this subdivision if

the standard for sewage sludge use or disposal is more stringent than any requirements for sludge use or disposal in the permit, or controls a pollutant or practice not limited in the permit.

D. Water quality standards and state requirements. Any requirements in addition to or more stringent than promulgated effluent limitations guidelines or standards under §§ 301, 304, 306, 307, 318, and 405 of the CWA necessary to:

1. Achieve water quality standards established under the law and § 303 of the CWA, including state narrative criteria for water quality.

a. Limitations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the board determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any Virginia water quality standard, including Virginia narrative criteria for water quality.

b. When determining whether a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative or numeric criteria within a Virginia water quality standard, the board shall use procedures which account for existing controls on point and nonpoint sources of pollution, the variability of the pollutant or pollutant parameter in the effluent, the sensitivity of the species to toxicity testing (when evaluating whole effluent toxicity), and where appropriate, the dilution of the effluent in the receiving water.

c. When the board determines, using the procedures in subdivision 1 b of this subsection, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the allowable ambient concentration of a Virginia numeric criteria within a Virginia water quality standard for an individual pollutant, the permit must contain effluent limits for that pollutant.

d. Except as provided in this subdivision, when the board determines, using the procedures in subdivision 1 b of this subsection, toxicity testing data, or other information, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative criterion within an applicable Virginia water quality standard, the permit must contain effluent limits for whole effluent toxicity. Limits on whole effluent toxicity are not necessary where the board demonstrates in the fact sheet or statement of basis of the VPDES permit, using the procedures in subdivision 1 b of this subsection, that chemical-specific limits for the effluent are sufficient to attain and maintain applicable numeric and narrative Virginia water quality standards.

e. Where Virginia has not established a water quality criterion for a specific chemical pollutant that is present in an effluent at a concentration that causes, has the reasonable potential to cause, or contributes to an excursion above a narrative criterion within an applicable Virginia water quality standard, the board must establish effluent limits using one or more of the following options:

(1) Establish effluent limits using a calculated numeric water quality criterion for the pollutant which the board demonstrates will attain and maintain applicable narrative water quality criteria and will fully protect the designated use. Such a criterion may be derived using a proposed Virginia criterion, or an explicit policy or regulation interpreting Virginia's narrative water quality criterion, supplemented with other relevant information which may include: EPA's Water Quality Standards Handbook, August 1994, risk assessment data, exposure data, information about the pollutant from the Food and Drug Administration, and current EPA criteria documents;

(2) Establish effluent limits on a case-by-case basis, using EPA's water quality criteria, published under § 307(a) of the CWA, supplemented where necessary by other relevant information; or

(3) Establish effluent limitations on an indicator parameter for the pollutant of concern, provided:

(a) The permit identifies which pollutants are intended to be controlled by the use of the effluent limitation;

(b) The fact sheet required by 9VAC25-31-280 sets forth the basis for the limit, including a finding that compliance with the effluent limit on the indicator parameter will result in controls on the pollutant of concern which are sufficient to attain and maintain applicable water quality standards;

(c) The permit requires all effluent and ambient monitoring necessary to show that during the term of the permit the limit on the indicator parameter continues to attain and maintain applicable water quality standards; and

(d) The permit contains a reopener clause allowing the board to modify or revoke and reissue the permit if the limits on the indicator parameter no longer attain and maintain applicable water quality standards.

f. When developing water quality-based effluent limits under this subdivision the board shall ensure that:

(1) The level of water quality to be achieved by limits on point sources established under this subsection is derived from, and complies with all applicable water quality standards; and

(2) Effluent limits developed to protect a narrative water quality criterion, a numeric water quality criterion, or both, are consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared by Virginia and approved by EPA pursuant to 40 CFR 130.7;

2. Attain or maintain a specified water quality through water quality related effluent limits established under the law and § 302 of the CWA;

3. Conform to the conditions of a Virginia Water Protection Permit (VWPP) issued under the law and § 401 of the CWA;

4. Conform to applicable water quality requirements under § 401(a)(2) of the CWA when the discharge affects a state other than Virginia;

5. Incorporate any more stringent limitations, treatment standards, or schedule of compliance requirements established under the law or regulations in accordance with § 301(b)(1)(C) of the CWA;

6. Ensure consistency with the requirements of a Water Quality Management plan approved by EPA under § 208(b) of the CWA;

7. Incorporate § 403(c) criteria under 40 CFR Part 125, Subpart M, for ocean discharges; or

8. Incorporate alternative effluent limitations or standards where warranted by fundamentally different factors, under 40 the CFR Part 125, Subpart D.

E. Technology-based controls for toxic pollutants. Limitations established under ~~subsections~~ subsection A, B, or D of this section, to control pollutants meeting the criteria listed in subdivision 1 of this subsection. Limitations will be established in accordance with subdivision 2 of this subsection. An explanation of the development of these limitations shall be included in the fact sheet.

1. Limitations must control all toxic pollutants which the board determines (based on information reported in a permit application or in a notification required by the permit or on other information) are or may be discharged at a level greater than the level which can be achieved by the technology-based treatment requirements appropriate to the permittee; or

2. The requirement that the limitations control the pollutants meeting the criteria of subdivision 1 of this subsection will be satisfied by:

a. Limitations on those pollutants; or

b. Limitations on other pollutants which, in the judgment of the board, will provide treatment of the pollutants under subdivision 1 of this subsection to the levels required by the law and 40 CFR Part 125, Subpart A.

F. A notification level which exceeds the notification level of 9VAC25-31-200 A 1 a, b, or c, upon a petition from the permittee or on the board's initiative. This new notification level may not exceed the level which can be achieved by the technology-based treatment requirements appropriate to the permittee.

G. Twenty-four-hour reporting. Pollutants for which the permittee must report violations of maximum daily discharge limitations under 9VAC25-31-190 L 7 b (3) (24-hour reporting) shall be listed in the permit. This list shall include any toxic pollutant or hazardous substance, or any pollutant specifically identified as the method to control a toxic pollutant or hazardous substance.

H. Durations for permits, as set forth in 9VAC25-31-240.

I. Monitoring requirements. The following monitoring requirements:

1. Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods (including biological monitoring methods when appropriate);

2. Required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity including, when appropriate, continuous monitoring;

3. Applicable reporting requirements based upon the impact of the regulated activity and as specified in 9VAC25-31-190, subdivisions 5 through 8 of this subsection, and Part XI (9VAC25-31-950 et seq.) of this chapter. Reporting shall be no less frequent than specified in the above regulation;

4. To assure compliance with permit limitations, requirements to monitor:

a. The mass (or other measurement specified in the permit) for each pollutant limited in the permit;

b. The volume of effluent discharged from each outfall;

c. Other measurements as appropriate including pollutants in internal waste streams; pollutants in intake water for net limitations; frequency, rate of discharge, etc., for noncontinuous discharges; pollutants subject to notification requirements; and pollutants in sewage sludge or other monitoring as specified in Part VI (9VAC25-31-420 et seq.) of this chapter; or as determined to be necessary on a case-by-case basis pursuant to the law and § 405(d)(4) of the CWA; and

d. ~~According to test procedures approved under 40 CFR Part 136 for the analyses of pollutants having approved methods under that part, or alternative EPA approved methods, and according to a test procedure specified in the permit for pollutants with no approved methods;~~ According to sufficiently sensitive test procedures (i.e., methods) approved under 40 CFR Part 136 for the analysis of pollutants or pollutant parameters or required under 40 CFR Chapter I, Subchapter N or O.

(1) For the purposes of this subdivision, a method is "sufficiently sensitive" when:

(a) The method minimum level (ML) is at or below the level of the effluent limit established in the permit for the measured pollutant or pollutant parameter; or

(b) The method has the lowest ML of the analytical methods approved under 40 CFR Part 136 or required under 40 CFR Chapter I, Subchapter N or O for the measured pollutant or pollutant parameter.

(2) In the case of pollutants or pollutant parameters for which there are no approved methods under 40 CFR Part 136 or methods are not otherwise required under 40 CFR Chapter I, Subchapter N or O, monitoring shall be

conducted according to a test procedure specified in the permit for such pollutants or pollutant parameters;

5. Except as provided in subdivisions 7 and 8 of this subsection, requirements to report monitoring results shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but in no case less that once a year. For sewage sludge use or disposal practices, requirements to monitor and report results shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the sewage sludge use or disposal practice; minimally this shall be as specified in Part VI (9VAC25-31-420 et seq.) of this chapter (where applicable), but in no case less than once a year. All results shall be electronically reported in compliance with 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-31-110, and Part XI (9VAC25-31-950 et seq.) of this chapter;

6. Requirements to report monitoring results for ~~storm water~~ stormwater discharges associated with industrial activity which are subject to an effluent limitation guideline shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year;

7. Requirements to report monitoring results for ~~storm water~~ stormwater discharges associated with industrial activity (other than those addressed in subdivision 6 of this subsection) shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge. At a minimum, a permit for such a discharge must require:

a. The discharger to conduct an annual inspection of the facility site to identify areas contributing to a ~~storm water~~ stormwater discharge associated with industrial activity and evaluate whether measures to reduce pollutant loading identified in a ~~storm water~~ stormwater pollution prevention plan are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed;

b. The discharger to maintain for a period of three years a record summarizing the results of the inspection and a certification that the facility is in compliance with the plan and the permit, and identifying any incidents of noncompliance;

c. Such report and certification be signed in accordance with 9VAC25-31-110; and

d. Permits for ~~storm water~~ stormwater discharges associated with industrial activity from inactive mining operations may, where annual inspections are impracticable, require certification once every three years by a Registered Professional Engineer that the facility is in compliance with the permit, or alternative requirements; and

8. Permits ~~which~~ that do not require the submittal of monitoring result reports at least annually shall require that the permittee report all instances of noncompliance not reported under 9VAC25-31-190 L 1, 4, 5, 6, and 7 at least annually.

J. Pretreatment program for POTWs. Requirements for POTWs to:

1. Identify, in terms of character and volume of pollutants, any significant indirect dischargers into the POTW subject to pretreatment standards under § 307(b) of the CWA and Part VII (9VAC25-31-730 et seq.) of this chapter;

2. Submit a local program when required by and in accordance with Part VII of this chapter to assure compliance with pretreatment standards to the extent applicable under § 307(b) of the CWA. The local program shall be incorporated into the permit as described in Part VII of this chapter. The program shall require all indirect dischargers to the POTW to comply with the reporting requirements of Part VII of this chapter;

3. Provide a written technical evaluation of the need to revise local limits under Part VII of this chapter following permit issuance or reissuance; and

4. For POTWs ~~which~~ that are sludge-only facilities, a requirement to develop a pretreatment program under Part VII of this chapter when the board determines that a pretreatment program is necessary to assure compliance with Part VI of this chapter.

K. Best management practices to control or abate the discharge of pollutants when:

1. Authorized under § 304(e) of the CWA for the control of toxic pollutants and hazardous substances from ancillary industrial activities;

2. Authorized under § 402(p) of the CWA for the control of ~~storm water~~ stormwater discharges;

3. Numeric effluent limitations are infeasible; or

4. The practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the law and the CWA.

L. Reissued permits.

1. In the case of effluent limitations established on the basis of § 402(a)(1)(B) of the CWA, a permit may not be renewed, reissued, or modified on the basis of effluent guidelines promulgated under § 304(b) of the CWA subsequent to the original issuance of such permit, to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit. In the case of effluent limitations established on the basis of ~~§§~~ § 301(b)(1)(C) or 303(d) or (e) of the CWA, a permit may not be renewed, reissued, or modified to contain effluent limitations ~~which~~ that are less stringent than the comparable effluent limitations in the previous permit except in compliance with § 303(d)(4) of the CWA.

2. Exceptions. A permit with respect to which subdivision 1 of this subsection applies may be renewed, reissued, or modified to contain a less stringent effluent limitation applicable to a pollutant, if:

a. Material and substantial alterations or additions to the permitted facility occurred after permit issuance which justify the application of a less stringent effluent limitation;

b. (1) Information is available ~~which~~ that was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and ~~which~~ that would have justified the application of a less stringent effluent limitation at the time of permit issuance; or

(2) The board determines that technical mistakes or mistaken interpretations of law were made in issuing the permit under § 402(a)(1)(B) of the CWA;

c. A less stringent effluent limitation is necessary because of events over which the permittee has no control and for which there is no reasonably available remedy;

d. The permittee has received a permit modification under the law and ~~§§~~ § 301(c), 301(g), 301(h), 301(i), 301(k), 301(n), or 316(a) of the CWA; or

e. The permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations, in which case the limitations in the reviewed, reissued, or modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance, or modification).

Subdivision 2 b of this subsection shall not apply to any revised waste load allocations or any alternative grounds for translating water quality standards into effluent limitations, except where the cumulative effect of such revised allocations results in a decrease in the amount of pollutants discharged into the concerned waters, and such revised allocations are not the result of a discharger eliminating or substantially reducing its discharge of pollutants due to complying with the requirements of the law or the CWA or for reasons otherwise unrelated to water quality.

3. In no event may a permit with respect to which subdivision 2 of this subsection applies be renewed, reissued, or modified to contain an effluent limitation ~~which~~ that is less stringent than required by effluent guidelines in effect at the time the permit is renewed, reissued, or modified. In no event may such a permit to discharge into waters be renewed, issued, or modified to contain a less stringent effluent limitation if the implementation of such limitation would result in a violation of a Virginia water quality standard applicable to such waters.

M. For a privately owned treatment works, any conditions expressly applicable to any user, as a limited co-permittee, that may be necessary in the permit issued to the treatment works to ensure compliance with applicable requirements under this part. Alternatively, the board may issue separate permits to the treatment works and to its users, or may require a separate permit application from any user. The board's decision to issue a permit with no conditions applicable to any user, to impose conditions on one or more users, to issue separate permits, or to require separate applications, and the basis for that decision, shall be stated in the fact sheet for the draft permit for the treatment works.

N. Any conditions imposed in grants made by the board to POTWs under §§ 201 and 204 of the CWA ~~which~~ that are reasonably necessary for the achievement of effluent limitations under § 301 of the CWA and the law.

O. Requirements governing the disposal of sewage sludge from publicly owned treatment works or any other treatment works treating domestic sewage for any use regulated by Part VI of this chapter.

P. When a permit is issued to a facility that may operate at certain times as a means of transportation over water, a condition that the discharge shall comply with any applicable regulations promulgated by the secretary of the department in which the Coast Guard is operating, that establish specifications for safe transportation, handling, carriage, and storage of pollutants.

Q. Navigation. Any conditions that the Secretary of the Army considers necessary to ensure that navigation and anchorage will not be substantially impaired in accordance with 9VAC25-31-330.

9VAC25-31-280. Fact sheet.

A. A fact sheet shall be prepared for every draft permit for a major VPDES facility or activity, for every Class I sludge management facility, for every VPDES general permit, for every VPDES draft permit that incorporates a variance or requires an explanation under subsection B 8 of this section, for every draft permit that includes a biosolids land application under 9VAC25-31-100 D 2, and for every draft permit which the board finds is the subject of wide-spread public interest or raises major issues. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. The board shall send this fact sheet to the applicant and, on request, to any other person.

B. The fact sheet shall include, when applicable:

1. A brief description of the type of facility or activity ~~which~~ that is the subject of the draft permit;

2. The type and quantity of wastes, fluids, or pollutants ~~which~~ that are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged;

3. A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions;

4. Reasons why any requested variances or alternatives to required standards do or do not appear justified;

5. A description of the procedures for reaching a final decision on the draft permit including:

a. The beginning and ending dates of the comment period for the draft permit and the address where comments will be received;

b. Procedures for requesting a public hearing and the nature of that hearing; and

c. Any other procedures by which the public may participate in the final decision;

6. Name and telephone number of a person to contact for additional information;

7. Any calculations or other necessary explanation of the derivation of specific effluent limitations and conditions or standards for biosolids use or sewage sludge disposal, including a citation to the applicable effluent limitation guideline, performance standard, or standard for biosolids use or sewage sludge disposal and reasons why they are applicable or an explanation of how the alternate effluent limitations were developed;

8. When the draft permit contains any of the following conditions, an explanation of the reasons why such conditions are applicable:

a. Limitations to control toxic pollutants;

b. Limitations on internal waste streams;

c. Limitations on indicator pollutants;

d. Technology-based or sewage sludge disposal limitations set on a case-by-case basis;

e. Limitations to meet the criteria for permit issuance under 9VAC25-31-50; or

f. Waivers from monitoring requirements granted under 9VAC25-31-220 A;

9. For every permit to be issued to a treatment works owned by a person other than a state or municipality, an explanation of the board's decision on regulation of users;

10. When appropriate, a sketch or detailed description of the location of the discharge or regulated activity described in the application; and

11. Justification of waiver of any application requirements under 9VAC25-31-100 ~~J or P~~ K or Q.

9VAC25-31-380. Transfer of permits.

A. Except as provided in subsection B of this section, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued, or a minor modification made, to identify the new permittee and incorporate such other requirements as may be necessary under the law and the CWA.

B. Automatic transfers. As an alternative to transfers under subsection A of this section, any VPDES permit may be automatically transferred to a new permittee if:

1. The current permittee notifies the department at least 30 days in advance of the proposed transfer date in subdivision 2 of this subsection;

2. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; ~~and~~

3. The board does not notify the existing permittee and the proposed new permittee of its intent to modify or revoke and reissue the permit. A modification under this subdivision may also be a minor modification. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in subdivision 2 of this subsection; and

4. The new owner or operator has demonstrated compliance with 9VAC25-650-70, if applicable.

9VAC25-31-800. Pretreatment program requirements: development and implementation by POTW.

A. POTWs required to develop a pretreatment program. Any POTW (or combination of POTWs operated by the same authority) with a total design flow greater than five million gallons per day (mgd) and receiving from industrial users pollutants ~~which~~ that pass through or interfere with the operation of the POTW or are otherwise subject to pretreatment standards will be required to establish a POTW pretreatment program unless the director exercises his or her option to assume local responsibilities. The regional administrator or director may require that a POTW with a design flow of five mgd or less develop a POTW pretreatment program if he finds that the nature or volume of the industrial influent, treatment process upsets, violations of POTW effluent limitations, contamination of municipal sludge, violations of water quality standards, or other circumstances warrant in order to prevent interference with the POTW or pass through.

B. Deadline for program approval. POTWs identified as being required to develop a POTW pretreatment program under subsection A of this section shall develop and submit such a program for approval as soon as possible, but in no case later than one year after written notification from the director of such identification. The approved program shall be in operation within two years of the effective date of the permit. The POTW pretreatment program shall meet the criteria set forth in subsection F of this section and shall be administered by the POTW to ensure compliance by industrial users with applicable pretreatment standards and requirements.

C. Incorporation of approved programs in permits. A POTW may develop an appropriate POTW pretreatment program any time before the time limit set forth in subsection B of this section. The POTW's VPDES permit will be reissued or

modified to incorporate the approved program as enforceable conditions of the permit. The modification of a POTW's VPDES permit for the purposes of incorporating a POTW pretreatment program approved in accordance with the procedures in 9VAC25-31-830 shall be deemed a minor permit modification subject to the procedures in 9VAC25-31-400.

D. Incorporation of compliance schedules in permits. (Reserved.)

E. Cause for revocation and reissuance or modification of permits. Under the authority of the law and § 402 (b)(1)(C) of the CWA, the director may modify, or alternatively, revoke and reissue a POTW's permit in order to:

1. Put the POTW on a compliance schedule for the development of a POTW pretreatment program where the addition of pollutants into a POTW by an industrial user or combination of industrial users presents a substantial hazard to the functioning of the treatment works, quality of the receiving waters, human health, or the environment;

2. Coordinate the issuance of § 201 construction grant with the incorporation into a permit of a compliance schedule for POTW pretreatment program;

3. Incorporate a modification of the permit approved under § 301(h) or § 301(i) of the CWA;

4. Incorporate an approved POTW pretreatment program in the POTW permit;

5. Incorporate a compliance schedule for the development of a POTW pretreatment program in the POTW permit; or

6. Incorporate the removal credits (established under 9VAC25-31-790) in the POTW permit.

F. POTW pretreatment requirements. A POTW pretreatment program must be based on the following legal authority and include the following procedures. These authorities and procedures shall at all times be fully and effectively exercised and implemented.

1. Legal authority. The POTW shall operate pursuant to legal authority enforceable in federal, state or local courts, which authorizes or enables the POTW to apply and to enforce the requirements of §§ 307(b), (c) and (d), and 402(b)(8) of the CWA and any regulations implementing those sections. Such authority may be contained in a statute ~~or ordinances which~~, ordinance, or series of contracts or joint powers agreements that the POTW is authorized to enact, enter into or implement, and which are authorized by state law. At a minimum, this legal authority shall enable the POTW to:

a. Deny or condition new or increased contributions of pollutants, or changes in the nature of pollutants, to the POTW by industrial users where such contributions do not meet applicable pretreatment standards and requirements or where such contributions would cause the POTW to violate its VPDES permit.

b. Require compliance with applicable pretreatment standards and requirements by industrial users.

c. Control through permit, or order the contribution to the POTW by each industrial user to ensure compliance with applicable pretreatment standards and requirements. In the case of industrial users identified as significant under 9VAC25-31-10, this control shall be achieved through individual permits or equivalent individual control mechanisms issued to each such user except as follows:

(1)(a) At the discretion of the POTW, this control may include use of general control mechanisms if the following conditions are met. All of the facilities to be covered must:

(i) Involve the same or substantially similar types of operations;

(ii) Discharge the same types of wastes;

(iii) Require the same effluent limitations;

(iv) Require the same or similar monitoring; and

(v) In the opinion of the POTW, be more appropriately controlled under a general control mechanism than under individual control mechanisms.

(b) To be covered by the general control mechanism, the significant industrial user must file a written request for coverage that identifies its contact information, production processes, the types of wastes generated, the location for monitoring all wastes covered by the general control mechanism, any requests in accordance with 9VAC25-31-840 E 2 for a monitoring waiver for a pollutant neither present nor expected to be present in the discharge, and any other information the POTW deems appropriate. A monitoring waiver for a pollutant neither present nor expected to be present in the discharge is not effective in the general control mechanism until after the POTW has provided written notice to the significant industrial user that such a waiver request has been granted in accordance with 9VAC25-31-840 E 2. The POTW must retain a copy of the general control mechanism, documentation to support the POTW's determination that a specific significant industrial user meets the criteria in subdivisions 1 c (1) (a) (i) through (v) of this subsection, and a copy of the user's written request for coverage for three years after the expiration of the general control mechanism. A POTW may not control a significant industrial user through a general control mechanism where the facility is subject to production-based categorical pretreatment standards or categorical pretreatment standards expressed as mass of pollutant discharged per day or for industrial users whose limits are based on the Combined Wastestream Formula or Net/Gross calculations (9VAC25-31-780 E and 9VAC25-31-870).

(2) Both individual and general control mechanisms must be enforceable and contain, at a minimum, the following conditions:

(a) Statement of duration (in no case more than five years);

(b) Statement of nontransferability without, at a minimum, prior notification to the POTW and provision of a copy of the existing control mechanism to the new owner or operator;

(c) Effluent limits, including Best Management Practices, based on applicable general pretreatment standards in this part, categorical pretreatment standards, local limits, and the law;

(d) Self-monitoring, sampling, reporting, notification and recordkeeping requirements, including an identification of the pollutants to be monitored (including the process for seeking a waiver for a pollutant neither present nor expected to be present in the discharge in accordance with 9VAC25-31-840 E 2, or a specific waiver pollutant in the case of an individual control mechanism), sampling location, sampling frequency, and sample type, based on the applicable general pretreatment standards in this part, categorical pretreatment standards, local limits, and the law;

(e) Statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements; and any applicable compliance schedules, which may not extend beyond applicable federal deadlines.

(f) Requirements to control slug discharges, if determined by the POTW to be necessary.

d. Require:

(1) The development of a compliance schedule by each industrial user for the installation of technology required to meet applicable pretreatment standards and requirements; and

(2) The submission of all notices and self-monitoring reports from industrial users as are necessary to assess and ensure compliance by industrial users with pretreatment standards and requirements, including but not limited to the reports required in 9VAC25-31-840.

e. Carry out all inspection, surveillance and monitoring procedures necessary to determine, independent of information supplied by industrial users, compliance or noncompliance with applicable pretreatment standards and requirements by industrial users. Representatives of the POTW shall be authorized to enter any premises of any industrial user in which a discharge source or treatment system is located or in which records are required to be kept under 9VAC25-31-840 O to ensure compliance with pretreatment standards. Such authority shall be at least as extensive as the authority provided under § 308 of the CWA.

f. Obtain remedies for noncompliance by any industrial user with any pretreatment standard and requirement. All POTWs shall be able to seek injunctive relief for noncompliance by industrial users with pretreatment standards and requirements. All POTWs shall also have authority to seek or assess civil or criminal penalties in at least the amount of $1,000 a day for each violation by industrial users of pretreatment standards and requirements.

Pretreatment requirements which will be enforced through the remedies set forth in this subdivision, will include ~~but not be limited to,~~ the duty to allow or carry out inspections, entry, or monitoring activities; any rules, regulations, or orders issued by the POTW; any requirements set forth in individual control mechanisms issued by the POTW; or any reporting requirements imposed by the POTW or this part. The POTW shall have authority and procedures (after informal notice to the discharger) to immediately and effectively halt or prevent any discharge of pollutants to the POTW which reasonably appears to present an imminent endangerment to the health or welfare of persons. The POTW shall also have authority and procedures (which shall include notice to the affected industrial users and an opportunity to respond) to halt or prevent any discharge to the POTW which presents or may present an endangerment to the environment or which threatens to interfere with the operation of the POTW. The director shall have authority to seek judicial relief and may also use administrative penalty authority when the POTW has sought a monetary penalty which the director believes to be insufficient.

g. Comply with the confidentiality requirements set forth in 9VAC25-31-860.

2. Procedures. The POTW shall develop and implement procedures to ensure compliance with the requirements of a pretreatment program. At a minimum, these procedures shall enable the POTW to:

a. Identify and locate all possible industrial users ~~which~~ that might be subject to the POTW pretreatment program. Any compilation, index or inventory of industrial users made under this subdivision shall be made available to the regional administrator or department upon request.

b. Identify the character and volume of pollutants contributed to the POTW by the industrial users identified under subdivision 2 a of this subsection. This information shall be made available to the regional administrator or department upon request.

c. Notify industrial users identified under subdivision 2 a of this subsection, of applicable pretreatment standards and any applicable requirements under §§ 204(b) and 405 of the CWA and subtitles C and D of the Resource Conservation and Recovery Act (42 USC § 6901 et seq.). Within 30 days of approval pursuant to 9VAC25-31-800 F 6, of a list of significant industrial users, notify each significant industrial user of its status as such and of all requirements applicable to it as a result of such status.

d. Receive and analyze self-monitoring reports and other notices submitted by industrial users in accordance with the self-monitoring requirements in 9VAC25-31-840.

e. Randomly sample and analyze the effluent from industrial users and conduct surveillance activities in order to identify, independent of information supplied by industrial users, occasional and continuing noncompliance with pretreatment standards. Inspect and sample the effluent from each significant industrial user at least once a year except as otherwise specified below.

(1) Where the POTW has authorized the industrial user subject to a categorical pretreatment standard to forego sampling of a pollutant regulated by a categorical pretreatment standard in accordance with 9VAC25-31-840 E the POTW must sample for the waived ~~pollutant(s)~~ pollutant at least once during the term of the categorical industrial user's control mechanism. In the event that the POTW subsequently determines that a waived pollutant is present or is expected to be present in the industrial user's wastewater based on changes that occur in the user's operations, the POTW must immediately begin at least annual effluent monitoring of the user's discharge and inspection.

(2) Where the POTW has determined that an industrial user meets the criteria for classification as a nonsignificant categorical industrial user, the POTW must evaluate, at least once per year, whether an industrial user continues to meet the criteria in 9VAC25-31-10.

(3) In the case of industrial users subject to reduced reporting requirements under 9VAC25-31-840 E, the POTW must randomly sample and analyze the effluent from industrial users and conduct inspections at least once every two years. If the industrial user no longer meets the conditions for reduced reporting in 9VAC25-31-840 E, the POTW must immediately begin sampling and inspecting the industrial user at least once a year.

f. Evaluate whether each such significant industrial user needs a plan or other action to control slug discharges. For industrial users identified as significant prior to November 14, 2005, this evaluation must have been conducted at least once by October 14, 2005; additional significant industrial users must be evaluated within one year of being designated a significant industrial user. For purposes of this subsection, a slug discharge is any discharge of a nonroutine, episodic nature, including ~~but not limited to~~ an accidental spill or noncustomary batch discharge that has a reasonable potential to cause interference or pass through, or in any other way violate the POTWs regulating local limits or permit conditions. The results of such activities shall be available to the department upon request. Significant industrial users are required to notify the POTW immediately of any changes at its facility affecting potential for a slug discharge. If the POTW decides that a slug control plan is needed, the plan shall contain, at a minimum, the following elements:

(1) Description of discharge practices, including nonroutine batch discharges;

(2) Description of stored chemicals;

(3) Procedures for immediately notifying the POTW of slug discharges, including any discharge that would violate a prohibition under 9VAC25-31-770 B, with procedures for follow-up written notification within five days; and

(4) If necessary, procedures to prevent adverse impact from accidental spills, including inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site run-off, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants (including solvents), and measures and equipment necessary for emergency response.

g. Investigate instances of noncompliance with pretreatment standards and requirements, as indicated in the reports and notices required under 9VAC25-31-840, or indicated by analysis, inspection, and surveillance activities described in subdivision 2 e of this subsection. Sample taking and analysis and the collection of other information shall be performed with sufficient care to produce evidence admissible in enforcement proceedings or in judicial actions.

h. Comply with the public participation requirements of the Code of Virginia and 40 CFR Part 25 in the enforcement of national pretreatment standards. These procedures shall include provisions for at least annual public notification, in a newspaper of general circulation that provides meaningful public notice within the ~~jurisdiction(s)~~ jurisdiction served by the POTW of industrial users which, at any time during the previous 12 months were in significant noncompliance with applicable pretreatment requirements. For the purposes of this provision, a significant industrial user (or any industrial user that violates subdivision 2 h (3), (4) or (8) of this subsection is in significant noncompliance if its violation meets one or more of the following criteria:

(1) Chronic violations of wastewater discharge limits, defined here as those in which 66% or more of all of the measurements taken during a six-month period exceed (by any magnitude) a numeric pretreatment standard or requirement, including instantaneous limits, as defined by 9VAC25-31-10;

(2) Technical Review Criteria (TRC) violations, defined here as those in which 33% or more of all of the measurements for each pollutant parameter taken during a six-month period equal or exceed the product of the numeric pretreatment standard or requirement, including instantaneous limits, as defined by 9VAC25-31-10; multiplied by the applicable TRC (TRC = 1.4 for BOD, TSS, fats, oil, and grease, and 1.2 for all other pollutants except pH);

(3) Any other violation of a pretreatment standard or requirement as defined by 9VAC25-31-10 (daily

maximum, long-term average, instantaneous limit, or narrative standard) that the control authority POTW determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of POTW personnel or the general public);

(4) Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the POTW's exercise of its emergency authority under subdivision 1 f of this subsection to halt or prevent such a discharge;

(5) Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for starting construction, completing construction, or attaining final compliance;

(6) Failure to provide, within 45 days after the due date, required reports such as baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;

(7) Failure to accurately report noncompliance; or

(8) Any other violation or group of violations that may include a violation of Best Management Practices which the POTW determines will adversely affect the operation or implementation of the local pretreatment program.

3. Funding. The POTW shall have sufficient resources and qualified personnel to carry out the authorities and procedures described in subdivisions 1 and 2 of this subsection. In some limited circumstances, funding and personnel may be delayed where (i) the POTW has adequate legal authority and procedures to carry out the pretreatment program requirements described in this section, and (ii) a limited aspect of the program does not need to be implemented immediately (see 9VAC25-31-810 B).

4. Local limits. The POTW shall develop local limits as required in 9VAC25-31-770 C 1, using current influent, effluent and sludge data, or demonstrate that they are not necessary.

5. The POTW shall develop and implement an enforcement response plan. This plan shall contain detailed procedures indicating how a POTW will investigate and respond to instances of industrial user noncompliance. The plan shall, at a minimum:

a. Describe how the POTW will investigate instances of noncompliance;

b. Describe the types of escalating enforcement responses the POTW will take in response to all anticipated types of industrial user violations and the time periods within which responses will take place;

c. Identify (by title) the official or officials responsible for each type of response; and

d. Adequately reflect the POTW's primary responsibility to enforce all applicable pretreatment requirements and standards, as detailed in subdivisions 1 and 2 of this subsection.

6. The POTW shall prepare and maintain a list of its significant industrial users. The list shall identify the criteria in the definition of significant industrial user in Part I (9VAC25-31-10 et seq.) of this chapter which are applicable to each industrial user and, where applicable, shall also indicate whether the POTW has made a determination pursuant to subdivision 3 of that definition that such industrial user should not be considered a significant industrial user. This list shall be submitted to the department pursuant to 9VAC25-31-810 as a nonsubstantial program modification pursuant to 9VAC25-31-900 D. Modifications to the list shall be submitted to the department pursuant to 9VAC25-31-840 I 1.

G. A POTW that chooses to receive electronic documents must satisfy the requirements of 40 CFR Part 3 (electronic reporting).

VA.R. Doc. No. R21-6247; Filed July 30, 2020, 6:33 a.m.

Fast-Track Regulation

Title of Regulation: **9VAC25-80. General Regulations under State Water Control Law - Requirement No. 1 (repealing 9VAC25-80-10).**

Statutory Authority: §§ 62.1-44.3 and 62.1-44.15 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: September 30, 2020.

Effective Date: October 15, 2020.

Agency Contact: Melissa Porterfield, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (803) 698-4238, or email melissa.porterfield@deq.virginia.gov.

Basis: The State Water Control Board adopted this regulation under the authority of § 62.1-44.15 of the Code of Virginia. Section 62.1-44.19 A of the Code of Virginia requires an owner to file an application for a certificate with the board before they "erect, construct, open, expand or operate a sewerage system or sewage treatment works which will have a potential discharge or actual discharge to state waters."

Purpose: A periodic review of the General Regulations Under State Water Control Board - Requirement 1 (9VAC25-80) was conducted in 2019. The result of the periodic review was to repeal this regulation since it is no longer necessary. Under the Sewage Collection and Treatment (SCAT) Regulations, no person shall construct, expand, or modify a sewerage system or sewage treatment works except in compliance with a Certificate to Construct from the department and in accordance with the detailed standards contained within the regulations. As a result, the more generalized requirements of 9VAC25-80 are no longer needed and can be repealed. The amendments

protect public health, safety, or welfare by removing an unnecessary regulation.

Rationale for Using Fast-Track Rulemaking Process: A periodic review of the General Regulations Under State Water Control Board - Requirement 1 (9VAC25-80) was conducted in 2019. The result of the periodic review was to repeal this regulation since it is no longer necessary and therefore the action is uncontroversial.

Substance: The entire regulation, which has only one section, is being repealed.

Issues: The primary advantage to the regulated community, public, and the Commonwealth is the removal of a regulation that contains general requirements that are included in another regulation. There are no disadvantages to the regulated community, public, or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The State Water Control Board (Board) proposes to repeal 9VAC25-80 General Regulations Under State Water Control Law - Requirement No. 1 (General Regulations).

Background. The Board's 9VAC25-790 Sewage Collection and Treatment Regulations (SCAT Regulations)[1] became effective on February 12, 2004. Under the SCAT Regulations, no person shall construct, expand, or modify a sewerage system or sewage treatment works except in compliance with a Certificate to Construct from the Department of Environmental Quality and in accordance with the detailed standards contained within the regulation. As a result, the more generalized requirements in the General Regulations became superfluous.

A periodic review of the General Regulations was conducted in 2019.[2] The result of the periodic review was to repeal this regulation since it is no longer necessary.

Estimated Benefits and Costs. The proposed repeal of the General Regulations would have no impact beyond the benefit of reducing potential confusion for readers of the regulation.

Businesses and Other Entities Affected. The proposed repeal would affect readers of the regulation. No costs would be introduced.

Small Businesses[3] Affected. The proposed repeal does not appear to substantively affect small businesses.

Localities[4] Affected.[5] The proposed repeal does not appear to substantively affect localities and does not introduce costs for local governments.

Projected Impact on Employment. The proposed repeal does not affect total employment.

Effects on the Use and Value of Private Property. The proposed repeal does not appear to substantively affect the use and value of private property or real estate development costs.

[1]See https://law.lis.virginia.gov/admincode/title9/agency25/chapter790/

[2]See https://townhall.virginia.gov/l/ViewPReview.cfm?PRid=1780

[3]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."

[4]"Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

[5]§ 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

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

Summary:

A periodic review of General Regulations under State Water Control Board - Requirement 1 (9VAC25-80) found the chapter should be repealed as unnecessary. The Sewage Collection and Treatment (SCAT) Regulations (9VAC25-790), which became effective on February 12, 2004, and contain detailed requirements for sewerage system or sewage treatment works certification, replace the more generalized requirements of 9VAC25-80. Therefore, this action repeals 9VAC25-80.

VA.R. Doc. No. R21-6150; Filed August 10, 2020, 3:24 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

Fast-Track Regulation

Title of Regulation: **18VAC30-21. Regulations Governing Audiology and Speech-Language Pathology (amending 18VAC30-21-40).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: September 30, 2020.

Effective Date: October 15, 2020.

Agency Contact: Leslie L. Knachel, Executive Director, Board of Audiology and Speech-Language Pathology, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 597-4130, FAX (804) 527-4471, or email audbd@dhp.virginia.gov.

Basis: Regulations are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which provides the Board of Audio and Speech-Language Pathology the authority to promulgate regulations to administer the regulatory system. The specific mandate for collection of a handling fee is found in § 2.2-4805 of the Code of Virginia.

Purpose: The rationale for the regulatory change is compliance with the Virginia Debt Collection Act in which the General Assembly has determined that the cost for handling returned

checks or dishonored credit or debit card is $50. The board has the responsibility of licensing competent practitioners and disciplining those who are found in violation of law or regulation in order to protect the health and safety of the public. As a non-general fund agency, the board must charge fees sufficient to cover its expenditures related to its statutory responsibility to protect the public.

Rationale for Using Fast-Track Rulemaking Process: The Office of the Comptroller has advised the department that the costs for handling a returned check or dishonored credit card or debit card payment is $50, as set forth in § 2.2-4805 of the Code of Virginia. Therefore, all board regulations are being amended to delete the returned check fee of $35 and replace it with a handling fee of $50. The Office of the Attorney General concurs with amending regulations accordingly but advised that it is not an exempt action.

The rulemaking is concurring with financial policy of the Commonwealth and is not expected to be controversial. It is appropriate for a fast-track rulemaking action because it is consistent with actions by all other boards at the department and is not expected to be controversial.

Substance: All board regulations are being amended to delete the returned check fee of $35 and replace it with a handling fee of $50 for a returned check, dishonored credit card, or dishonored debit card.

Issues: There are no primary advantages or disadvantages to the public.

The primary advantage to the department is compliance with auditors from the Office of the Comptroller.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Audiology and Speech-Language Pathology (Board) proposes to amend 18VAC30-20 Regulations Governing the Practice of Audiology and Speech-Language Pathology to state that the handling fee for a returned check or dishonored credit card or debit card is $50, replacing a current $35 charge.

Background. Code of Virginia § 2.2-614.1 specifies that:

> If any check or other means of payment tendered to a public body in the course of its duties is not paid by the financial institution on which it is drawn, because of insufficient funds in the account of the drawer, no account is in the name of the drawer, or the account of the drawer is closed, and the check or other means of payment is returned to the public body unpaid, the amount thereof shall be charged to the person on whose account it was received, and his liability and that of his sureties, shall be as if he had never offered any such payment. A penalty of $35 or the amount of any costs, whichever is greater, shall be added to such amount.

Based on this Code provision, the current regulations include a $35 returned check charge.

On the other hand, Code of Virginia § 2.2-4805 specifies that "Returned checks or dishonored credit card or debit card payments shall incur a handling fee of $50 unless a higher amount is authorized by statute to be added to the principal account balance." According to the Department of Health Professions (DHP), the Office of the Attorney General has advised that the handling fee of $50 in Virginia Code 2.2-4805 governs.

Estimated Benefits and Costs. Based on the view of the Office of the Attorney General that Virginia Code 2.2-4805 prevails, the fee by law for a returned check or dishonored credit card or debit card is $50. The Board's proposal therefore conforms the regulation to current law. DHP has indicated that in practice they will continue to charge the $35 fee until this proposed regulatory action becomes effective. The services provided by DHP are funded by the fees paid by the regulated individuals and entities. To the extent that the $50 fee more accurately represents the cost incurred by DHP, the proposed change may be beneficial in that the cost would need not be subsidized by other regulants who did not cause the cost to be incurred.

Businesses and Other Entities Affected. The proposal pertains to fee-paying individuals regulated by the Board. As of December 31, 2019, there were 558 audiologists, 464 school speech pathologists, and 4,528 speech pathologists licensed by the Board. If any of these individuals have a check returned or a credit card or debit card dishonored, the proposal would increase their cost by $15. Since adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits of the proposal exceed the costs for all entities combined, adverse impact is indicated for this action.

Small Businesses[1] Affected: The proposed amendment does not appear to substantively affect small businesses.

Localities[2] Affected.[3] The proposal does not disproportionately affect any particular localities or introduce costs for local governments.

Projected Impact on Employment. The proposal does not affect employment.

Effects on the Use and Value of Private Property. The proposal does not substantially affect the use and value of private property or real estate development costs.

[1]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."

[2]"Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

[3]§ 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency's Response to Economic Impact Analysis: The Board of Audiology and Speech-Language Pathology concurs with the analysis of the Department of Planning and Budget.

Summary:

The amendments replace the returned check fee of $35 with a fee of $50 for handling a returned check or dishonored credit card or debit card payment in compliance with § 2.2-4805 of the Code of Virginia.

18VAC30-21-40. Fees required.

A. The following fees shall be paid as applicable for licensure:

1. Application for audiology or speech-language pathology license	$135
2. Application for school speech-language pathology license	$70
3. Verification of licensure requests from other states	$20
4. Annual renewal of audiology or speech-language pathology license	$75
5. Late renewal of audiology or speech-language pathology license	$25
6. Annual renewal of school speech-language pathology license	$40
7. Late renewal of school speech-language pathology license	$15
8. Reinstatement of audiology or speech-language pathology license	$135
9. Reinstatement of school speech-language pathology license	$70
10. Duplicate wall certificate	$25
11. Duplicate license	$5
12. ~~Returned~~ Handling fee for returned check or dishonored credit card or debit card	~~$35~~ $50
13. Inactive license renewal for audiology or speech-language pathology	$40
14. Inactive license renewal for school speech-language pathology	$20
15. Application for provisional license	$50
16. Renewal of provisional license	$25

B. Fees shall be made payable to the Treasurer of Virginia and shall not be refunded once submitted.

C. The renewal fees due by December 31, 2018, shall be as follows:

1. Annual renewal of audiology or speech-language pathology license	$55
2. Annual renewal of school speech-language pathology license	$30

VA.R. Doc. No. R21-6171; Filed August 6, 2020, 1:49 p.m.

BOARD OF DENTISTRY

Fast-Track Regulation

Titles of Regulations: **18VAC60-21. Regulations Governing the Practice of Dentistry (amending 18VAC60-21-40).**

18VAC60-25. Regulations Governing the Practice of Dental Hygiene (amending 18VAC60-25-30).

18VAC60-30. Regulations Governing the Practice of Dental Assistants (amending 18VAC60-30-30).

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: September 30, 2020.

Effective Date: October 15, 2020.

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

Basis: Regulations are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which provides the Board of Dentistry the authority to promulgate regulations to administer the regulatory system. The specific mandate for collection of a handling fee is found in § 2.2-4805 of the Virginia Debt Collection Act.

Purpose: The amendments conform the regulation to the Virginia Debt Collection Act (§ 2.2-4800 et seq.) of the Code of Virginia, in which the General Assembly has determined that the cost for handling returned checks, dishonored credit cards, or dishonored debit cards is $50. The department and its regulatory boards license and discipline health care practitioners with the mission of protecting the health and safety of the public, which must be supported by licensing and miscellaneous fees.

Rationale for Using Fast-Track Rulemaking Process: The rulemaking is concurring with the financial policy of the Commonwealth and is not expected to be controversial.

Substance: Fees are being amended to replace the returned check fee of $35 with a handling fee of $50 for a returned check, dishonored credit card, or dishonored debit card.

Issues: There are no primary advantages or disadvantages to the public. The primary advantage to the department is compliance with auditors from the Office of the Comptroller. There are no disadvantages to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Dentistry (Board) proposes to amend 18VAC60-21 Regulations Governing the Practice of Dentistry, 18VAC60-25 Regulations Governing the Practice of Dental Hygienists, and 18VAC60-30 Regulations Governing the Practice of Dental Assistants to state that the handling fee for a returned

check or dishonored credit card or debit card is $50, replacing a current $35 charge.

Background. Code of Virginia § 2.2-614.1 specifies that:

> If any check or other means of payment tendered to a public body in the course of its duties is not paid by the financial institution on which it is drawn, because of insufficient funds in the account of the drawer, no account is in the name of the drawer, or the account of the drawer is closed, and the check or other means of payment is returned to the public body unpaid, the amount thereof shall be charged to the person on whose account it was received, and his liability and that of his sureties, shall be as if he had never offered any such payment. A penalty of $35 or the amount of any costs, whichever is greater, shall be added to such amount.

Based on this Code provision, the current regulations include a $35 returned check charge.

On the other hand, Code of Virginia § 2.2-4805 specifies that "Returned checks or dishonored credit card or debit card payments shall incur a handling fee of $50 unless a higher amount is authorized by statute to be added to the principal account balance." According to the Department of Health Professions (DHP), the Office of the Attorney General has advised that the handling fee of $50 in Virginia Code 2.2-4805 governs.

Estimated Benefits and Costs. Based on the view of the Office of the Attorney General that Virginia Code § 2.2-4805 prevails, the fee by law for a returned check or dishonored credit card or debit card is $50. The Board's proposal therefore conforms the regulations to current law. DHP has indicated that in practice they will continue to charge the $35 fee until this proposed regulatory action becomes effective. The services provided by DHP are funded by the fees paid by the regulated individuals and entities. To the extent that the $50 fee more accurately represents the cost incurred by DHP, the proposed change may be beneficial in that the cost would need not be subsidized by other regulants who did not cause the cost to be incurred.

Businesses and Other Entities Affected. The proposal pertains to fee-paying individuals and entities regulated by the Board. As of September 30, 2019, there were 7,492 dentists, 10 dental full-time faculty, 7 volunteer dentists, 58 temporary residents, 270 oral maxillofacial surgeons, 6,028 dental hygienists, 1 volunteer dental hygienist, 32 dental assistants II, and 12 mobile dental facilities. The Board does not directly regulate dental practices. If any of these individuals or entities have a check returned or a credit card or debit card dishonored, the proposal would increase their cost by $15. Since adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits of the proposal exceed the costs for all entities combined, adverse impact is indicated for this action.

Small Businesses[1] Affected:

Types and Estimated Number of Small Businesses Affected: As stated, the Board does not directly regulate dental practices; with one exception, all fees are charged to individuals. The one exception is the 12 mobile dental facilities. No direct information is available on their size, but all would likely qualify for the statutory definition of a small business.[2]

Costs and Other Effects: If any of the mobile dental facilities were to have a check returned or a credit card or debit card dishonored, the proposal would increase their cost by $15.

Alternative Method that Minimizes Adverse Impact: There are no clear alternative methods that both reduce adverse impact and meet the intended policy goals.

Localities[3] Affected.[4] The proposal does not disproportionately affect any particular localities or introduce costs for local governments.

Projected Impact on Employment. The proposal does not affect employment.

Effects on the Use and Value of Private Property. The proposal does not substantially affect the use and value of private property or real estate development costs.

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[1]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."

[2]Ibid

[3]"Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

[4]§ 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

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

Summary:

The amendments replace the returned check fee of $35 with a fee of $50 for handling a returned check or dishonored credit card or debit card payment in compliance with § 2.2-4805 of the Code of Virginia.

18VAC60-21-40. Required fees.

A. Application/registration fees.

1. Dental license by examination	$400
2. Dental license by credentials	$500
3. Dental restricted teaching license	$285
4. Dental faculty license	$400
5. Dental temporary resident's license	$60
6. Restricted volunteer license	$25
7. Volunteer exemption registration	$10
8. Oral maxillofacial surgeon registration	$175
9. Cosmetic procedures certification	$225

10. Mobile clinic/portable operation	$250
11. Moderate sedation permit	$100
12. Deep sedation/general anesthesia permit	$100

B. Renewal fees.

1. Dental license - active	$285
2. Dental license - inactive	$145
3. Dental temporary resident's license	$35
4. Restricted volunteer license	$15
5. Oral maxillofacial surgeon registration	$175
6. Cosmetic procedures certification	$100
7. Moderate sedation permit	$100
8. Deep sedation/general anesthesia permit	$100

C. Late fees.

1. Dental license - active	$100
2. Dental license - inactive	$50
3. Dental temporary resident's license	$15
4. Oral maxillofacial surgeon registration	$55
5. Cosmetic procedures certification	$35
6. Moderate sedation permit	$35
7. Deep sedation/general anesthesia permit	$35

D. Reinstatement fees.

1. Dental license - expired	$500
2. Dental license - suspended	$750
3. Dental license - revoked	$1000
4. Oral maxillofacial surgeon registration	$350
5. Cosmetic procedures certification	$225

E. Document fees.

1. Duplicate wall certificate	$60
2. Duplicate license	$20
3. License certification	$35

F. Other fees.

1. ~~Returned~~ Handling fee for returned check ~~fee~~ or dishonored credit or debit card	~~$35~~ $50
2. Practice inspection fee	$350

G. No fee will be refunded or applied for any purpose other than the purpose for which the fee is submitted.

H. For the renewal of an active dental license in 2021, fees shall be prorated according to a licensee's birth month as follows:

January birth month	$150
February birth month	$165
March birth month	$180
April birth month	$195
May birth month	$210
June birth month	$225
July birth month	$240
August birth month	$255
September birth month	$270
October birth month	$285
November birth month	$300
December birth month	$315

18VAC60-25-30. Required fees.

A. Application fees.

1. License by examination	$175
2. License by credentials	$275
3. License to teach dental hygiene pursuant to § 54.1-2725 of the Code	$175
4. Temporary permit pursuant to § 54.1-2726 of the Code	$175
5. Restricted volunteer license	$25
6. Volunteer exemption registration	$10

B. Renewal fees.

1. Active license	$75
2. Inactive license	$40
3. License to teach dental hygiene pursuant to § 54.1-2725	$75
4. Temporary permit pursuant to § 54.1-2726	$75

C. Late fees.

1. Active license	$25
2. Inactive license	$15
3. License to teach dental hygiene pursuant to § 54.1-2725	$25
4. Temporary permit pursuant to § 54.1-2726	$25

D. Reinstatement fees.

1. Expired license	$200

2. Suspended license	$400
3. Revoked license	$500
E. Administrative fees.	
1. Duplicate wall certificate	$60
2. Duplicate license	$20
3. Certification of licensure	$35
4. ~~Returned~~ Handling fee for returned check or dishonored credit or debit card	~~$35~~ $50

F. No fee shall be refunded or applied for any purpose other than the purpose for which the fee was submitted.

G. For the renewal of an active dental hygienist license in 2021, fees shall be prorated according to a licensee's birth month as follows:

January birth month	$40
February birth month	$44
March birth month	$48
April birth month	$52
May birth month	$56
June birth month	$60
July birth month	$64
August birth month	$68
September birth month	$72
October birth month	$76
November birth month	$80
December birth month	$84

18VAC60-30-30. Required fees.

A. Initial registration fee.	$100
B. Renewal fees.	
1. Dental assistant II registration - active	$50
2. Dental assistant II registration - inactive	$25
C. Late fees.	
1. Dental assistant II registration - active	$20
2. Dental assistant II registration - inactive	$10
D. Reinstatement fees.	
1. Expired registration	$125
2. Suspended registration	$250
3. Revoked registration	$300
E. Administrative fees.	
1. Duplicate wall certificate	$60
2. Duplicate registration	$20
3. Registration verification	$35
4. ~~Returned~~ Handling fee for returned check ~~fee~~ or dishonored credit or debit card	~~$35~~ $50

F. No fee will be refunded or applied for any purpose other than the purpose for which the fee is submitted.

G. For the renewal of an active dental assistant II registration in 2021, the fees for renewal of an active dental assistant II registration shall be prorated according to the registrant's birth month as follows:

January birth month	$30
February birth month	$33
March birth month	$36
April birth month	$39
May birth month	$42
June birth month	$45
July birth month	$48
August birth month	$51
September birth month	$54
October birth month	$57
November birth month	$60
December birth month	$63

VA.R. Doc. No. R21-5764; Filed August 6, 2020, 1:59 p.m.

BOARD OF MEDICINE

Fast-Track Regulation

Title of Regulation: **18VAC85-40. Regulations Governing the Practice of Respiratory Therapists (amending 18VAC85-40-66).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: September 30, 2020.

Effective Date: October 15, 2020.

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

Basis: Regulations are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which provides the Board of Medicine the authority to promulgate regulations to administer the regulatory system. The requirement for passage of a National Board of Respiratory Care (NBRC) examination for initial licensure is found in § 54.1-2954 of the Code of Virginia.

Purpose: The purpose of the regulatory change is to recognize the extensive preparation and effort required to pass a specialty examination of the NBRC by allowing a respiratory therapist to have 20 hours of continuing education credit in the biennium in which the examination is passed. Such an allowance may encourage respiratory therapists to increase their knowledge and clinical skills to enable them to provide more proficient care and protect the health and safety of patients they serve.

Rationale for Using Fast-Track Rulemaking Process: The impetus for the amendment was a recommendation of the Advisory Board on Respiratory Care. Since the regulatory change provides an optional pathway for fulfillment of continuing education requirements, it will not be controversial and is appropriate for the fast-track rulemaking process.

Substance: The proposed amendment will allow a respiratory therapist to have 20 hours of continuing education credit for passage of a specialty examination of the National Board of Respiratory Care for the biennium in which the practitioner passed the exam.

Issues: There is an advantage to the public if a respiratory therapist completes a specialty examination, which would improve their competency and clinical skills. There are no disadvantages to the public; the basic examination of the NBRC is already recognized by the Code of Virginia as the basis for licensure.

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 allow a respiratory therapist who passes a specialty examination of the National Board of Respiratory Care to earn 20 hours of continuing education credit for the biennium in which the practitioner passed the exam.

Background. Currently, in order to renew an active license as a respiratory therapist, a licensee must have 20 hours of continuing education within the biennial license renewal cycle. For the continuing education credits, the Board currently recognizes: 1) courses approved and documented by a sponsor recognized by the American Association for Respiratory Care, 2) courses directly related to the practice of respiratory care as approved by the American Medical Association for Category 1 Continuing Medical Education credit, and 3) a credit course of post-licensure academic education relevant to respiratory care offered by a college or university accredited by an agency recognized by the United States Department of Education. In addition, up to two continuing education hours may be satisfied through delivery of respiratory therapy services, without compensation, to low-income individuals receiving services through a local health department or a free clinic.

In addition to the enumerated ways of obtaining the required 20 hours of continuing education, the proposed amendment would allow respiratory therapists to meet that requirement for the biennium if they pass a specialty exam of the National Board of Respiratory Care. The specialty areas include adult critical care, neonatal/pediatric respiratory care, pulmonary function technology, and sleep disorders testing and therapeutic intervention. The impetus for the proposed change was a recommendation of the Advisory Board on Respiratory Care.

Estimated Benefits and Costs. The proposed change represents an additional option to meet the required 20 hours of continuing education for biennial renewal of the respiratory therapy license. According to the Department of Health Professions (DHP), even though the Board does not offer specialty licenses some respiratory therapists already take the specialty exam, perhaps to signal to potential employers that their skills are advanced and current in certain areas. The purpose of the regulatory change is to recognize the extensive preparation and effort required to pass a specialty exam by allowing those who pass the exam to meet the continuing education requirement.

In addition to the individuals who would have taken a specialty exam without this change, the proposed amendment may encourage more respiratory therapists to take a specialty exam. Since the proposed change is optional, it can be inferred that the benefits to those who choose to take the exam would exceed the costs to them. Also, to the extent that the specialty exam improves the quality of respiratory care in the Commonwealth, both employers and patients would benefit.

However, the proposed regulation may also lead to a decrease in demand for continuing education services offered by the current continuing education providers. With this change, a respiratory therapist who passes the specialty exam would not have to take 20 hours of continuing education from existing providers.

Businesses and Other Entities Affected. According to DHP, there are currently 3,743 persons licensed as respiratory therapists in Virginia. However, the Board does not license by specialty and as such there is no information on the number of therapists who pass a specialty exam during a certain period of time, nor is there an estimate of the number of therapists who may be interested in taking the specialty exam as a result of the proposed change.

While the benefits of the proposal may exceed costs overall, there would likely be a reduction in net revenue for existing providers of continuing education. An adverse economic impact[1] on existing providers of continuing education is indicated because there do not appear to be any offsetting direct benefits to these businesses.

Small Businesses[2] Affected. Substitution of the specialty exam for the alternate courses may negatively affect the small businesses that currently offer the courses that would count toward the 20 required hours.

Types and Estimated Number of Small Businesses Affected: The board does not license continuing education providers for

respiratory therapy. Accordingly, there is no estimate available on the number of small businesses that currently offer continuing education services to respiratory therapists.

Costs and Other Effects: The proposed amendment makes it more attractive to earn continuing education credits through a specialty exam which may reduce the demand for continuing education services from current providers.

Alternative Method that Minimizes Adverse Impact: There is no clear alternative method that both reduce adverse impact and meet the intended policy goals.

Localities[3] Affected.[4] The proposed amendment potentially affects respiratory therapists and continuing education providers in all 132 localities. The proposed amendment does not introduce costs for local governments. Accordingly, no additional funds would be required.

Projected Impact on Employment. There is not enough information to assess whether the likely reduction in demand for continuing education services offered by the current providers has the potential to affect total employment.

Effects on the Use and Value of Private Property. The proposed amendment may negatively affect the asset value of current continuing education providers by potentially reducing the demand for their services. The proposed amendment does not appear to affect real estate development costs.

[1]Adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined.

[2]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."

[3]"Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

[4]§ 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

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

Summary:

The amendment allows a respiratory therapist who passes a specialty examination of the National Board of Respiratory Care to earn 20 hours of continuing education credit for the biennium in which the practitioner passes the exam.

18VAC85-40-66. Continuing education requirements.

A. In order to renew an active license as a respiratory therapist, a licensee shall attest to having completed 20 hours of continuing education within the last biennium as follows:

1. Courses approved and documented by a sponsor recognized by the AARC;

2. Courses directly related to the practice of respiratory care as approved by the American Medical Association for Category 1 CME credit; ~~or~~

3. A credit course of post-licensure academic education relevant to respiratory care offered by a college or university accredited by an agency recognized by the U.S. Department of Education; or

4. Passage of a specialty examination of the National Board of Respiratory Care for 20 hours of credit in the biennium in which the examination was passed.

Up to two continuing education hours may be satisfied through delivery of respiratory 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. For the purpose of continuing education credit for voluntary service, the hours shall be approved and documented by the health department or free clinic.

B. A practitioner shall be exempt from the continuing education 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 four years following the renewal of an active license.

D. The board shall periodically conduct a random audit of its active licensees to determine compliance. The practitioners selected for the audit shall provide all supporting documentation within 30 days of receiving notification of the audit.

E. Failure to comply with these requirements may subject the licensee to disciplinary action by the board.

F. The board may grant an extension of the deadline for continuing competency requirements, for up to one year, for good cause shown upon a written request from the licensee prior to the renewal date.

G. The board may grant an exemption for all or part of the requirements for circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters.

VA.R. Doc. No. R21-6299; Filed August 7, 2020, 10:54 a.m.

Proposed Regulation

Title of Regulation: **18VAC85-50. Regulations Governing the Practice of Physician Assistants (amending 18VAC85-50-10, 18VAC85-50-35, 18VAC85-50-40, 18VAC85-50-57, 18VAC85-50-101, 18VAC85-50-110, 18VAC85-50-115, 18VAC85-50-117, 18VAC85-50-140, 18VAC85-50-160, 18VAC85-50-181).**

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

Public Hearing Information:

October 8, 2020 - 1:05 p.m. - Perimeter Center, 9960 Mayland Drive, Suite 201, Richmond, VA 23233-1463

Public Comment Deadline: October 30, 2020.

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

Basis: Regulations are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which provides the Board of Medicine the authority to promulgate regulations to administer the regulatory system.

Purpose: The purpose of this regulatory action is compliance with statutory changes delineating the practice of a physician assistant. The amendments are consistent with the requirement for a practice agreement between or among the parties and the responsibility of the patient care team physician or podiatrist for the health, safety, and welfare of patients who receive care.

Substance: Amendments are adopted to comply with changes to the Code of Virginia by Chapters 92 and 137 of the 2019 Acts of Assembly, which eliminated practice by a physician assistant under the supervision of a physician or podiatrist and redefined the relationship as one of practice in collaboration and consultation with a patient care team physician or podiatrist.

Issues: There are no advantages or disadvantages to the public apart from those in the statutory language in Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1. The changes do not substantially alter the practice model for physician assistants and physicians as they are currently employed.

There are no particular advantages or disadvantages to the agency.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Medicine (Board) proposes to revise the regulation to reflect new legislation that revised the practice relationship between a physician assistant and a physician or a podiatrist and to repeal an obsolete fee.

Background. This action results from Chapters 92[1] and 137[2] of the 2019 Acts of Assembly that changed how physician assistants practice, from practicing under the supervision of a physician or podiatrist to practicing as part of a patient care team. The legislation established "a patient care team model" where the focus of the relationship is on collaboration and consultation rather than supervision. In the new model, the role of the patient care team physician or podiatrist is to provide management and leadership to a physician assistant in the care of patients as part of a patient care team.

Estimated Benefits and Costs. According to the Department of Health Professions (DHP), the patient care team model affords more discretion to the physician assistants as the focus of the relationship has shifted from supervision to collaboration and consultation under the new legislation. Otherwise, the change does not substantially alter the practice model for physician assistants and physicians as they are currently employed. Since there are no significant differences in the way physician assistants and doctors practice, the main benefit of this change is clarity and consistency of the regulation with the statute.

The Board also proposes to repeal obsolete language requiring a $15 fee for the review and approval of new protocols that are submitted following initial licensure. This fee has not been enforced in practice following the passage of Chapter 450 of the 2016 Acts of Assembly[3] that required only "Evidence of a practice agreement shall be maintained by the physician assistant and provided to the Board upon request, " but it has been inadvertently left in the regulatory text since then. The main benefit of this change is the removal of inaccurate language from the regulatory text.

Businesses and Other Entities Affected. The proposed amendments affect physicians and physician assistants entering into professional collaboration and a consultation relationship. There are 38,947 doctors of medicine and surgery, 3,834 doctors of osteopathic medicine, 553 doctors of podiatry, and 4,224 physician assistants. None of these entities appears to be disproportionately affected.

Small Businesses[4] Affected. The proposed amendments do not appear to adversely affect small businesses.

Localities[5] Affected.[6] The proposed amendments potentially affect physicians and physician assistants entering into professional collaboration and consultation relationship in all 132 localities. The proposed amendments do not introduce costs for local governments. Accordingly, no additional funds would be required.

Projected Impact on Employment. The proposed amendments do not appear to affect total employment.

Effects on the Use and Value of Private Property. The proposed amendments do not affect real estate development costs.

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[1] http://lis.virginia.gov/cgi-bin/legp604.exe?191+ful+CHAP0092.

[2] http://lis.virginia.gov/cgi-bin/legp604.exe?191+ful+CHAP0137.

[3] http://lis.virginia.gov/cgi-bin/legp604.exe?161+ful+CHAP0450.

[4] 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. "

[5] "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

[6] § 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

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

Summary:

Pursuant to Chapters 92 and 137 of the 2019 Acts of Assembly, the amendments replace practice by a physician assistant under the supervision of a physician or a podiatrist with practice in collaboration and consultation with a patient care team physician or patient care team podiatrist.

Part I
General Provisions

18VAC85-50-10. Definitions.

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

"Board."

"Collaboration."

"Consultation."

"Patient care team physician."

"Patient care team podiatrist."

"Physician assistant."

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

"Group practice" means the practice of a group of two or more doctors of medicine, osteopathy, or podiatry licensed by the board who practice as a partnership or professional corporation.

"Institution" means a hospital, nursing home or other health care facility, community health center, public health center, industrial medicine or corporation clinic, a medical service facility, student health center, or other setting approved by the board.

"NCCPA" means the National Commission on Certification of Physician Assistants.

"Practice agreement" means a written or electronic agreement developed by the ~~supervising~~ patient care team physician or podiatrist and the physician assistant that defines the ~~supervisory~~ relationship between the physician assistant and the physician or podiatrist, the prescriptive authority of the physician assistant, and the circumstances under which the physician or podiatrist will see and evaluate the patient.

~~"Supervision" means the supervising physician has on-going, regular communication with the physician assistant on the care and treatment of patients, is easily available, and can be physically present or accessible for consultation with the physician assistant within one hour.~~

18VAC85-50-35. Fees.

Unless otherwise provided, the following fees shall not be refundable:

1. The initial application fee for a license, payable at the time application is filed, shall be $130.

2. The biennial fee for renewal of an active license shall be $135 and for renewal of an inactive license shall be $70, payable in each odd-numbered year in the birth month of the licensee. For 2021, the fee for renewal of an active license shall be $108, and the fee for renewal of an inactive license shall be $54.

3. The additional fee for late renewal of licensure within one renewal cycle shall be $50.

4. A restricted volunteer license shall expire 12 months from the date of issuance and may be renewed without charge by receipt of a renewal application that verifies that the physician assistant continues to comply with provisions of § 54.1-2951.3 of the Code of Virginia.

~~5. The fee for review and approval of a new protocol submitted following initial licensure shall be $15.~~

~~6.~~ 5. The fee for reinstatement of a license pursuant to § 54.1-2408.2 of the Code of Virginia shall be $2,000.

~~7.~~ 6. The fee for a duplicate license shall be $5.00, and the fee for a duplicate wall certificate shall be $15.

~~8.~~ 7. The handling fee for a returned check or a dishonored credit card or debit card shall be $50.

~~9.~~ 8. The fee for a letter of good standing or verification to another jurisdiction shall be $10.

~~10.~~ 9. The fee for an application or for the biennial renewal of a restricted volunteer license shall be $35, due in the licensee's birth month. An additional fee for late renewal of licensure shall be $15 for each renewal cycle.

Part II
Requirements for Practice as a Physician's Assistant

18VAC85-50-40. General requirements.

A. No person shall practice as a physician assistant in the Commonwealth of Virginia except as provided in this chapter.

B. All services rendered by a physician assistant shall be performed only ~~under the continuous supervision of~~ in accordance with a practice agreement with a doctor of medicine, osteopathy, or podiatry licensed by this board to practice in the Commonwealth.

18VAC85-50-57. Discontinuation of employment.

If for any reason the physician assistant discontinues working ~~in the employment and under the supervision of a licensed practitioner~~ with a patient care team physician or podiatrist, a new practice agreement shall be entered into in order for the physician assistant either to be reemployed by the same practitioner or to accept new employment with another ~~supervising physician~~ patient care team physician or podiatrist.

Part IV
Practice Requirements

18VAC85-50-101. Requirements for a practice agreement.

A. Prior to initiation of practice, a physician assistant and his ~~supervising~~ patient care team physician or podiatrist shall enter into a written or electronic practice agreement that spells out the roles and functions of the assistant and is consistent with provisions of § 54.1-2952 of the Code of Virginia.

1. The ~~supervising~~ patient care team physician or podiatrist shall be a doctor of medicine, osteopathy, or podiatry licensed in the Commonwealth who has accepted responsibility for ~~the supervision of~~ the service that a physician assistant renders.

2. Any such practice agreement shall take into account such factors as the physician assistant's level of competence, the number of patients, the types of illness treated by the physician or podiatrist, the nature of the treatment, special procedures, and the nature of the physician or podiatrist availability in ensuring direct physician or podiatrist involvement at an early stage and regularly thereafter.

3. The practice agreement shall also provide an evaluation process for the physician assistant's performance, including a requirement specifying the time period, proportionate to the acuity of care and practice setting, within which the ~~supervising~~ physician or podiatrist shall review the record of services rendered by the physician assistant.

4. The practice agreement may include requirements for periodic site visits by ~~supervising licensees who supervise and direct~~ the patient care team physician or podiatrist to collaborate and consult with physician assistants who provide services at a location other than where the ~~licensee~~ physician or podiatrist regularly practices.

B. The board may require information regarding the ~~level~~ degree of ~~supervision with which the supervising~~ collaboration and consultation by the patient care team physician ~~plans to supervise the physician assistant for selected tasks~~ or podiatrist. The board may also require the ~~supervising~~ patient care team physician or podiatrist to document the physician assistant's competence in performing such tasks.

C. If the role of the physician assistant includes prescribing drugs and devices, the written practice agreement shall include those schedules and categories of drugs and devices that are within the scope of practice and proficiency of the ~~supervising~~ patient care team physician or podiatrist.

D. If the initial practice agreement did not include prescriptive authority, there shall be an addendum to the practice agreement for prescriptive authority.

E. If there are any changes in ~~supervision~~ consultation and collaboration, authorization, or scope of practice, a revised practice agreement shall be entered into at the time of the change.

18VAC85-50-110. Responsibilities of the ~~supervisor~~ patient care team physician or podiatrist.

The ~~supervising~~ patient care team physician or podiatrist shall:

1. Review the clinical course and treatment plan for any patient who presents for the same acute complaint twice in a single episode of care and has failed to improve as expected. The ~~supervising~~ physician or podiatrist shall be involved with any patient with a continuing illness as noted in the written or electronic practice agreement for the evaluation process.

2. Be responsible for all invasive procedures.

a. Under supervision, a physician assistant may insert a nasogastric tube, bladder catheter, needle, or peripheral intravenous catheter, but not a flow-directed catheter, and may perform minor suturing, venipuncture, and subcutaneous intramuscular or intravenous injection.

b. All other invasive procedures not listed in subdivision 2 a of this section must be performed under supervision with the physician in the room unless, after directly observing the performance of a specific invasive procedure three times or more, the ~~supervising~~ patient care team physician or podiatrist attests on the practice agreement to the competence of the physician assistant to perform the specific procedure without direct observation and supervision.

3. Be responsible for all prescriptions issued by the physician assistant and attest to the competence of the assistant to prescribe drugs and devices.

4. Be available at all times to collaborate and consult with the physician assistant.

18VAC85-50-115. Responsibilities of the physician assistant.

A. The physician assistant shall not render independent health care and shall:

1. Perform only those medical care services that are within the scope of the practice and proficiency of the ~~supervising~~ patient care team physician or podiatrist as prescribed in the physician assistant's practice agreement. When a physician assistant is ~~to be supervised by an alternate supervising physician~~ working outside the scope of specialty of the ~~supervising~~ patient care team physician or podiatrist, then the physician assistant's functions shall be limited to those areas not requiring specialized clinical judgment, unless a separate practice agreement has been executed for that alternate ~~supervising~~ patient care team physician or podiatrist.

2. Prescribe only those drugs and devices as allowed in Part V (18VAC85-50-130 et seq.) of this chapter.

3. Wear during the course of performing his duties identification showing clearly that he is a physician assistant.

B. An alternate ~~supervising~~ patient care team physician or podiatrist shall be a member of the same group, professional corporation, or partnership of any licensee who ~~supervises~~ is the patient care team physician or podiatrist for a physician assistant or shall be a member of the same hospital or commercial enterprise with the ~~supervising~~ patient care team physician or podiatrist. Such alternating ~~supervising~~ physician or podiatrist shall be a physician or podiatrist licensed in the Commonwealth who has accepted responsibility for the ~~supervision of the~~ service that a physician assistant renders.

C. If, due to illness, vacation, or unexpected absence, the ~~supervising~~ patient care team physician or podiatrist or alternate ~~supervising~~ physician or podiatrist is unable to supervise the activities of his physician assistant, such ~~supervising~~ patient care team physician or podiatrist may temporarily delegate the responsibility to another doctor of medicine, osteopathic medicine, or podiatry.

Temporary coverage may not exceed four weeks unless special permission is granted by the board.

D. With respect to physician assistants employed by institutions, the following additional regulations shall apply:

1. No physician assistant may render care to a patient unless the physician or podiatrist responsible for that patient has signed the practice agreement to act as ~~supervising~~ patient care team physician or podiatrist for that physician assistant.

2. Any such practice agreement as described in subdivision 1 of this subsection shall delineate the duties which said patient care team physician or podiatrist authorizes the physician assistant to perform.

~~3. The physician assistant shall, as soon as circumstances may dictate, report an acute or significant finding or change in clinical status to the supervising physician concerning the examination of the patient. The physician assistant shall also record his findings in appropriate institutional records.~~

E. Practice by a physician assistant in a hospital, including an emergency department, shall be in accordance with § 54.1-2952 of the Code of Virginia.

18VAC85-50-117. Authorization to use fluoroscopy.

A physician assistant working under ~~the supervision of~~ a practice agreement with a licensed doctor of medicine or osteopathy specializing in the field of radiology is authorized to use fluoroscopy for guidance of diagnostic and therapeutic procedures provided such activity is specified in his protocol and he has met the following qualifications:

1. Completion of at least 40 hours of structured didactic educational instruction and at least 40 hours of supervised clinical experience as set forth in the Fluoroscopy Educational Framework for the Physician Assistant created by the American Academy of Physician Assistants (AAPA) and the American Society of Radiologic Technologists (ASRT); and

2. Successful passage of the American Registry of Radiologic Technologists (ARRT) Fluoroscopy Examination.

18VAC85-50-140. Approved drugs and devices.

A. The approved drugs and devices which the physician assistant with prescriptive authority may prescribe, administer, or dispense manufacturer's professional samples shall be in accordance with provisions of § 54.1-2952.1 of the Code of Virginia:

B. The physician assistant may prescribe only those categories of drugs and devices included in the practice agreement. The ~~supervising~~ patient care team physician or podiatrist retains the authority to restrict certain drugs within these approved categories.

C. The physician assistant, pursuant to § 54.1-2952.1 of the Code of Virginia, shall only dispense manufacturer's professional samples or administer controlled substances in good faith for medical or therapeutic purposes within the course of his professional practice.

18VAC85-50-160. Disclosure.

A. Each prescription for a Schedule II through V drug shall bear the name of the ~~supervising~~ patient care team physician or podiatrist and of the physician assistant.

B. The physician assistant shall disclose to the patient that he is a licensed physician assistant, and also the name, address and telephone number of the ~~supervising~~ patient care team physician or podiatrist. Such disclosure shall either be included on the prescription or be given in writing to the patient.

18VAC85-50-181. Pharmacotherapy for weight loss.

A. A practitioner shall not prescribe amphetamine, Schedule II, for the purpose of weight reduction or control.

B. A practitioner shall not prescribe controlled substances, Schedules III through VI, for the purpose of weight reduction or control in the treatment of obesity, unless the following conditions are met:

1. An appropriate history and physical examination are performed and recorded at the time of initiation of pharmacotherapy for obesity by the prescribing physician, and the physician reviews the results of laboratory work, as indicated, including testing for thyroid function;

2. If the drug to be prescribed could adversely affect cardiac function, the physician shall review the results of an electrocardiogram performed and interpreted within 90 days of initial prescribing for treatment of obesity;

3. A diet and exercise program for weight loss is prescribed and recorded;

4. The patient is seen within the first 30 days following initiation of pharmacotherapy for weight loss, by the prescribing physician or a licensed practitioner with prescriptive authority working under the supervision of the prescribing physician, at which time a recording shall be made of blood pressure, pulse, and any other tests as may be necessary for monitoring potential adverse effects of drug therapy; and

5. The treating physician shall direct the follow-up care, including the intervals for patient visits and the continuation of or any subsequent changes in pharmacotherapy. Continuation of prescribing for treatment of obesity shall occur only if the patient has continued progress toward achieving or maintaining a target weight and has no significant adverse effects from the prescribed program.

C. If specifically authorized in his practice agreement with a ~~supervising~~ patient care team physician, a physician assistant

may perform the physical examination, review tests, and prescribe Schedules III through VI controlled substances for treatment of obesity as specified in subsection B of this section.

VA.R. Doc. No. R20-6083; Filed August 6, 2020, 2:04 p.m.

BOARD OF NURSING

Fast-Track Regulation

Title of Regulation: **18VAC90-19. Regulations Governing the Practice of Nursing (amending 18VAC90-19-130).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: September 30, 2020.

Effective Date: October 15, 2020.

Agency Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4520, FAX (804) 527-4455, or email jay.douglas@dhp.virginia.gov.

Basis: Regulations are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which provides the Board of Nursing the authority to promulgate regulations to administer the regulatory system.

Purpose: The amendment will allow the use of the term "RN applicant" for foreign graduates awaiting approval for licensure, which is consistent with the nametag requirement for U.S. graduates practicing during a 90-day approval period. Since all applicants complete the same licensing examination and foreign graduates undergo a rigorous evaluation process, the amended nametag designation continues to protect public health and safety by indicating that the nurse providing care is an applicant for licensure who has been approved by the board to practice for a certain period of time.

Rationale for Using Fast-Track Rulemaking Process: The board is amending 18VAC90-19-130 in response to a petition for rulemaking. The petition was supported overwhelmingly by public comment, so the board has adopted the proposed amendment by a fast-track rulemaking process.

Substance: The board has amended 18VAC90-19-130 to allow an applicant who is a graduate of a foreign education program and is practicing nursing during a 90-day period following submission of an application to use the title "RN Applicant" on a nametag, rather than the designation of "Foreign graduate applicant."

Issues: There are no primary advantages or disadvantages to the public; the public is equally protected by use of the amended title.

There are no advantages or disadvantages to the department.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Nursing proposes to allow approved registered nurse (RN) applicants with education from countries other than the United States and Canada to use the "RN Applicant" designation in their name tags or when signing documents while their application is pending passage of the licensure examination.

Background. This action results from a petition for rulemaking.[1] All applicants for licensure as a RN whose basic nursing education was received in other countries are required to submit evidence showing: 1) that their secondary and nursing education is comparable to those required for RNs in the Commonwealth, and 2) that they are proficient in English. Applicants who meet these conditions are then allowed to practice for up to 90 days following approval of an application. Currently, during the 90 days, approved applicants with domestic or Canadian education backgrounds are designated as "RN Applicants," but other applicants are designated as "foreign nurse graduates." The petition seeks to use the "RN Applicant" designation for applicants from other counties during the 90-day period.

Estimated Benefits and Costs. The comments supporting the petition indicate that there is a perceived issue of discrimination due to differing name tags based on the origin of nursing education and point out that there should be no difference in name tag designation or when signing documents as the foreign educational credits must be deemed comparable to those from domestic or Canadian sources. The proposed amendment would allow all approved applicants to use the same designation and is expected to eliminate the perceived issue of discrimination.

Businesses and Other Entities Affected. The proposed amendment would primarily affect approved RN applicants up to 90 days whose education credits are earned in countries other than the United States or Canada. The Department of Health Professions does not track the number of applicants based on education background but reports that in the first quarter of fiscal year 2020, there were 3,025 new licenses issued for RNs.

Small Businesses[2] Affected. The proposed amendment does not appear to adversely affect small businesses.

Localities[3] Affected.[4] The proposed amendment does not appear to affect localities.

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

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

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[1] https://townhall.virginia.gov/l/viewpetition.cfm?petitionid=311

[2] 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."

[3] "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

[4] § 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

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

Summary:

The amendment allows an applicant who is a graduate of a foreign education program and is practicing nursing during a 90-day period following submission of an application to use the title "RN Applicant" on a nametag.

18VAC90-19-130. Licensure of applicants from other countries.

A. With the exception of applicants from Canada who are eligible to be licensed by endorsement, applicants whose basic nursing education was received in another country shall be scheduled to take the licensing examination provided they meet the statutory qualifications for licensure. Verification of qualification shall be based on documents submitted as required in subsection B or C of this section.

B. Such applicants for registered nurse licensure shall:

1. Submit evidence from the CGFNS that the secondary education and nursing education are comparable to those required for registered nurses in the Commonwealth;

2. Submit evidence of passage of an English language proficiency examination approved by the CGFNS, unless the applicant meets the CGFNS criteria for an exemption from the requirement; and

3. Submit the required application and fee for licensure by examination.

C. Such applicants for practical nurse licensure shall:

1. Submit evidence from the CGFNS that the secondary education and nursing education are comparable to those required for practical nurses in the Commonwealth;

2. Submit evidence of passage of an English language proficiency examination approved by the CGFNS, unless the applicant meets the CGFNS criteria for an exemption from the requirement; and

3. Submit the required application and fee for licensure by examination.

D. An applicant for licensure as a registered nurse who has met the requirements of subsections A and B of this section may practice for a period not to exceed 90 days from the date of approval of an application submitted to the board when he is working as a nonsupervisory staff nurse in a licensed nursing home or certified nursing facility.

1. Applicants who practice nursing as provided in this subsection shall use the designation ~~"foreign nurse graduate"~~ "RN applicant" on nametags or when signing official records.

2. During the 90-day period, the applicant shall take and pass the licensing examination in order to remain eligible to practice nursing in Virginia.

3. Any person practicing nursing under this exemption who fails to pass the licensure examination within the 90-day period may not thereafter practice nursing until he passes the licensing examination.

E. In addition to CGFNS, the board may accept credentials from other recognized agencies that review credentials of foreign-educated nurses if such agencies have been approved by the board.

VA.R. Doc. No. R20-16; Filed August 6, 2020, 2:05 p.m.

Final Regulation

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

Title of Regulation: **18VAC90-50. Regulations Governing the Licensure of Massage Therapists (amending 18VAC90-50-40).**

Statutory Authority: §§ 54.1-2400 and 54.1-3005 of the Code of Virginia.

Effective Date: September 30, 2020.

Agency Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4520, FAX (804) 527-4455, or email jay.douglas@dhp.virginia.gov.

Summary:

To conform the regulation to Chapter 727 of the 2020 Acts of Assembly, the amendments (i) clarify the licensure requirement for completion of a massage therapy educational program that has a minimum of 500 hours of training and (ii) specify the requirements for a foreign-trained massage therapist seeking licensure, including that the applicant has passed a board-approved English language proficiency examination, is at least 18 years of age, and has not committed any acts or omissions that would be grounds for disciplinary action or denial of licensure.

Part II

Requirements for Licensure

18VAC90-50-40. Initial licensure.

A. An applicant seeking initial licensure shall submit a completed application and required fee and verification of meeting the requirements of § 54.1-3029 A of the Code of Virginia as follows:

1. Is at least 18 years old;

2. Has successfully completed ~~a minimum of 500 hours of training from~~ a massage therapy educational program that required a minimum of 500 hours of training. The massage

therapy educational program shall be certified or approved by the State Council of Higher Education for Virginia or an agency in another state, the District of Columbia, or a United States territory that approves educational programs, notwithstanding the provisions of § 23.1-226 of the Code of Virginia;

3. Has passed the Licensing Examination of the Federation of State Massage Therapy Boards, or an exam deemed acceptable to the board;

4. Has not committed any acts or omissions that would be grounds for disciplinary action or denial of certification as set forth in § 54.1-3007 of the Code of Virginia and 18VAC90-50-90; and

5. Has completed a criminal history background check as required by § 54.1-3005.1 of the Code of Virginia.

B. An applicant shall attest that he has read and will comply with laws and regulations and the professional code of ethics relating to massage therapy.

C. An applicant who ~~has been licensed or certified in another country and who provides certification of equivalency to the educational requirements in Virginia from a credentialing body acceptable to the board shall take and pass an examination as required in subsection A of this section in order to become licensed.~~ completed a massage therapy educational program in a foreign country may apply for licensure as a massage therapist upon submission of evidence satisfactory to the board that the applicant:

1. Is at least 18 years old;

2. Has successfully completed a massage therapy educational program in a foreign country that is comparable to a massage therapy educational program required for licensure by the board as demonstrated by submission of evidence of comparability and equivalency provided by an agency that evaluates credentials for persons who have studied outside the United States;

3. Has passed a board-approved English language proficiency examination; and

4. Has not committed any acts or omissions that would be grounds for disciplinary action or denial of licensure as set forth in Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 of the Code of Virginia.

The board shall issue a license to an applicant who meets the requirements in this subsection upon submission by the applicant of evidence satisfactory to the board that the applicant has completed an English version of the Licensing Examination of the Federation of State Massage Therapy Boards or a comparable examination deemed acceptable to the board.

VA.R. Doc. No. R21-6407; Filed August 3, 2020, 12:33 p.m.

BOARD OF OPTOMETRY

Emergency Regulation

Title of Regulation: **18VAC105-20. Regulations Governing the Practice of Optometry (amending 18VAC105-20-47).**

Statutory Authority: §§ 54.1-2400 and 54.1-3408.02 of the Code of Virginia.

Effective Dates: August 12, 2020, through February 11, 2022.

Agency Contact: Leslie L. Knachel, Executive Director, Board of Optometry, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 597-4130, FAX (804) 527-4471, or email leslie.knachel@dhp.virginia.gov.

Preamble:

Section 2.2-4011 of the Code of Virginia states that agencies may adopt emergency regulations in situations in which 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, and the regulation is not exempt under the provisions of subdivision A 4 of § 2.2-4006 of the Code of Virginia.

The emergency amendments (i) reiterate the Code of Virginia requirement effective July 1, 2020, that a prescription for a controlled substance that contains an opioid must be issued as an electronic prescription and (ii) provide for a one-year waiver from the requirement if the practitioner can demonstrate economic hardship technological limitations or other exceptional circumstances beyond the practitioner's control.

18VAC105-20-47. Therapeutic pharmaceutical agents.

A. A TPA-certified optometrist, acting within the scope of his practice, may procure, administer, and prescribe medically appropriate therapeutic pharmaceutical agents (or any therapeutically appropriate combination thereof) to treat diseases and abnormal conditions of the human eye and its adnexa within the following categories:

1. Oral analgesics - Schedule II controlled substances consisting of hydrocodone in combination with acetaminophen andSchedule III, IV and VI narcotic and nonnarcotic agents.

2. Topically administered Schedule VI agents:

a. Alpha-adrenergic blocking agents;

b. Anesthetic (including esters and amides);

c. Anti-allergy (including antihistamines and mast cell stabilizers);

d. Anti-fungal;

e. Anti-glaucoma (including carbonic anhydrase inhibitors and hyperosmotics);

f. Anti-infective (including antibiotics and antivirals);

g. Anti-inflammatory;

h. Cycloplegics and mydriatics;

i. Decongestants; and

j. Immunosuppressive agents.

3. Orally administered Schedule VI agents:

a. Aminocaproic acids (including antifibrinolytic agents);

b. Anti-allergy (including antihistamines and leukotriene inhibitors);

c. Anti-fungal;

d. Anti-glaucoma (including carbonic anhydrase inhibitors and hyperosmotics);

e. Anti-infective (including antibiotics and antivirals);

f. Anti-inflammatory (including steroidal and nonsteroidal);

g. Decongestants; and

h. Immunosuppressive agents.

B. Schedule I, II, and V drugs are excluded from the list of therapeutic pharmaceutical agents with the exception of controlled substances in Schedule II consisting of hydrocodone in combination with acetaminophen and gabapentin in Schedule V.

C. Over-the-counter topical and oral medications for the treatment of the eye and its adnexa may be procured for administration, administered, prescribed or dispensed.

D. Beginning July 1, 2020, a prescription for a controlled substance that contains an opioid shall be issued as an electronic prescription consistent with § 54.1-3408.02 of the Code of Virginia. Upon written request, the board may grant a one-time waiver of the requirement for electronic prescribing, for a period not to exceed one year, due to demonstrated economic hardship, technological limitations that are not reasonably within the control of the prescriber, or other exceptional circumstances demonstrated by the prescriber.

VA.R. Doc. No. R21-6199; Filed August 12, 2020, 2:06 p.m.

BOARD OF PHARMACY

Emergency Regulation

Title of Regulation: **18VAC110-60. Regulations Governing Pharmaceutical Processors (amending 18VAC110-60-280).**

Statutory Authority: §§ 54.1-3442.6 and 54.1-3447 of the Code of Virginia.

Effective Dates: August 6, 2020, through February 5, 2022.

Agency Contact: Caroline Juran, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4456, FAX (804) 527-4472, or email caroline.juran@dhp.virginia.gov.

Preamble:

Section 2.2-4011 A of the Code of Virginia states that regulations that an agency finds are necessitated by an emergency situation may be adopted upon consultation with the Attorney General, which approval shall be granted only after the agency has submitted a request stating in writing the nature of the emergency, and the necessity for such action shall be at the sole discretion of the Governor.

The amendments (i) prohibit the production of cannabis oil intended to be vaporized or inhaled from containing vitamin E acetate and (ii) change references to cannabidiol oil or THC-A oil to cannabis oil in accordance with Chapter 1278 of the 2020 Session of the General Assembly.

Part VI

Cultivation, Production, and Dispensing of ~~Cannabidiol Oil or THC-A~~ Cannabis Oil

18VAC110-60-280. Cultivation and production of ~~cannabidiol oil or THC-A~~ cannabis oil.

A. No ~~cannabidiol oil or THC-A~~ cannabis oil shall have had pesticide chemicals or petroleum-based solvents used during the cultivation, extraction, production, or manufacturing process, except that the board may authorize the use of pesticide chemicals for purposes of addressing an infestation that could result in a catastrophic loss of Cannabis crops.

B. Cultivation methods for Cannabis plants and extraction methods used to produce the ~~cannabidiol oil and THC-A~~ cannabis oil shall be performed in a manner deemed safe and effective based on current standards or scientific literature.

C. Any Cannabis plant, seed, parts of plant, extract, ~~cannabidiol oil,~~ or ~~THC-A~~ cannabis oil not in compliance with this section shall be deemed adulterated.

D. No cannabis oil intended to be vaporized or inhaled shall contain vitamin E acetate.

VA.R. Doc. No. R21-6250; Filed August 6, 2020, 2:07 p.m.

Final Regulation

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

Title of Regulation: **18VAC110-60. Regulations Governing Pharmaceutical Processors (amending 18VAC110-60-10 through 18VAC110-60-90, 18VAC110-60-110, 18VAC110-60-120, 18VAC110-60-130, 18VAC110-60-160 through 18VAC110-60-310, 18VAC110-60-330).**

Statutory Authority: §§ 54.1-3442.6 and 54.1-3447 of the Code of Virginia.

Effective Date: September 30, 2020.

Agency Contact: Caroline Juran, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4456, FAX (804) 527-4472, or email caroline.juran@dhp.virginia.gov.

Summary:

To conform the regulation to Chapters 730 and 1278 of the 2020 Acts of Assembly, the amendments (i) change every reference of "cannabidiol oil or THC-A oil" to "cannabis oil," (ii) delete the requirement for an in-person examination by the prescriber certifying a patient to receive cannabis oil and allow for the use of telemedicine consistent with federal requirements, (iii) allow the pharmacist-in-charge to authorize certain employee access to secured areas without a pharmacist on the premises, (iv) allow a ratio of six pharmacy technicians per pharmacist working in the processor, and (v) allow a laboratory performing quality testing on products to determine a valid sample size to the testing with a minimum of sample size from each homogenized batch.

Part I
General Provisions

18VAC110-60-10. Definitions.

In addition to words and terms defined in §§ 54.1-3408.3 and 54.1-3442.5 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:

"90-day supply" means the amount of ~~cannabidiol oil or THC-A~~ cannabis oil reasonably necessary to ensure an uninterrupted availability of supply for a 90-day period for registered patients.

"Batch" means a quantity of ~~cannabidiol oil or THC-A~~ cannabis oil from a production lot that is identified by a batch number or other unique identifier.

"Board" means the Board of Pharmacy.

"Certification" means a written statement, consistent with requirements of § 54.1-3408.3 of the Code of Virginia, issued by a practitioner for the use of ~~cannabidiol oil or THC-A~~ cannabis oil for treatment of or to alleviate the symptoms of any diagnosed condition or disease determined by the practitioner to benefit from such use.

"Dispensing error" means one or more of the following was discovered after the final verification by the pharmacist, regardless of whether the patient received the oil:

1. Variation from the intended oil to be dispensed, including:

a. Incorrect oil;

b. Incorrect oil strength;

c. Incorrect dosage form;

d. Incorrect patient; or

e. Inadequate or incorrect packaging, labeling, or directions.

2. Failure to exercise professional judgment in identifying and managing:

a. Known therapeutic duplication;

b. Known drug-disease contraindications;

c. Known drug-drug interactions;

d. Incorrect drug dosage or duration of drug treatment;

e. Known drug-allergy interactions;

f. A clinically significant, avoidable delay in therapy; or

g. Any other significant, actual, or potential problem with a patient's drug therapy.

3. Delivery of an oil to the incorrect patient.

4. An act or omission relating to the dispensing of ~~cannabidiol oil or THC-A~~ cannabis oil that results in, or may reasonably be expected to result in, injury to or death of a registered patient or results in any detrimental change to the medical treatment for the patient.

"Electronic tracking system" means an electronic radio-frequency identification (RFID) seed-to-sale tracking system that tracks the Cannabis from either the seed or immature plant stage until the ~~cannabidiol oil and THC-A~~ cannabis oil ~~are~~ is sold to a registered patient, parent, or legal guardian or until the Cannabis, including the seeds, parts of plants, and extracts, are destroyed. The electronic tracking system shall include, at a minimum, a central inventory management system and standard and ad hoc reporting functions as required by the board and shall be capable of otherwise satisfying required recordkeeping.

"On duty" means that a pharmacist is on the premises at the address of the permitted pharmaceutical processor and is available as needed.

"PIC" means the pharmacist-in-charge.

"Production" or "produce" means the manufacture, planting, preparation, cultivation, growing, harvesting, propagation, conversion, or processing of marijuana, (i) directly or indirectly by extraction from substances of natural origin, (ii) independently by means of chemical synthesis, or (iii) by a combination of extraction and chemical synthesis. "Production" or "produce" includes any packaging or repackaging of the substance or labeling or relabeling of its container.

"Qualifying patient" means a Virginia resident who has received from a practitioner, as defined in § 54.1-3408.3 of the Code of Virginia, a written certification for the use of ~~cannabidiol oil or THC-A~~ cannabis oil for treatment of or to alleviate the symptoms of any diagnosed condition or disease.

"Registered patient" means a qualifying patient who has been issued a registration by the board for the dispensing of ~~cannabidiol oil or THC-A~~ cannabis oil to such patient.

"Registration" means an identification card or other document issued by the board that identifies a person as a practitioner or a qualifying patient, parent, or legal guardian.

"Resident" means a person whose principal place of residence is within the Commonwealth as evidenced by a federal or state income tax return or a current Virginia driver's license. If a person is a minor, residency may be established by evidence of Virginia residency by a parent or legal guardian.

"Temperature and humidity" means temperature and humidity maintained in the following ranges:

Room or Phase	Temperature	Humidity
Mother room	65 - 75°	50% - 60%
Nursery phase	71 - 85° F	65% - 75%
Vegetation phase	71 - 85° F	55% - 65%
Flower/harvest phase	71 - 85° F	55% - 60%
Drying/extraction rooms	< 75° F	55% - 60%

18VAC110-60-20. Fees.

A. Fees are required by the board as specified in this section. Unless otherwise provided, fees listed in this section shall not be refundable.

B. Registration of practitioner.

1. Initial registration.	$50
2. Annual renewal of registration.	$50
3. Replacement of registration for a qualifying practitioner whose information has changed or whose original registration certificate has been lost, stolen, or destroyed.	$50

C. Registration by a qualifying patient, parent, or legal guardian.

1. Initial registration of a patient.	$50
2. Annual renewal of registration of a patient.	$50
3. Initial registration of a parent or legal guardian.	$25
4. Annual renewal of registration of a parent or guardian.	$25
5. Replacement of registration for a qualifying patient, parent, or legal guardian whose original registration certificate has been lost, stolen, or destroyed.	$25

D. Pharmaceutical processor permit.

1. Application.	$10,000
2. Initial permit.	$60,000
3. Annual renewal of permit.	$10,000
4. Change of name of processor.	$100
5. Change of PIC or any other information provided on the permit application.	$100
6. Change of ownership not requiring a criminal background check.	$100
7. Change of ownership requiring a criminal background check.	$250
8. Any acquisition, expansion, remodel, or change of location requiring an inspection.	$1,000
9. Reinspection fee.	$1,000
10. Registration of each ~~cannabidiol oil or THC-A~~ cannabis oil product.	$25

Part II
Requirements for Practitioners and Patients

18VAC110-60-30. Requirements for a practitioner issuing a certification.

A. Prior to issuing a certification for ~~cannabidiol oil or THC-A~~ cannabis oil for any diagnosed condition or disease, the practitioner shall meet the requirements of § 54.1-3408.3 of the Code of Virginia, shall submit an application and fee as prescribed in 18VAC110-60-20, and shall be registered with the board.

B. A practitioner issuing a certification shall:

1. Conduct an assessment and evaluation of the patient in order to develop a treatment plan for the patient, which shall include an examination of the patient and the patient's medical history, prescription history, and current medical condition~~, including an in-person physical examination~~;

2. Diagnose the patient;

3. Be of the opinion that the potential benefits of ~~cannabidiol oil or THC-A~~ cannabis oil would likely outweigh the health risks of such use to the qualifying patient;

4. Explain proper administration and the potential risks and benefits of the ~~cannabidiol oil or THC-A~~ cannabis oil to the qualifying patient and, if the qualifying patient lacks legal capacity, to a parent or legal guardian prior to issuing the written certification;

5. Be available or ensure that another practitioner, as defined in § 54.1-3408.3 of the Code of Virginia, is available to provide follow-up care and treatment to the qualifying patient, including physical examinations, to determine the efficacy of ~~cannabidiol oil or THC-A~~ cannabis oil for treating the diagnosed condition or disease;

6. Comply with generally accepted standards of medical practice, except to the extent such standards would counsel against certifying a qualifying patient for ~~cannabidiol oil or THC-A~~ cannabis oil;

7. Maintain medical records in accordance with 18VAC85-20-26 for all patients for whom the practitioner has issued a certification; and

8. Access or direct the practitioner's delegate to access the Virginia Prescription Monitoring Program of the

Department of Health Professions for the purpose of determining which, if any, covered substances have been dispensed to the patient.

C. ~~Patient care and evaluation shall not occur by telemedicine for at least the first year of certification. Thereafter, the~~ The practitioner shall use his professional judgment to determine the manner and frequency of patient care and evaluation, which may include the use of telemedicine. Such telemedicine use shall be consistent with federal requirements for the prescribing of Schedules II through V controlled substances.

D. A practitioner shall not delegate the responsibility of diagnosing a patient or determining whether a patient should be issued a certification. Employees under the direct supervision of the practitioner may assist with preparing a certification, so long as the final certification is approved and signed by the practitioner before it is issued to the patient.

E. The practitioner shall provide instructions for the use of ~~cannabidiol oil or THC-A~~ cannabis oil to the patient, parent, or guardian, as applicable, and shall also securely transmit such instructions to the permitted pharmaceutical processor.

F. A practitioner shall not issue certifications for ~~cannabidiol oil or THC-A~~ cannabis oil to more than 600 patients at any given time. However, the practitioner may petition the Board of Pharmacy and Board of Medicine for an increased number of patients for whom certifications may be issued, upon submission of evidence that the limitation represents potential patient harm.

G. Upon request, a practitioner shall make a copy of medical records available to an agent of the Board of Medicine or Board of Pharmacy for the purpose of enabling the board to ensure compliance with the law and regulations or to investigate a possible violation.

18VAC110-60-40. Prohibited practices for practitioners.

A. A practitioner who issues certifications shall not:

1. Directly or indirectly accept, solicit, or receive anything of value from any person associated with a pharmaceutical processor or provider of paraphernalia, excluding information on products or educational materials on the benefits and risks of ~~cannabidiol oil or THC-A~~ cannabis oil;

2. Offer a discount or any other thing of value to a qualifying patient, parent, or guardian based on the patient's agreement or decision to use a particular pharmaceutical processor or ~~cannabidiol oil or THC-A~~ cannabis oil product;

3. Examine a qualifying patient for purposes of diagnosing the condition or disease at a location where ~~cannabidiol oil or THC-A~~ cannabis oil is dispensed or produced; or

4. Directly or indirectly benefit from a patient obtaining a certification. Such prohibition shall not prohibit a practitioner from charging an appropriate fee for the patient visit.

B. A practitioner who issues certifications, and such practitioner's coworker, employee, spouse, parent, or child, shall not have a direct or indirect financial interest in a pharmaceutical processor or any other entity that may benefit from a qualifying patient's acquisition, purchase, or use of ~~cannabidiol oil or THC-A~~ cannabis oil, including any formal or informal agreement whereby a pharmaceutical processor or other person provides compensation if the practitioner issues a certification for a qualifying patient or steers a qualifying patient to a specific pharmaceutical processor or ~~cannabidiol oil or THC-A~~ cannabis oil product.

C. A practitioner shall not issue a certification for himself or for family members, employees, or coworkers.

D. A practitioner shall not provide product samples containing ~~cannabidiol oil or THC-A~~ cannabis oil other than those approved by the U.S. Food and Drug Administration.

18VAC110-60-50. Registration of a patient, parent, or legal guardian.

A. A qualifying patient for whom a practitioner has issued a certification shall register with the board in accordance with this section. If the qualifying patient is a minor or an incapacitated adult, the qualifying patient's parent or legal guardian shall register with the board in accordance with this section. For a registration application to be considered complete, the following items shall be submitted:

1. A copy of the certification issued by a registered practitioner;

2. Proof of residency of the qualifying patient and proof of residency of a parent or legal guardian, if applicable, such as a government-issued identification card or tax receipt;

3. Proof of identity of the qualifying patient and, if the patient is a minor, proof of identity of the parent or legal guardian in the form of a government-issued identification card;

4. Proof of the qualifying patient's age in the form of a birth certificate or other government-issued identification;

5. Payment of the appropriate fees; and

6. Such other information as the board may require to determine the applicant's suitability for registration or to protect public health and safety.

B. A qualifying patient shall not be issued a written certification by more than one practitioner during a given time period.

C. Patients, parents, and legal guardians issued a registration shall carry their registrations with them whenever they are in possession of ~~cannabidiol oil or THC-A~~ cannabis oil.

18VAC110-60-60. Denial of a qualifying patient, parent, or legal guardian registration application.

A. The board may deny an application or renewal of the registration of a qualifying patient, parent, or legal guardian if the applicant:

1. Does not meet the requirements set forth in law or regulation or fails to provide complete information on the application form;

2. Does not provide acceptable proof of identity, residency, or age of the patient to the board;

3. Provides false, misleading, or incorrect information to the board;

4. Has had a qualifying registration of a qualifying patient, parent, or legal guardian denied, suspended, or revoked by the board in the previous six months;

5. Has a certification issued by a practitioner who is not authorized to certify patients for ~~cannabidiol oil or THC-A~~ cannabis oil; or

6. Has a prior conviction of a violation of any law pertaining to controlled substances.

B. If the board denies an application or renewal of a qualifying patient, parent, or legal guardian applicant, the board shall provide the applicant with notice of the grounds for the denial and shall inform the applicant of the right to request a hearing pursuant to § 2.2-4019 of the Code of Virginia.

18VAC110-60-70. Reporting requirements for practitioners, patients, parents, or legal guardians.

A. A practitioner shall report to the board, on a form prescribed by the board, the death of a registered patient or a change in status involving a registered patient for whom the practitioner has issued a certification if such change affects the patient's continued eligibility to use ~~cannabidiol oil or THC-A~~ cannabis oil or the practitioner's inability to continue treating the patient. A practitioner shall report such death, change of status, or inability to continue treatment not more than 15 days after the practitioner becomes aware of such fact.

B. A patient, parent, or legal guardian who has been issued a registration shall notify the board of any change in the information provided to the board not later than 15 days after such change. The patient, parent, or legal guardian shall report changes that include a change in name, address, contact information, medical status of the patient, or change of the certifying practitioner. The patient, parent, or legal guardian shall report such changes on a form prescribed by the board.

C. If a patient, parent, or legal guardian notifies the board of any change that results in information on the patient, parent, or legal guardian's registration being inaccurate, the board shall issue a replacement registration. Upon receipt of a new registration, the qualifying patient, parent, or legal guardian shall destroy in a nonrecoverable manner the registration that was replaced.

D. If a patient, parent, or legal guardian becomes aware of the loss, theft, or destruction of the registration of such patient, parent, or legal guardian, the patient, parent, or legal guardian shall notify the board not later than five business days after becoming aware of the loss, theft, or destruction, and submit the fee for a replacement registration. The board shall inactivate the initial registration upon receiving such notice and issue a replacement registration upon receiving the applicable fee, provided the applicant continues to satisfy the requirements of law and regulation.

18VAC110-60-80. Proper storage and disposal of cannabidiol oil or THC-A oil by patients, parents, or legal guardians.

A. A registered patient, parent, or legal guardian shall exercise reasonable caution to store ~~cannabidiol oil or THC-A~~ cannabis oil in a manner to prevent theft, loss, or access by unauthorized persons.

B. A registered patient, parent, or legal guardian shall dispose of all usable ~~cannabidiol oil or THC-A~~ cannabis oil in the registered patient, parent, or legal guardian's possession no later than 10 calendar days after the expiration of the patient's registration if such registration is not renewed, or sooner should the patient no longer wish to possess ~~cannabidiol oil or THC-A~~ cannabis oil. A registered patient, parent, or legal guardian shall complete such disposal by one of the following methods:

1. By removing the oil from the original container and mixing it with an undesirable substance such as used coffee grounds, dirt, or kitty litter. The mixture shall be placed in a sealable bag, empty can, or other container to prevent the drug from leaking or breaking out of a garbage bag.

2. By transferring it to law enforcement via a medication drop-box or drug take-back event if permissible under state and federal law.

18VAC110-60-90. Revocation or suspension of a qualifying patient, parent, or legal guardian registration.

The board may revoke or suspend the registration of a patient, parent, or legal guardian under the following circumstances:

1. The patient's practitioner notifies the board that the practitioner is withdrawing the written certification submitted on behalf of the patient, and 30 days after the practitioner's withdrawal of the written certification the patient has not obtained a valid written certification from a different practitioner;

2. The patient, parent, or legal guardian provided false, misleading, or incorrect information to the board;

3. The patient, parent, or legal guardian is no longer a resident of Virginia;

4. The patient, parent, or legal guardian obtained more than a 90-day supply of ~~cannabidiol oil or THC-A~~ cannabis oil in a 90-day period;

5. The patient, parent, or legal guardian provided or sold ~~cannabidiol oil or THC-A~~ cannabis oil to any person, including another registered patient, parent, or legal guardian;

6. The patient, parent, or legal guardian permitted another person to use the registration of the patient, parent, or legal guardian;

7. The patient, parent, or legal guardian tampered, falsified, altered, modified, or allowed another person to tamper, falsify, alter, or modify the registration of the patient, parent, or legal guardian;

8. The registration of the patient, parent, or legal guardian was lost, stolen, or destroyed, and the patient, parent, or legal guardian failed to notify the board or notified the board of such incident more than five business days after becoming aware that the registration was lost, stolen, or destroyed;

9. The patient, parent, or legal guardian failed to notify the board of a change in registration information or notified the board of such change more than 14 days after the change; or

10. The patient, parent, or legal guardian violated any federal or state law or regulation.

18VAC110-60-110. Application process for pharmaceutical processor permits.

A. The application process for permits shall occur in three stages: submission of initial application, award of conditional approval, and grant of a pharmaceutical processor permit.

B. Submission of initial application.

1. A pharmaceutical processor permit applicant shall submit the required application fee and form with the following information and documentation:

a. The name and address of the applicant and the applicant's owners;

b. The location within the health service area established by the State Board of Health for the pharmaceutical processor that is to be operated under such permit;

c. Detailed information regarding the applicant's financial position indicating all assets, liabilities, income, and net worth to demonstrate the financial capacity of the applicant to build and operate a facility to cultivate Cannabis plants intended only for the production and dispensing of ~~cannabidiol oil and THC-A~~ cannabis oil pursuant to §§ 54.1-3442.6 and 54.1-3442.7 of the Code of Virginia, which may include evidence of an escrow account, letter of credit, or performance surety bond;

d. Details regarding the applicant's plans for security to maintain adequate control against the diversion, theft, or loss of the Cannabis plants and the ~~cannabidiol oil or THC-A~~ cannabis oil;

e. Documents sufficient to establish that the applicant is authorized to conduct business in Virginia and that all applicable state and local building, fire, and zoning requirements and local ordinances are met or will be met prior to issuance of a permit;

f. Information necessary for the board to conduct a criminal background check on the applicant;

g. Information about any previous or current involvement in the medical ~~cannabidiol oil or THC-A~~ cannabis oil industry;

h. Whether the applicant has ever applied for a permit or registration related to medical ~~cannabidiol oil or THC-A~~ cannabis oil in any state and, if so, the status of that application, permit, or registration, to include any disciplinary action taken by any state on the permit, the registration, or an associated license;

i. Any business and marketing plans related to the operation of the pharmaceutical processor or the sale of ~~cannabidiol oil or THC-A~~ cannabis oil;

j. Text and graphic materials showing the exterior appearance of the proposed pharmaceutical processor;

k. A blueprint of the proposed pharmaceutical processor that shall show and identify (i) the square footage of each area of the facility; (ii) the location of all safes or vaults used to store the Cannabis plants and oils; (iii) the location of all areas that may contain Cannabis plants~~, cannabidiol oil,~~ or ~~THC-A~~ cannabis oil; (iv) the placement of walls, partitions, and counters; and (v) all areas of ingress and egress;

l. Documents related to any compassionate need program the pharmaceutical processor intends to offer;

m. Information about the applicant's expertise in agriculture and other production techniques required to produce ~~cannabidiol oil or THC-A~~ cannabis oil and to safely dispense such products; and

n. Such other documents and information required by the board to determine the applicant's suitability for permitting or to protect public health and safety.

2. In the event any information contained in the application or accompanying documents changes after being submitted to the board, the applicant shall immediately notify the board in writing and provide corrected information in a timely manner so as not to disrupt the permit selection process.

3. The board shall conduct criminal background checks on applicants and may verify information contained in each application and accompanying documentation in order to assess the applicant's ability to operate a pharmaceutical processor.

C. In the event the board determines that there are no qualified applicants to award conditional approval for a pharmaceutical processor permit in a health service area, the board may republish, in accordance with 18VAC110-60-100, a notice of open applications for pharmaceutical processor permits.

D. No person who has been convicted of a felony or of any offense in violation of Article 1 (§ 18.2-247 et seq.) or Article 1.1 (§ 18.2-265.1 et seq.) of Chapter 7 of Title 18.2 of the Code of Virginia shall have any form of ownership, be employed by, or act as an agent of a pharmaceutical processor.

18VAC110-60-120. Conditional approval.

A. Following the deadline for receipt of applications, the board shall evaluate each complete and timely submitted application and may grant conditional approval on a competitive basis based on compliance with requirements set forth in 18VAC110-60-110.

B. The board shall consider, but is not limited to, the following criteria in evaluating pharmaceutical processor permit applications:

1. The results of the criminal background checks required in 18VAC110-60-110 B 3 or any history of disciplinary action imposed by a state or federal regulatory agency;

2. The location for the proposed pharmaceutical processor, which shall not be within 1,000 feet of a school or daycare;

3. The applicant's ability to maintain adequate control against the diversion, theft, and loss of the Cannabis, to include the seeds, any parts or extracts of the Cannabis plants~~, the cannabidiol oil,~~ or the ~~THC A~~ cannabis oil;

4. The applicant's ability to maintain the knowledge, understanding, judgment, procedures, security controls, and ethics to ensure optimal safety and accuracy in the dispensing and sale of ~~cannabidiol oil or THC A~~ cannabis oil;

5. The extent to which the applicant or any of the applicant's pharmaceutical processor owners have a financial interest in another license, permit, registrant, or applicant; and

6. Any other reason provided by state or federal statute or regulation that is not inconsistent with the law and regulations regarding pharmaceutical processors.

C. The board may disqualify any applicant who:

1. Submits an incomplete, false, inaccurate, or misleading application;

2. Fails to submit an application by the published deadline;

3. Fails to pay all applicable fees; or

4. Fails to comply with all requirements for a pharmaceutical processor.

D. Following review, the board shall notify applicants of denial or conditional approval. The decision of the board not to grant conditional approval to an applicant shall be final.

E. If granted conditional approval, an applicant shall have one year from date of notification to complete all requirements for issuance of a permit, to include employment of a PIC and other personnel necessary for operation of a pharmaceutical processor, construction or remodeling of a facility, installation of equipment, and securing local zoning approval.

18VAC110-60-130. Granting of a pharmaceutical processor permit.

A. The board may issue a pharmaceutical processor permit when all requirements of the board have been met, to include:

1. Designation of a PIC;

2. Evidence of criminal background checks for all employees and delivery agents of the processor to ensure compliance with § 54.1-3442.6 of the Code of Virginia;

3. Evidence of utilization of an electronic tracking system; and

4. A satisfactory inspection of the facility conducted by the board or its agents.

B. The permit shall not be awarded until any deficiency identified by inspectors has been corrected and the facility has been satisfactorily reinspected if warranted.

C. Before any permit is issued, the applicant shall attest to compliance with all state and local laws and ordinances. A pharmaceutical processor permit shall not be issued to any person to operate from a private dwelling or residence.

D. If an applicant has been awarded a pharmaceutical processor permit and has not commenced operation of such facility within 180 days of being notified of the issuance of a pharmaceutical processor permit, the board may rescind such permit, unless such delay was caused by circumstances beyond the control of the permit holder.

E. A pharmaceutical processor shall be deemed to have commenced operation if Cannabis plants are under cultivation by the processor in accordance with the approved application.

F. In the event a permit is rescinded pursuant to this section, the board may award a pharmaceutical processor permit by selecting among the qualified applicants who applied for the pharmaceutical processor permit subject to rescission. If no other qualified applicant who applied for such pharmaceutical processor permit satisfied the criteria for awarding a permit, the board shall publish in accordance with this section a notice of open applications for a pharmaceutical processor permit.

G. Once the permit is issued, Cannabis may not be grown or held in the pharmaceutical processor earlier than two weeks prior to the opening date designated on the application. Once Cannabis has been placed in the pharmaceutical processor, a pharmacist shall be present during hours of operation to ensure the safety, security, and integrity of the Cannabis. Pursuant to § 54.1-3442.6 of the Code of Virginia, the PIC may authorize certain employee access to secured areas designated for cultivation. No pharmacist shall be required to be on the premises during such authorized access. The PIC shall ensure security measures are adequate to protect the cannabis from diversion at all times. If there is a change in the designated opening date, the pharmaceutical processor shall notify the board office, and a pharmacist shall continue to be on site on a daily basis.

18VAC110-60-160. Grounds for action against a pharmaceutical processor permit.

In addition to the bases enumerated in § 54.1-3316 of the Code of Virginia, the board may suspend, revoke, or refuse to grant or renew a permit issued; place such permit on probation; place conditions on such permit; or take other actions permitted by statute or regulation on the following grounds:

1. Any criminal conviction under federal or state statutes or regulations or local ordinances, unless the conviction was based on a federal statute or regulation related to the possession, purchase, or sale of ~~cannabidiol oil or THC A~~ cannabis oil that is authorized under state law and regulations;

2. Any civil action under any federal or state statute or regulation or local ordinance (i) relating to the applicant's, licensee's, permit holder's, or registrant's profession or (ii) involving drugs, medical devices, or fraudulent practices, including fraudulent billing practices;

3. Failure to maintain effective controls against diversion, theft, or loss of Cannabis, ~~cannabidiol oil or THC A~~ cannabis oil, or other controlled substances;

4. Intentionally or through negligence obscuring, damaging, or defacing a permit or registration card;

5. Permitting another person to use the permit of a permit holder or registration of a qualifying patient, parent, or legal guardian;

6. Failure to cooperate or give information to the board on any matter arising out of conduct at a pharmaceutical processor; or

7. Discontinuance of business for more than 60 days, unless the board approves an extension of such period for good cause shown upon a written request from a pharmaceutical processor. Good cause includes exigent circumstances that necessitate the closing of the facility. Good cause shall not include a voluntary closing of the pharmaceutical processor or production facility.

Part IV

Requirements for Pharmaceutical Processor Personnel

18VAC110-60-170. Pharmaceutical processor employee licenses and registrations.

A. A pharmacist with a current, unrestricted license issued by the board practicing at the location of the address on the pharmaceutical processor application shall be in full and actual charge of a pharmaceutical processor and serve as the pharmacist-in-charge.

B. A pharmacist with a current, unrestricted license issued by the board shall provide personal supervision on the premises of the pharmaceutical processor at all times during hours of operation or whenever the processor is being accessed.

C. A person who holds a current, unrestricted registration as a pharmacy technician pursuant to § 54.1-3321 of the Code of Virginia and who has had at least two years of experience practicing as a pharmacy technician may perform the following duties under supervision of a pharmacist:

1. The entry of drug dispensing information and drug history into a data system or other recordkeeping system;

2. The preparation of labels for dispensing the oils or patient information;

3. The removal of the oil to be dispensed from inventory;

4. The measuring of the oil to be dispensed;

5. The packaging and labeling of the oil to be dispensed and the repackaging thereof;

6. The stocking or loading of devices used in the dispensing process;

7. The selling of the oil to the registered patient, parent, or legal guardian; and

8. The performance of any other task restricted to pharmacy technicians by the board's regulations.

D. A pharmacist with a current, unrestricted license; a registered pharmacy intern who has completed the first professional year of pharmacy school; or a pharmacy technician with a current, unrestricted registration issued by the board may perform duties associated with the cultivation, extraction, and dispensing of the oils as authorized by the PIC or as otherwise authorized in law.

E. A person who does not maintain licensure as a pharmacist or registration as a pharmacy technician but has received a degree in horticulture or has at least two years of experience cultivating plants may perform duties associated with the cultivation of Cannabis as authorized by the PIC.

F. A person who does not maintain licensure as a pharmacist or registration as a pharmacy technician but has received a degree in chemistry or pharmacology or has at least two years of experience extracting chemicals from plants may perform duties associated with the extraction of ~~cannabidiol oil and THC A~~ cannabis oil as authorized by the PIC.

G. A pharmacist on duty shall directly supervise the activities in all areas designated for cultivation, extraction, and dispensing or have a process in place, approved by the board, that provides adequate supervision to protect the security of the Cannabis, seeds, extracts, ~~cannabidiol oil,~~ and ~~THC A~~ cannabis oil and shall ensure quality of the dispensed oils. Pursuant to § 54.1-3442.6 of the Code of Virginia, the PIC may authorize certain employee access to secured areas designated for cultivation. No pharmacist shall be required to be on the premises during such authorized access. The PIC shall ensure security measures are adequate to protect the cannabis from diversion at all times.

H. ~~At~~ Except for certain employee access to secured areas designated for cultivation and authorized by the PIC pursuant § 54.1-3442.6 of the Code of Virginia, at no time shall a pharmaceutical processor operate or be accessed without a pharmacist on duty.

I. No person shall be employed by or serve as an agent of a pharmaceutical processor without being at least 18 years of age.

J. No person who has had a license or registration suspended or revoked or been denied issuance of such license or registration shall serve as an employee or agent of the pharmaceutical processor unless such license or registration has been reinstated and is current and unrestricted.

18VAC110-60-180. Employee training.

A. All employees of a pharmaceutical processor shall complete training prior to the employee commencing work at the pharmaceutical processor. At a minimum, the training shall be in the following areas:

1. The proper use of security measures and controls that have been adopted for the prevention of diversion, theft, or loss of Cannabis, to include the seeds, any parts or extracts of the Cannabis plants~~, cannabidiol oil,~~ and ~~THC-A~~ cannabis oil;

2. Procedures and instructions for responding to an emergency;

3. Professional conduct, ethics, and state and federal statutes and regulations regarding patient confidentiality; and

4. Developments in the field of the medical use of ~~cannabidiol oil or THC-A~~ cannabis oil.

B. Prior to regular performance of assigned tasks, the employee shall also receive on-the-job training and other related education, which shall be commensurate with the tasks assigned to the employee.

C. The PIC shall assure the continued competency of all employees through continuing in-service training that is provided at least annually, is designed to supplement initial training, and includes any guidance specified by the board.

D. The PIC shall be responsible for maintaining a written record documenting the initial and continuing training of all employees that shall contain:

1. The name of the person receiving the training;

2. The dates of the training;

3. A general description of the topics covered;

4. The name of the person supervising the training; and

5. The signatures of the person receiving the training and the PIC.

E. When a change of pharmaceutical processor PIC occurs, the new PIC shall review the training record and sign it, indicating that the new PIC understands its contents.

F. A pharmaceutical processor shall maintain the record documenting the employee training and make it available in accordance with regulations.

18VAC110-60-190. Pharmacy technicians; ratio; supervision and responsibility.

A. The ratio of pharmacy technicians to pharmacists on duty in the areas of a pharmaceutical processor designated for production or dispensing shall not exceed four pharmacy technicians to one pharmacist.

B. The pharmacist providing direct supervision of pharmacy technicians may be held responsible for the pharmacy technicians' actions. Any violations relating to the dispensing of ~~cannabidiol oil or THC-A~~ cannabis oil resulting from the actions of a pharmacy technician shall constitute grounds for action against the license of the pharmacist and the registration of the pharmacy technician. As used in this subsection, "direct supervision" means a supervising pharmacist who:

1. Is on duty where the pharmacy technician is performing routine ~~cannabidiol oil or THC-A~~ cannabis oil production or dispensing functions; and

2. Conducts in-process and final checks on the pharmacy technician's performance.

C. Pharmacy technicians shall not:

1. Counsel a registered patient or the patient's parent or legal guardian regarding (i) ~~cannabidiol oil, THC-A~~ cannabis oil~~,~~ or other drugs either before or after ~~cannabidiol oil or THC-A~~ cannabis oil has been dispensed or (ii) any medical information contained in a patient medication record;

2. Consult with the practitioner who certified the qualifying patient, or the practitioner's agent, regarding a patient or any medical information pertaining to the patient's ~~cannabidiol oil or THC-A~~ cannabis oil or any other drug the patient may be taking;

3. Interpret the patient's clinical data or provide medical advice;

4. Determine whether a different formulation of ~~cannabidiol oil or THC-A~~ cannabis oil should be substituted for the ~~cannabidiol oil or THC-A~~ cannabis oil product or formulation recommended by the practitioner or requested by the registered patient or parent or legal guardian; or

5. Communicate with a practitioner who certified a registered patient, or the practitioner's agent, to obtain a clarification on a qualifying patient's written certification or instructions.

18VAC110-60-200. Responsibilities of the PIC.

A. No person shall be PIC for more than one pharmaceutical processor or for one processor and a pharmacy at any one time. A processor shall employ the PIC at the pharmaceutical processor for at least 35 hours per week, except as otherwise authorized by the board.

B. The PIC or the pharmacist on duty shall control all aspects of the practice of the pharmaceutical processor. Any decision overriding such control of the PIC or other pharmacist on duty may be grounds for disciplinary action against the pharmaceutical processor permit.

C. The pharmaceutical processor PIC shall be responsible for ensuring that:

1. Pharmacy technicians are registered and all employees are properly trained;

2. All record retention requirements are met;

3. All requirements for the physical security of the Cannabis, to include the seeds, any parts or extracts of the Cannabis plants~~, the cannabidiol oil,~~ and the ~~THC-A~~ cannabis oil are met;

4. The pharmaceutical processor has appropriate pharmaceutical reference materials to ensure that ~~cannabidiol oil or THC-A~~ cannabis oil can be properly dispensed;

5. The following items are conspicuously posted in the pharmaceutical processor in a location and in a manner so as to be clearly and readily identifiable to registered patients, parents, or legal guardians:

a. Pharmaceutical processor permit;

b. Licenses for all pharmacists practicing at the pharmaceutical processor; and

c. The price of all ~~cannabidiol oil or THC-A~~ cannabis oil products offered by the pharmaceutical processor; and

6. Any other required filings or notifications are made on behalf of the processor as set forth in regulation.

D. When the PIC ceases practice at a pharmaceutical processor or no longer wishes to be designated as PIC, he shall immediately return the pharmaceutical processor permit to the board indicating the effective date on which he ceased to be the PIC.

E. An outgoing PIC shall have the opportunity to take a complete and accurate inventory of all Cannabis, to include plants, extracts, ~~cannabidiol oil,~~ or ~~THC-A~~ cannabis oil on hand on the date he ceases to be the PIC, unless the owner submits written notice to the board showing good cause as to why this opportunity should not be allowed.

F. A PIC who is absent from practice for more than 30 consecutive days shall be deemed to no longer be the PIC. If the PIC knows of an upcoming absence of longer than 30 days, he shall be responsible for notifying the board and returning the permit. For unanticipated absences by the PIC that exceed 15 days with no known return date within the next 15 days, the permit holder shall immediately notify the board and shall obtain a new PIC.

G. An application for a permit designating the new PIC shall be filed with the required fee within 14 days of the original date of resignation or termination of the PIC on a form provided by the board. It shall be unlawful for a pharmaceutical processor to operate without a new permit past the 14-day deadline unless the board receives a request for an extension prior to the deadline. The executive director for the board may grant an extension for up to an additional 14 days for good cause shown.

Part V

Operation of a Pharmaceutical Processor

18VAC110-60-210. General provisions.

A. A pharmaceutical processor shall sell ~~cannabidiol oil or THC-A~~ cannabis oil only in a child-resistant, secure, and light-resistant container. Upon a written request from the registered patient, parent, or legal guardian, the oil may be dispensed in a non-child-resistant container so long as all labeling is maintained with the product.

B. Only a pharmacist may dispense ~~cannabidiol oil or THC-A~~ cannabis oil to registered patients or parents or legal guardians of patients who are minors or incapacitated adults and who are registered with the board. A pharmacy technician who meets the requirements of 18VAC110-60-170 C may assist, under the direct supervision of a pharmacist, in the dispensing and selling of ~~cannabidiol oil or THC-A~~ cannabis oil.

C. The PIC or pharmacist on duty shall restrict access to the pharmaceutical processor to:

1. A person whose responsibilities necessitate access to the pharmaceutical processor and then for only as long as necessary to perform the person's job duties; or

2. A person who is a registered patient, parent, or legal guardian, in which case such person shall not be permitted behind the service counter or in other areas where Cannabis plants, extracts, ~~cannabidiol oil,~~ or ~~THC-A~~ cannabis oil is stored.

D. All pharmacists and pharmacy technicians shall at all times while at the pharmaceutical processor have their current license or registration available for inspection by the board or the board's agent.

E. While inside the pharmaceutical processor, all pharmaceutical processor employees shall wear name tags or similar forms of identification that clearly identify them, including their position at the pharmaceutical processor.

F. A pharmaceutical processor shall be open for registered patients, parents, or legal guardians to purchase ~~cannabidiol oil or THC-A~~ cannabis oil products for a minimum of 35 hours a week, except as otherwise authorized by the board.

G. A pharmaceutical processor that closes during its normal hours of operation shall implement procedures to notify registered patients, parents, and legal guardians of when the pharmaceutical processor will resume normal hours of operation. Such procedures may include telephone system messages and conspicuously posted signs. If the pharmaceutical processor is or will be closed during its normal hours of operation for longer than two business days, the pharmaceutical processor shall immediately notify the board.

H. A pharmacist shall counsel registered patients, parents, and legal guardians regarding the use of ~~cannabidiol oil or THC-A~~ cannabis oil. Such counseling shall include information related to safe techniques for proper use and storage of ~~cannabidiol oil or THC-A~~ cannabis oil and for disposal of the oils in a manner that renders them nonrecoverable.

I. The pharmaceutical processor shall establish, implement, and adhere to a written alcohol-free, drug-free, and smoke-free work place policy that shall be available to the board or the board's agent upon request.

18VAC110-60-220. Pharmaceutical processor prohibitions.

A. No pharmaceutical processor shall:

1. Cultivate Cannabis plants or produce or dispense ~~cannabidiol oil or THC-A~~ cannabis oil in any place except the approved facility at the address of record on the application for the pharmaceutical processor permit;

2. Sell, deliver, transport, or distribute Cannabis, including ~~cannabidiol oil or THC-A~~ cannabis oil, to any other facility;

3. Produce or manufacture ~~cannabidiol oil or THC-A~~ cannabis oil for use outside of Virginia; or

4. Provide ~~cannabidiol oil or THC-A~~ cannabis oil samples.

B. ~~No~~ Except for certain employee access to secured areas designated for cultivation and authorized by the PIC pursuant to § 54.1-3442.6 of the Code of Virginia, no pharmaceutical processor shall be open or in operation, and no person shall be in the pharmaceutical processor, unless a pharmacist is on the premises and directly supervising the activity within the pharmaceutical processor. At all other times, the pharmaceutical processor shall be closed and properly secured.

C. No pharmaceutical processor shall sell anything other than ~~cannabidiol oil or THC-A~~ cannabis oil products from the pharmaceutical processor.

D. A pharmaceutical processor shall not advertise ~~cannabidiol oil or THC-A~~ cannabis oil products, except it may post the following information on websites:

1. Name and location of the processor;

2. Contact information for the processor;

3. Hours and days the pharmaceutical processor is open for dispensing ~~cannabidiol oil or THC-A~~ cannabis oil products;

4. Laboratory results;

5. Product information and pricing; and

6. Directions to the processor facility.

E. No ~~cannabidiol oil or THC-A~~ cannabis oil shall be consumed on the premises of a pharmaceutical processor, except for emergency administration to a registered patient.

F. No person except a pharmaceutical processor employee or a registered patient, parent, or legal guardian shall be allowed on the premises of a processor with the following exceptions: laboratory staff may enter a processor for the sole purpose of identifying and collecting Cannabis~~, cannabidiol oil,~~ or ~~THC-A~~ cannabis oil samples for purposes of conducting laboratory tests; the board or the board's authorized representative may waive the prohibition upon prior written request.

G. All persons who have been authorized in writing to enter the facility by the board or the board's authorized representative shall obtain a visitor identification badge from a pharmaceutical processor employee prior to entering the pharmaceutical processor.

1. An employee shall escort and monitor an authorized visitor at all times the visitor is in the pharmaceutical processor.

2. A visitor shall visibly display the visitor identification badge at all times the visitor is in the pharmaceutical processor and shall return the visitor identification badge to a pharmaceutical processor employee upon exiting the pharmaceutical processor.

3. All visitors shall log in and out. The pharmaceutical processor shall maintain the visitor log that shall include the date, time, and purpose of the visit and that shall be available to the board.

4. If an emergency requires the presence of a visitor and makes it impractical for the pharmaceutical processor to obtain a waiver from the board, the processor shall provide written notice to the board as soon as practicable after the onset of the emergency. Such notice shall include the name and company affiliation of the visitor, the purpose of the visit, and the date and time of the visit. A pharmaceutical processor shall monitor the visitor and maintain a log of such visit as required by this subsection.

H. No ~~cannabidiol oil or THC-A~~ cannabis oil shall be sold, dispensed, or distributed via a delivery service or any other manner outside of a pharmaceutical processor, except that a registered parent or legal guardian or an agent of the processor may deliver ~~cannabidiol oil or THC-A~~ cannabis oil to the registered patient or in accordance with 18VAC110-60-310 A.

I. Notwithstanding the requirements of subsection F of this section, an agent of the board or local law enforcement or other federal, state, or local government officials may enter any area of a pharmaceutical processor if necessary to perform their governmental duties.

18VAC110-60-230. Inventory requirements.

A. Each pharmaceutical processor prior to commencing business shall:

1. Conduct an initial comprehensive inventory of all Cannabis plants, including the seeds, parts of plants, extracts, ~~cannabidiol oil,~~ and ~~THC-A~~ cannabis oil, at the facility. The inventory shall include, at a minimum, the date of the inventory, a summary of the inventory findings, and the name, signature, and title of the pharmacist or pharmacy technician who conducted the inventory. If a facility commences business with no Cannabis on hand, the pharmacist shall record this fact as the initial inventory; and

2. Establish ongoing inventory controls and procedures for the conduct of inventory reviews and comprehensive inventories of all Cannabis plants, including the seeds, parts of plants, extracts, ~~cannabidiol oil,~~ and ~~THC-A~~ cannabis oil, that shall enable the facility to detect any diversion, theft, or loss in a timely manner.

B. Upon commencing business, each pharmaceutical processor and production facility shall conduct a weekly inventory of all Cannabis plants, including the seeds, parts of plants, ~~cannabidiol oil,~~ and ~~THC-A~~ cannabis oil in stock, that shall include, at a minimum, the date of the inventory, a summary of the inventory findings, and the name, signature, and title of the pharmacist or pharmacy technician who conducted the inventory. The record of all ~~cannabidiol oil and THC-A~~ cannabis oil sold, dispensed, or otherwise disposed of shall show the date of sale; the name of the pharmaceutical processor; the registered patient, parent, or legal guardian to whom the ~~cannabidiol oil or THC-A~~ cannabis oil was sold; the

address of such person; and the kind and quantity of ~~cannabidiol oil or THC-A~~ cannabis oil sold.

C. The record of all ~~cannabidiol oil and THC-A~~ cannabis oil sold, dispensed, or otherwise disposed of shall show the date of sale or disposition; the name of the pharmaceutical processor; the name and address of the registered patient, parent, or legal guardian to whom the ~~cannabidiol oil or THC-A~~ cannabis oil was sold; the kind and quantity of ~~cannabidiol oil or THC-A~~ cannabis oil sold or disposed of; and the method of disposal.

D. A complete and accurate record of all Cannabis plants, including the seeds, parts of plants, ~~cannabidiol oil,~~ and ~~THC-A~~ cannabis oil on hand shall be prepared annually on the anniversary of the initial inventory or such other date that the PIC may choose, so long as it is not more than one year following the prior year's inventory.

E. All inventories, procedures, and other documents required by this section shall be maintained on the premises and made available to the board or its agent.

F. Inventory records shall be maintained for three years from the date the inventory was taken.

G. Whenever any sample or record is removed by a person authorized to enforce state or federal law for the purpose of investigation or as evidence, such person shall tender a receipt in lieu thereof and the receipt shall be kept for a period of at least three years.

18VAC110-60-240. Security requirements.

A. A pharmaceutical processor shall initially cultivate only the number of Cannabis plants necessary to produce ~~cannabidiol oil or THC-A~~ cannabis oil for the number of patients anticipated within the first nine months of operation. Thereafter, the processor shall:

1. Not maintain more than 12 Cannabis plants per patient at any given time based on dispensing data from the previous 90 days;

2. Not maintain ~~cannabidiol oil or THC-A~~ cannabis oil in excess of the quantity required for normal, efficient operation;

3. Maintain all Cannabis plants, seeds, parts of plants, extracts, ~~cannabidiol oil,~~ and ~~THC-A~~ cannabis oil in a secure area or location accessible only by the minimum number of authorized employees essential for efficient operation;

4. Store all cut parts of Cannabis plants, extracts, ~~cannabidiol oil,~~ or ~~THC-A~~ cannabis oil in an approved safe or approved vault within the pharmaceutical processor and not sell ~~cannabidiol oil or THC-A~~ cannabis oil products when the pharmaceutical processor is closed;

5. Keep all approved safes, approved vaults, or any other approved equipment or areas used for the production, cultivation, harvesting, processing, manufacturing, or storage of ~~cannabidiol oil or THC-A~~ cannabis oil securely locked or protected from entry, except for the actual time required to remove or replace the Cannabis, seeds, parts of plants, extracts, ~~cannabidiol oil,~~ or ~~THC-A~~ cannabis oil;

6. Keep all locks and security equipment in good working order;

7. Restrict access to keys or codes to all safes, approved vaults, or other approved equipment or areas to pharmacists practicing at the pharmaceutical processor; and

8. Not allow keys to be left in the locks or accessible to non-pharmacists.

B. The pharmaceutical processor shall have an adequate security system to prevent and detect diversion, theft, or loss of Cannabis seeds, plants, extracts, ~~cannabidiol oil,~~ or ~~THC-A~~ cannabis oil. A device for the detection of breaking and a back-up alarm system with an ability to remain operational during a power outage shall be installed in each pharmaceutical processor. The installation and the device shall be based on accepted alarm industry standards and subject to the following conditions:

1. The device shall be a sound, microwave, photoelectric, ultrasonic, or other generally accepted and suitable device;

2. The device shall be monitored in accordance with accepted industry standards, be maintained in operating order, have an auxiliary source of power, and be capable of sending an alarm signal to the monitoring entity when breached if the communication line is not operational;

3. The device shall fully protect the entire processor facility and shall be capable of detecting breaking by any means when activated;

4. The device shall include a duress alarm, a panic alarm, and an automatic voice dialer; and

5. Access to the alarm system for the pharmaceutical processor shall be restricted to the pharmacists working at the pharmaceutical processor, and the system shall be activated whenever the pharmaceutical processor is closed for business.

C. A pharmaceutical processor shall keep the outside perimeter of the premises well-lit. A processor shall have video cameras in all areas that may contain Cannabis plants, seeds, parts of plants, extracts, ~~cannabidiol oil,~~ or ~~THC-A~~ cannabis oil and at all points of entry and exit, which shall be appropriate for the normal lighting conditions of the area under surveillance.

1. The processor shall direct cameras at all approved safes, approved vaults, dispensing areas, ~~cannabidiol oil~~ or ~~THC-A~~ cannabis oil sales areas, and any other area where Cannabis plants, seeds, extracts, ~~cannabidiol oil,~~ or ~~THC-A~~ cannabis oil are being produced, harvested, manufactured, stored, or handled. At entry and exit points, the processor shall angle cameras so as to allow for the capture of clear and certain identification of any person entering or exiting the facility;

2. The video system shall have:

a. A failure notification system that provides an audible, text, or visual notification of any failure in the surveillance system. The failure notification system shall provide an alert to the processor within five minutes of the failure, either by telephone, email, or text message;

b. The ability to immediately produce a clear color still photo that is a minimum of 9600 dpi from any camera image, live or recorded;

c. A date and time stamp embedded on all recordings. The date and time shall be synchronized and set correctly and shall not significantly obscure the picture; and

d. The ability to remain operational during a power outage;

3. All video recordings shall allow for the exporting of still images in an industry standard image format. Exported video shall have the ability to be archived in a proprietary format that ensures authentication of the video and guarantees that no alteration of the recorded image has taken place. Exported video shall also have the ability to be saved in an industry standard file format that can be played on a standard computer operating system. A pharmaceutical processor shall erase all recordings prior to disposal or sale of the facility; and

4. The processor shall make 24-hour recordings from all video cameras available for immediate viewing by the board or the board's agent upon request and shall retain the recordings for at least 30 days. If a processor is aware of a pending criminal, civil, or administrative investigation or legal proceeding for which a recording may contain relevant information, the processor shall retain an unaltered copy of the recording until the investigation or proceeding is closed or the entity conducting the investigation or proceeding notifies the pharmaceutical processor PIC that it is not necessary to retain the recording.

D. The processor shall maintain all security system equipment and recordings in a secure location so as to prevent theft, loss, destruction, or alterations. All security equipment shall be maintained in good working order and shall be tested at least every six months.

E. A pharmaceutical processor shall limit access to surveillance areas to persons who are essential to surveillance operations, law-enforcement agencies, security system service employees, the board or the board's agent, and others when approved by the board. A processor shall make available a current list of authorized employees and security system service employees who have access to the surveillance room to the processor. The pharmaceutical processor shall keep all onsite surveillance rooms locked and shall not use such rooms for any other function.

F. If diversion, theft, or loss of Cannabis plants, seeds, parts of plants, extracts, ~~cannabidiol oil,~~ or ~~THC-A~~ cannabis oil has occurred from a pharmaceutical processor, the board may require additional safeguards to ensure the security of the products.

18VAC110-60-250. Requirements for the storage and handling of Cannabis, ~~cannabidiol oil,~~ or ~~THC-A~~ cannabis oil.

A. A pharmaceutical processor shall:

1. Have storage areas that provide adequate lighting, ventilation, sanitation, temperature, and humidity as defined in 18VAC110-60-10 and space, equipment, and security conditions for the cultivation of Cannabis and the production and dispensing of ~~cannabidiol oil or THC-A~~ cannabis oil;

2. Separate for storage in a quarantined area Cannabis plants, seeds, parts of plants, extracts, including ~~cannabidiol oil or THC-A~~ cannabis oil, that is outdated, damaged, deteriorated, misbranded, or adulterated, or whose containers or packaging have been opened or breached, until such Cannabis plants, seeds, parts of plants, extracts, ~~cannabidiol oil,~~ or ~~THC-A~~ cannabis oil are destroyed;

3. Be maintained in a clean, sanitary, and orderly condition; and

4. Be free from infestation by insects, rodents, birds, or vermin of any kind.

B. A processor shall compartmentalize all areas in the facility based on function and shall restrict access between compartments. The processor shall establish, maintain, and comply with written policies and procedures regarding best practices for the secure and proper cultivation of Cannabis and production of ~~cannabidiol oil or THC-A~~ cannabis oil. These shall include policies and procedures that:

1. Restrict movement between compartments;

2. Provide for different colored identification cards for facility employees based on the compartment to which they are assigned at a given time so as to ensure that only employees necessary for a particular function have access to that compartment of the facility;

3. Require pocketless clothing for all production facility employees working in an area containing Cannabis plants, seeds, and extracts, including ~~cannabidiol oil or THC-A~~ cannabis oil; and

4. Document the chain of custody of all Cannabis plants, parts of plants, seeds, extracts, ~~cannabidiol oil,~~ and ~~THC-A~~ cannabis oil products.

C. The PIC shall establish, maintain, and comply with written policies and procedures for the cultivation, production, security, storage, and inventory of Cannabis, including seeds, parts of plants, extracts, ~~cannabidiol oil,~~ and ~~THC-A~~ cannabis oil. Such policies and procedures shall include methods for identifying, recording, and reporting diversion, theft, or loss, and for correcting all errors and inaccuracies in inventories. Pharmaceutical processors shall include in their written policies and procedures a process for the following:

1. Handling mandatory and voluntary recalls of ~~cannabidiol oil or THC-A~~ cannabis oil. The process shall be adequate to deal with recalls due to any action initiated at the request of the board and any voluntary action by the pharmaceutical processor to (i) remove defective or potentially defective ~~cannabidiol oil or THC-A~~ cannabis oil from the market or (ii) promote public health and safety by replacing existing ~~cannabidiol oil or THC-A~~ cannabis oil with improved products or packaging;

2. Preparing for, protecting against, and handling any crises that affect the security or operation of any facility in the event of strike, fire, flood, or other natural disaster, or other situations of local, state, or national emergency;

3. Ensuring that any outdated, damaged, deteriorated, misbranded, or adulterated Cannabis, including seeds, parts of plants, extracts, ~~cannabidiol oil,~~ and ~~THC-A~~ cannabis oil, is segregated from all other Cannabis, seeds, parts of plants, extracts, ~~cannabidiol oil,~~ and ~~THC-A~~ cannabis oil and destroyed. This procedure shall provide for written documentation of the Cannabis, including seeds, parts of plants, extracts, ~~cannabidiol oil,~~ and ~~THC-A~~ cannabis oil disposition; and

4. Ensuring the oldest stock of Cannabis, including seeds, parts of plants, extracts, ~~cannabidiol oil,~~ and ~~THC-A~~ cannabis oil product is used first. The procedure may permit deviation from this requirement if such deviation is temporary and appropriate.

D. The processor shall store all Cannabis, including seeds, parts of plants, extracts, ~~cannabidiol oil,~~ and ~~THC-A~~ cannabis oil, in the process of production, transfer, or analysis in such a manner as to prevent diversion, theft, or loss; shall make Cannabis, including the seeds, parts of plants, extracts, ~~cannabidiol oil,~~ and ~~THC-A~~ cannabis oil accessible only to the minimum number of specifically authorized employees essential for efficient operation; and shall return the aforementioned items to their secure location immediately after completion of the production, transfer, or analysis process or at the end of the scheduled business day. If a production process cannot be completed at the end of a working day, the pharmacist shall securely lock the processing area or tanks, vessels, bins, or bulk containers containing Cannabis, including the seeds, parts of plants, extracts, ~~cannabidiol oil,~~ and ~~THC-A~~ cannabis oil, inside an area or building that affords adequate security.

18VAC110-60-260. Recordkeeping requirements.

A. If a pharmaceutical processor uses an electronic system for the storage and retrieval of patient information or other records related to cultivating, producing, and dispensing ~~cannabidiol oil or THC-A~~ cannabis oil, the pharmaceutical processor shall use a system that:

1. Guarantees the confidentiality of the information contained in the system;

2. Is capable of providing safeguards against erasures and unauthorized changes in data after the information has been entered and verified by the pharmacist; and

3. Is capable of being reconstructed in the event of a computer malfunction or accident resulting in the destruction of the data bank.

B. All records relating to the inventory, laboratory results, and dispensing shall be maintained for a period of three years and shall be made available to the board upon request.

18VAC110-60-270. Reportable events; security.

A. Upon becoming aware of (i) diversion, theft, loss, or discrepancies identified during inventory; (ii) unauthorized destruction of any ~~cannabidiol oil or THC-A~~ cannabis oil; or (iii) any loss or unauthorized alteration of records related to ~~cannabidiol oil or THC-A~~ cannabis oil or qualifying patients, a pharmacist or pharmaceutical processor shall immediately notify appropriate law-enforcement authorities and the board.

B. A pharmacist or processor shall provide the notice required by subsection A of this section to the board by way of a signed statement that details the circumstances of the event, including an accurate inventory of the quantity and brand names of ~~cannabidiol oil or THC-A~~ cannabis oil diverted, stolen, lost, destroyed, or damaged and confirmation that the local law-enforcement authorities were notified. A pharmacist or processor shall make such notice no later than 24 hours after discovery of the event.

C. A pharmacist or pharmaceutical processor shall notify the board no later than the next business day, followed by written notification no later than 10 business days, of any of the following:

1. An alarm activation or other event that requires a response by public safety personnel;

2. A breach of security;

3. The failure of the security alarm system due to a loss of electrical support or mechanical malfunction that is expected to last longer than eight hours; and

4. Corrective measures taken if any.

D. A pharmacist or pharmaceutical processor shall immediately notify the board of an employee convicted of a felony or any offense referenced in § 54.1-3442.6 of the Code of Virginia.

Part VI

Cultivation, Production, and Dispensing of ~~Cannabidiol Oil or THC-A~~ Cannabis Oil

18VAC110-60-280. Cultivation and production of ~~cannabidiol oil or THC-A~~ cannabis oil.

A. No ~~cannabidiol oil or THC-A~~ cannabis oil shall have had pesticide chemicals or petroleum-based solvents used during the cultivation, extraction, production, or manufacturing process, except that the board may authorize the use of pesticide chemicals for purposes of addressing an infestation that could result in a catastrophic loss of Cannabis crops.

B. Cultivation methods for Cannabis plants and extraction methods used to produce the ~~cannabidiol oil and THC-A~~ cannabis oil shall be performed in a manner deemed safe and effective based on current standards or scientific literature.

C. Any Cannabis plant, seed, parts of plant, extract, ~~cannabidiol oil,~~ or ~~THC-A~~ cannabis oil not in compliance with this section shall be deemed adulterated.

18VAC110-60-285. Registration of products.

A. A pharmaceutical processor shall assign a brand name to each product of ~~cannabidiol oil or THC-A~~ cannabis oil. The pharmaceutical processor shall register each brand name with the board on a form prescribed by the board prior to any dispensing and shall associate each brand name with a specific laboratory test that includes a terpenes profile and a list of all active ingredients, including:

1. Tetrahydrocannabinol (THC);

2. Tetrahydrocannabinol acid (THC-A);

3. Cannabidiols (CBD); and

4. Cannabidiolic acid (CBDA).

B. A pharmaceutical processor shall not label two products with the same brand name unless the laboratory test results for each product indicate that they contain the same level of each active ingredient listed in subsection A of this section within a range of 90% to 110%.

C. The board shall not register any brand name that:

1. Is identical to or confusingly similar to the name of an existing commercially available product;

2. Is identical to or confusingly similar to the name of an unlawful product or substance;

3. Is confusingly similar to the name of a previously approved ~~cannabidiol oil or THC-A~~ cannabis oil product brand name;

4. Is obscene or indecent;

5. May encourage the use of marijuana~~, cannabidiol oil,~~ or ~~THC-A~~ cannabis oil for recreational purposes;

6. May encourage the use of ~~cannabidiol oil or THC-A~~ cannabis oil for a disease or condition other than the disease or condition the practitioner intended to treat;

7. Is customarily associated with persons younger than the age of 18; or

8. Is related to the benefits, safety, or efficacy of the ~~cannabidiol oil or THC-A~~ cannabis oil product unless supported by substantial evidence or substantial clinical data.

18VAC110-60-290. Labeling of batch of ~~cannabidiol oil or THC-A~~ cannabis oil products.

A. ~~Cannabidiol oil or THC-A~~ Cannabis oil produced as a batch shall not be adulterated.

B. ~~Cannabidiol oil or THC-A~~ Cannabis oil produced as a batch shall be:

1. Processed, packaged, and labeled according to the U.S. Food and Drug Administration's Current Good Manufacturing Practice in Manufacturing, Packaging, Labeling, or Holding Operations for Dietary Supplements, 21 CFR Part 111; and

2. Labeled with:

a. The name and address of the pharmaceutical processor;

b. The brand name of the ~~cannabidiol oil or THC-A~~ cannabis oil product that was registered with the board pursuant to 18VAC110-20-285;

c. A unique serial number that matches the product with the pharmaceutical processor batch and lot number so as to facilitate any warnings or recalls the board or pharmaceutical processor deem appropriate;

d. The date of testing and packaging;

e. The expiration date based on stability testing;

f. The quantity of ~~cannabidiol oil or THC-A~~ cannabis oil contained in the batch;

g. A terpenes profile and a list of all active ingredients, including:

(1) Tetrahydrocannabinol (THC);

(2) Tetrahydrocannabinol acid (THC-A);

(3) Cannabidiol (CBD); and

(4) Cannabidiolic acid (CBDA); and

h. A pass or fail rating based on the laboratory's microbiological, mycotoxins, heavy metals, residual solvents, and pesticide chemical residue analysis.

18VAC110-60-300. Laboratory requirements; testing.

A. No pharmaceutical processor shall utilize a laboratory to handle, test, or analyze ~~cannabidiol oil or THC-A~~ cannabis oil unless such laboratory:

1. Is independent from all other persons involved in the ~~cannabidiol oil or THC-A~~ cannabis oil industry in Virginia, which shall mean that no person with a direct or indirect interest in the laboratory shall have a direct or indirect financial interest in a pharmacist, pharmaceutical processor, certifying practitioner, or any other entity that may benefit from the production, manufacture, dispensing, sale, purchase, or use of ~~cannabidiol oil or THC-A~~ cannabis oil; and

2. Has employed at least one person to oversee and be responsible for the laboratory testing who has earned from a college or university accredited by a national or regional certifying authority at least (i) a master's level degree in chemical or biological sciences and a minimum of two years of post-degree laboratory experience or (ii) a bachelor's degree in chemical or biological sciences and a minimum of four years of post-degree laboratory experience.

B. After processing and before dispensing the ~~cannabidiol oil or THC-A~~ cannabis oil product, a pharmaceutical processor shall make a sample available from each homogenized batch

of product for a laboratory to (i) test for microbiological contaminants, mycotoxins, heavy metals, residual solvents, and pesticide chemical residue and (ii) conduct an active ingredient analysis and terpenes profile. ~~The sample size shall be a statistically valid sample as determined by the board~~ Each laboratory shall determine a valid sample size for testing, which may vary due to sample matrix, analytical method, and laboratory-specific procedures. A minimum sample size of 0.5% of individual units for dispensing or distribution from each homogenized batch is required to achieve a representative sample for analysis.

C. From the time that a batch of ~~cannabidiol oil or THC-A~~ cannabis oil product has been homogenized for sample testing until the laboratory provides the results from its tests and analysis, the pharmaceutical processor shall segregate and withhold from use the entire batch, except the samples that have been removed by the laboratory for testing. During this period of segregation, the pharmaceutical processor shall maintain the batch in a secure, cool, and dry location so as to prevent the batch from becoming contaminated or losing its efficacy.

D. Under no circumstances shall a pharmaceutical processor sell a ~~cannabidiol oil or THC-A~~ cannabis oil product prior to the time that the laboratory has completed its testing and analysis and provided a certificate of analysis to the pharmaceutical processor or other designated facility employee.

E. The processor shall require the laboratory to immediately return or properly dispose of any ~~cannabidiol or THC-A~~ cannabis oil products and materials upon the completion of any testing, use, or research.

F. If a sample of ~~cannabidiol oil or THC-A~~ cannabis oil product does not pass the microbiological, mycotoxin, heavy metal, or pesticide chemical residue test based on the standards set forth in this subsection, the pharmaceutical processor shall dispose of the entire batch from which the sample was taken.

1. For purposes of the microbiological test, a ~~cannabidiol oil or THC-A~~ cannabis oil sample shall be deemed to have passed if it satisfies the standards set forth in Section 1111 of the United States Pharmacopeia.

2. For purposes of the mycotoxin test, a sample of ~~cannabidiol oil or THC-A~~ cannabis oil product shall be deemed to have passed if it meets the following standards:

Test Specification	
Aflatoxin B1	<20 ug/kg of Substance
Aflatoxin B2	<20 ug/kg of Substance
Aflatoxin G1	<20 ug/kg of Substance
Aflatoxin G2	<20 ug/kg of Substance
Ochratoxin A	<20 ug/kg of Substance

3. For purposes of the heavy metal test, a sample of ~~cannabidiol oil or THC-A~~ cannabis oil product shall be deemed to have passed if it meets the following standards:

Metal	Limits - parts per million (ppm)
Arsenic	<10 ppm
Cadmium	<4.1 ppm
Lead	<10 ppm
Mercury	<2 ppm

4. For purposes of the pesticide chemical residue test, a sample of ~~cannabidiol oil or THC-A~~ cannabis oil product shall be deemed to have passed if it satisfies the most stringent acceptable standard for a pesticide chemical residue in any food item as set forth in Subpart C of the federal Environmental Protection Agency's regulations for Tolerances and Exemptions for Pesticide Chemical Residues in Food, 40 CFR Part 180.

5. For purposes of the active ingredient analysis, a sample of the ~~cannabidiol oil or THC-A~~ cannabis oil product shall be tested for:

a. Tetrahydrocannabinol (THC);

b. Tetrahydrocannabinol acid (THC-A);

c. Cannabidiols (CBD); and

d. Cannabidiolic acid (CBDA).

6. For the purposes of the residual solvent test, a sample of the ~~cannabidiol oil or THC-A~~ cannabis oil product shall be deemed to have passed if it meets the standards and limits recommended by the American Herbal Pharmacopia for Cannabis Inflorescence. If a sample does not pass the residual solvents test, the batch can be remediated with further processing. After further processing, the batch must be retested for microbiological, mycotoxin, heavy metal, residual solvents, and pesticide chemical residue, and an active ingredient analysis and terpenes profile must be conducted.

G. If a sample of ~~cannabidiol oil or THC-A~~ cannabis oil product passes the microbiological, mycotoxin, heavy metal, residual solvent, and pesticide chemical residue test, the entire batch may be utilized by the processor for immediate packaging and labeling for sale. An expiration date shall be assigned to the product that is based upon validated stability testing that addresses product stability when opened and the shelf-life for unopened products.

H. The processor shall require the laboratory to file with the board an electronic copy of each laboratory test result for any batch that does not pass the microbiological, mycotoxin, heavy metal, residual solvents, or pesticide chemical residue test at the same time that it transmits those results to the pharmaceutical processor. In addition, the laboratory shall

maintain the laboratory test results and make them available to the board or an agent of the board.

I. Each pharmaceutical processor shall have such laboratory results available upon request to registered patients, parents, or legal guardians and registered practitioners who have certified qualifying patients.

18VAC110-60-310. Dispensing of ~~cannabidiol oil or THC-A~~ cannabis oil.

A. A pharmacist in good faith may dispense ~~cannabidiol oil or THC-A~~ cannabis oil to any registered patient, parent, or legal guardian as indicated on the written certification.

1. Prior to the initial dispensing of cannabis oil pursuant to each written certification, the pharmacist or pharmacy technician at the location of the pharmaceutical processor shall view a current photo identification of the patient, parent, or legal guardian. The pharmacist or pharmacy technician shall verify in the Virginia Prescription Monitoring Program of the Department of Health Professions or other program recognized by the board that the registrations are current, the written certification has not expired, and the date and quantity of the last dispensing of ~~cannabidiol oil or THC-A~~ cannabis oil to the registered patient.

2. The pharmacist or pharmacy technician shall make and maintain for three years a paper or electronic copy of the current written certification that provides an exact image of the document that is clearly legible.

3. Prior to any subsequent dispensing, the pharmacist, pharmacy technician, or delivery agent shall view the current written certification and a current photo identification and current registration of the patient, parent, or legal guardian and shall maintain record of such viewing in accordance with policies and procedures of the processor.

B. A pharmacist may dispense a portion of a registered patient's 90-day supply of ~~cannabidiol oil or THC-A~~ cannabis oil. The pharmacist may dispense the remaining portion of the 90-day supply of ~~cannabidiol oil or THC-A~~ cannabis oil at any time except that no registered patient, parent, or legal guardian shall receive more than a 90-day supply of ~~cannabidiol oil or THC-A~~ cannabis oil in a 90-day period from any pharmaceutical processor.

C. A dispensing record shall be maintained for three years from the date of dispensing, and the pharmacist or pharmacy technician under the direct supervision of the pharmacist shall affix a label to the container of oil that contains:

1. A serial number assigned to the dispensing of the oil;

2. The brand name of ~~cannabidiol oil or THC-A~~ cannabis oil that was registered with the board pursuant to 18VAC110-60-285 and its strength;

3. The serial number assigned to the oil during production;

4. The date of dispensing the ~~cannabidiol oil or THC-A~~ cannabis oil;

5. The quantity of ~~cannabidiol oil or THC-A~~ cannabis oil dispensed;

6. A terpenes profile and a list of all active ingredients, including:

a. Tetrahydrocannabinol (THC);

b. Tetrahydrocannabinol acid (THC-A);

c. Cannabidiol (CBD); and

d. Cannabidiolic acid (CBDA);

7. A pass rating based on the laboratory's microbiological, mycotoxins, heavy metals, residual solvents, and pesticide chemical residue analysis;

8. The name and registration number of the registered patient;

9. The name and registration number of the certifying practitioner;

10. Directions for use as may be included in the practitioner's written certification or otherwise provided by the practitioner;

11. The name or initials of the dispensing pharmacist;

12. Name, address, and telephone number of the pharmaceutical processor;

13. Any necessary cautionary statement; and

14. A prominently printed expiration date based on stability testing and the pharmaceutical processor's recommended conditions of use and storage that can be read and understood by the ordinary individual.

D. A pharmaceutical processor shall not label ~~cannabidiol oil or THC-A~~ cannabis oil products as "organic" unless the Cannabis plants have been organically grown and the ~~cannabidiol oil or THC-A~~ cannabis oil products have been produced, processed, manufactured, and certified to be consistent with organic standards in compliance with 7 CFR Part 205.

E. The ~~cannabidiol oil or THC-A~~ cannabis oil shall be dispensed in child-resistant packaging, except as provided in 18VAC110-60-210 A. A package shall be deemed child-resistant if it satisfies the standard for "special packaging" as set forth in the Poison Prevention Packaging Act of 1970 Regulations, 16 CFR 1700.1(b)(4).

F. No person except a pharmacist or a pharmacy technician operating under the direct supervision of a pharmacist shall alter, deface, or remove any label so affixed.

G. A pharmacist shall be responsible for verifying the accuracy of the dispensed oil in all respects prior to dispensing and shall document that each verification has been performed.

H. A pharmacist shall document a registered patient's self-assessment of the effects of ~~cannabidiol oil or THC-A~~ cannabis oil in treating the registered patient's diagnosed condition or disease or the symptoms thereof. A pharmaceutical processor shall maintain such documentation in writing or electronically for three years from the date of dispensing and such

documentation shall be made available in accordance with regulation.

I. A pharmacist shall exercise professional judgment to determine whether to dispense ~~cannabidiol oil or THC-A~~ cannabis oil to a registered patient, parent, or legal guardian if the pharmacist suspects that dispensing ~~cannabidiol oil or THC-A~~ cannabis oil to the registered patient, parent, or legal guardian may have negative health or safety consequences for the registered patient or the public.

18VAC110-60-330. Disposal of ~~cannabidiol oil or THC-A~~ cannabis oil.

A. To mitigate the risk of diversion, a pharmaceutical processor shall routinely and promptly dispose of undesired, excess, unauthorized, obsolete, adulterated, misbranded, or deteriorated Cannabis plants, including seeds, parts of plants, extracts, ~~cannabidiol oil,~~ or ~~THC-A~~ cannabis oil by disposal in accordance with a plan approved by the board and in a manner as to render the ~~cannabidiol oil or THC-A~~ cannabis oil nonrecoverable.

B. The destruction shall be witnessed by the PIC and an agent of the board or another pharmacist not employed by the pharmaceutical processor. The persons disposing of the ~~cannabidiol oil or THC-A~~ cannabis oil shall maintain and make available a separate record of each such disposal indicating:

1. The date and time of disposal;

2. The manner of disposal;

3. The name and quantity of ~~cannabidiol oil or THC-A~~ cannabis oil disposed of; and

4. The signatures of the persons disposing of the ~~cannabidiol oil or THC-A~~ cannabis oil.

C. The record of disposal shall be maintained at the pharmaceutical processor for three years from the date of disposal.

VA.R. Doc. No. R21-6395; Filed August 5, 2020, 2:45 p.m.

BOARD OF PHYSICAL THERAPY

Proposed Regulation

Title of Regulation: **18VAC112-20. Regulations Governing the Practice of Physical Therapy (amending 18VAC112-20-10, 18VAC112-20-27, 18VAC112-20-60, 18VAC112-20-65, 18VAC112-20-90, 18VAC112-20-130, 18VAC112-20-140, 18VAC112-20-200; adding 18VAC112-20-82).**

Statutory Authority: §§ 54.1-2400 and 54.1-3474 of the Code of Virginia.

Public Hearing Information:

October 20, 2020 - 9:15 a.m. - Department of Health Professions, Perimeter Center, 9960 Mayland Drive, 2nd Floor Conference Center, Henrico, VA 23233

Public Comment Deadline: October 30, 2020.

Agency Contact: Corie Tillman Wolf, Executive Director, Board of Physical Therapy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4674, FAX (804) 527-4413, or email ptboard@dhp.virginia.gov.

Basis: Regulations are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which provides the Board of Physical Therapy the authority to promulgate regulations to administer the regulatory system. The specific statutory authority for regulation of physical therapists and physical therapist assistants as part of an interstate compact is found in § 54.1-3484 of the Code of Virginia.

Purpose: The purpose of this regulation is to establish the requirement, including a fee, for obtaining and maintaining a compact privilege to practice in Virginia without a Virginia license. In order to protect public health and safety in the delivery of physical therapy services, a practitioner holding a compact privilege is held to the same standards of practice and is accountable for compliance with all applicable laws and regulations pertaining to physical therapy.

Substance: To comply with compact rules, all applicants for licensure are required to have criminal background checks, and holders of a compact privilege are required to adhere to the laws and regulations governing practice in the compact state in which they practice. A member state may set a fee that is charged to obtain and renew a compact privilege in that state. The amendments include setting the fee in Virginia at $50, which is similar to the fee charged by other states. Regulations are amended to implement compact requirements in Virginia.

Issues: The advantage to the public is increased access to physical therapy service from practitioners holding a compact privilege to practice in Virginia. Regulations for compact privilege holders require compliance with laws and regulations and adherence to the same standard of care. There are no disadvantages.

There are no particular advantages or disadvantages to the agency. While it is expected that the board will experience some reduction in revenue from applicants for licensure from other states, it will have revenue from physical therapists and physical therapist assistants who want to have a compact privilege in Virginia. Any resulting decrease in revenue can be absorbed in the existing budget without any anticipated impact on current licensees or the operation of the board.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 300 of the 2019 Acts of the Assembly (Chapter 300),[1] the Board of Physical Therapy (Board) proposes to amend 18VAC112-20 Regulations Governing the Practice of Physical Therapy in order for Virginia to participate in the Physical Therapy Licensure Compact (Compact).[2] The Compact is an agreement between member states to improve access to physical therapy services for the public by increasing the mobility of eligible physical therapy providers to work in multiple states. Also pursuant to Chapter 300, the Board

proposes to require that all applicants for licensure as a physical therapist or physical therapist assistant undergo a criminal history background check.

Background. Chapter 300 states that "The General Assembly hereby enacts, and the Commonwealth of Virginia hereby enters into, the Physical Therapy Licensure Compact with any and all jurisdictions legally joining therein according to its terms, …"

Chapter 300 also stipulates that "The Board shall require each applicant for licensure as a physical therapist or physical therapist assistant to submit fingerprints and provide personal descriptive information to be forwarded along with his fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining criminal history record information regarding the applicant. The cost of fingerprinting and the criminal history record search shall be paid by the applicant."

The second enactment clause of Chapter 300 states "That the provisions of this act shall become effective on January 1, 2020. The third enactment clause stipulates "That the Board of Physical Therapy shall promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment." An emergency regulation is currently in place and expires on June 30, 2021. The Board is now proposing non-expiring amendments.

Estimated Benefits and Costs.

Compact: Under the Compact, physical therapists and physical therapist assistants licensed in a participating state are able to legally practice in other participating states without obtaining additional licenses from those other states. The physical therapists and physical therapist assistants would need only to obtain a compact privilege. In order to obtain a compact privilege, the applicant must:[3]

1. Hold a current, valid physical therapist or physical therapist assistant license in their home state.

2. Have their home state be a member of the Compact and actively issuing compact privileges.

3. Not have any encumbrances against any physical therapist or physical therapist assistant license.

4. Not have any disciplinary action against any physical therapist or physical therapist assistant license within the last two years.

5. Have the state where they are seeking a compact privilege be a member of the Compact and actively issuing compact privileges.

6. Successfully complete the jurisprudence requirement for the state(s) the applicant wants a compact privilege in. Note: Virginia does not have a jurisprudence requirement.

7. Pay a $45 fee to the Physical Therapy Compact Commission.

8. Pay a fee to the state that the applicant wants a compact privilege in. This fee is set by each member state. Note: The Board proposes that the Commonwealth's fee for obtaining a compact privilege to practice in Virginia be $50.

The current Compact member states are: Arizona, Arkansas, Colorado, Iowa, Kentucky, Louisiana, Mississippi, Missouri, Nebraska, New Hampshire, North Carolina, North Dakota, Oklahoma, Oregon, Tennessee, Texas, Utah, Virginia, Washington, and West Virginia. Delaware, Georgia, Maryland, Montana, New Jersey, South Carolina, South Dakota, and Wisconsin have enacted legislation to join the Compact but are not yet issuing or accepting compact privileges.[4]

According to a report from the Virginia Healthcare Workforce Data Center,[5] 97 percent of Virginia physical therapists were employed in the profession and involuntary unemployment[6] was nearly nonexistent. Thus, it appears that the Commonwealth would benefit from having more qualified physical therapists available to offer their services. The Compact makes it easier for physical therapists and physical therapist assistants who are licensed in other states and wish to practice in the Commonwealth to do so. Practitioners who move to Virginia for family reasons, such as having a spouse in the military, and out-of-state practitioners who reside near the border and are willing able to serve patients within the Commonwealth are particularly likely candidates. The Compact also makes it easier for Virginia practitioners to gain more clients across the border into neighboring states. All states bordering Virginia either are current Compact members (Kentucky, North Carolina, Tennessee, and West Virginia) or have enacted legislation to join the Compact, but are not yet issuing or accepting compact privileges (Maryland). The District of Columbia does not appear to participate in the Compact.

The Commonwealth officially joined the Compact on January 1, 2020, and compact privileges were first issued on January 2, 2020. According to the Department of Health Professions (DHP), as of February, 14, 2020, 27 compact privileges had been issued to practice in Virginia: 19 as physical therapists and 8 physical therapist assistants. The privileges were obtained from the following numbers of persons licensed in the following states: 11 in North Carolina, 9 in Tennessee, 2 in Washington, 1 in Louisiana, 1 in Kentucky, 1 in Colorado, 1 in New Hampshire, and 1 in Missouri. As of January 29, 2020, 11 Virginia licensees obtained compact privileges for other Compact states: seven as physical therapists and four as physical therapist assistants.

In its analysis of the impact of joining the Compact, the Board provided data in 2016 showing that there were 2,587 physical therapists and physical therapist assistants licensed in Virginia with out-of-state addresses. If all of those licensees were in Compact states and all chose to let their Virginia licenses lapse and opted for a compact privilege, the Board would lose $315,575 with each biennial renewal. If the compact privilege fee for Virginia is set at $50, the revenue from that number of

licensees would be $129,350 (less 3.5% banking fee to Compact), resulting in a biennial loss of revenue of $190,752. If all of the Virginia licensees with out-of-state addresses do not choose to let their Virginia licenses lapse, then the reduction in revenue would be less. As of June 30, 2019, the Board had a balance of $1,897,707; consequently, any potential loss of revenue could be absorbed in the current budget for the foreseeable future.

Criminal History Background Check: In order to join the Compact, each member state must require that all applicants for licensure as a physical therapist or physical therapist assistant undergo a criminal history background check. As stated above, this requirement was part of Chapter 300 and is now proposed to be added to the regulation. Adding this requirement enables the Commonwealth to gain the benefits of joining the Compact, and would help the Board gain additional information about license applicants when they are being considered for licensure. The proposed requirement that all applicants for licensure as a physical therapist or physical therapist assistant undergo a criminal history background check would cost in-state applicants $35.95 and out-of-state applicants $38.95.[7]

It is estimated that the requiring of criminal history background checks for all licensure applicants would require the Virginia State Police Central Criminal Records Exchange to process an additional 1,200 to 1,500 sets of fingerprints per year.[8] It is estimated that one additional employee would be needed for the additional fingerprint searches, billing and record review at an annual rate of $66,439 (salary and fringe).[9]

Businesses and Other Entities Affected. There are 8,706 physical therapists and 3,691 physical therapist assistants licensed in Virginia.[10] According to survey data from a Virginia Healthcare Workforce Data Center report published in March 2019, the primary type of employers of physical therapists in the Commonwealth are distributed as follows: [11]

Establishment Type	Percentage
Private Practice, Group	17%
Rehabilitation Facility, Outpatient Clinic	15%
Home Health Care	14%
General Hospital, Outpatient Department	11%
General Hospital, Inpatient Department	10%
Skilled Nursing Facility	8%
Private Practice, Solo	7%
Rehabilitation Facility, Residential/Inpatient	4%
Academic Institution	3%
Physician Office	3%
K-12 School System	3%
Assisted Living or Continuing Care Facility	2%
Other	5%

Adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. Mandated by Chapter 300, the proposal to require that all applicants for licensure as a physical therapist or physical therapist assistant undergo a criminal history background check increases costs for applicants. Thus, adverse impact is indicated to reflect the effects of the non-discretionary changes mandated by legislation.

Small Businesses[12] Affected.

Types and Estimated Number of Small Businesses Affected: The Board regulates individual practitioners, but not their employers. Thus, data on the number of small businesses affected is not available. The types of businesses that are potentially affected and may qualify as small are described in the table above.

Costs and Other Effects: Joining the Compact increases the supply of physical therapists and physical therapist assistants that could be hired by small firms in the Commonwealth. This may reduce their hiring costs.

Alternative Method that Minimizes Adverse Impact; There are no clear alternative methods that both reduce adverse impact and meet the intended policy goals.

Localities[13] Affected.[14] Virginia joining the Compact may particularly affect localities bordering or otherwise near North Carolina, Tennessee, Kentucky, West Virginia, and eventually Maryland. The first four states listed are current members. Legislation has passed in Maryland for that state to join as well.[15]

The proposal does not disproportionately affect any particularly locality nor appear to introduce additional costs for local governments.

Projected Impact on Employment. Joining the Compact increases the supply of physical therapists and physical therapist assistants that could practice in the Commonwealth. This may lead to more physical therapists and physical therapist assistants working in Virginia.

Effects on the Use and Value of Private Property. To the extent that increasing the supply of physical therapists and physical therapist assistants who can practice in the Commonwealth decreases hiring costs for employers, the value of the employing firms may increase. The proposed amendments do not affect real estate development costs.

[1]See https://lis.virginia.gov/cgi-bin/legp604.exe?191+ful+CHAP0300

[2]See http://ptcompact.org/about-compact

[3]Sources: http://ptcompact.org/portals/0/images/Eligibility_Requirements_to_Obtain_a_Compact Privilege.pdf and http://ptcompact.org/Compact-Privilege-Fee-Jurisprudence-and-Waiver-Table

[4]Source: http://ptcompact.org/ptc-states.

[5]See https://www.dhp.virginia.gov/media/dhpweb/docs/hwdc/pt/2305PT2018.pdf This is for 2018, the most recent data available.

[6]"Involuntary unemployment" is used here in the colloquial sense. Technically someone who is voluntarily not seeking employment would not be part of the labor force, and hence not technically unemployed.

[7]Source: DHP

[8]See https://lis.virginia.gov/cgi-bin/legp604.exe?191+oth+SB1106FER122+PDF

[9]Ibid

[10]Source: https://www.dhp.virginia.gov/about/stats/2020Q2/04CurrentLicenseCountQ2FY2020.pdf

[11]Source: https://www.dhp.virginia.gov/media/dhpweb/docs/hwdc/pt/2305PT2018.pdf

[12]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."

[13]"Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

[14]§ 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

[15]See http://ptcompact.org/ptc-states

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

Summary:

The amendments are necessary for Virginia to participate in the Physical Therapy Compact, as required by Chapter 300 of the 2019 Acts of Assembly, which allows a physical therapist or physical therapist assistant who has obtained a compact privilege to practice in the Commonwealth without a Virginia license. To comply with compact rules, the amendments require all applicants for licensure to have criminal background checks and require all holders of a compact privilege to adhere to the laws and regulations governing practice in Virginia. As permitted by the compact rules, the amendments set the fee in Virginia at $50, which is similar to the fee charged by other states.

Part I
General Provisions

18VAC112-20-10. Definitions.

In addition to the words and terms defined in ~~§~~ §§ 54.1-3473 and 54.1-3486 of the Code of Virginia, the following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Active practice" means a minimum of 160 hours of professional practice as a physical therapist or physical therapist assistant within the 24-month period immediately preceding renewal. Active practice may include supervisory, administrative, educational, or consultative activities or responsibilities for the delivery of such services.

"Approved program" means an educational program accredited by the Commission on Accreditation in Physical Therapy Education of the American Physical Therapy Association.

"Assessment tool" means oPTion or any other self-directed assessment tool approved by FSBPT.

"CLEP" means the College Level Examination Program.

"Compact" means the Physical Therapy Licensure Compact (§ 54.1-3485 of the Code of Virginia).

"Contact hour" means 60 minutes of time spent in continuing learning activity exclusive of breaks, meals, or vendor exhibits.

"Direct supervision" means a physical therapist or a physical therapist assistant is physically present and immediately available and is fully responsible for the physical therapy tasks or activities being performed.

"Discharge" means the discontinuation of interventions in an episode of care that have been provided in an unbroken sequence in a single practice setting and related to the physical therapy interventions for a given condition or problem.

"Evaluation" means a process in which the physical therapist makes clinical judgments based on data gathered during an examination or screening in order to plan and implement a treatment intervention, provide preventive care, reduce risks of injury and impairment, or provide for consultation.

"FCCPT" means the Foreign Credentialing Commission on Physical Therapy.

"FSBPT" means the Federation of State Boards of Physical Therapy.

"General supervision" means a physical therapist shall be available for consultation.

"National examination" means the examinations developed and administered by the Federation of State Boards of Physical Therapy and approved by the board for licensure as a physical therapist or physical therapist assistant.

"Physical Therapy Compact Commission" or "commission" means the national administrative body whose membership consists of all states that have enacted the compact.

"Reevaluation" means a process in which the physical therapist makes clinical judgments based on data gathered during an examination or screening in order to determine a patient's response to the treatment plan and care provided.

"Support personnel" means a person who is performing designated routine tasks related to physical therapy under the direction and supervision of a physical therapist or physical therapist assistant within the scope of this chapter.

"TOEFL" means the Test of English as a Foreign Language.

"Trainee" means a person seeking licensure as a physical therapist or physical therapist assistant who is undergoing a traineeship.

"Traineeship" means a period of active clinical practice during which an applicant for licensure as a physical therapist or physical therapist assistant works under the direct supervision of a physical therapist approved by the board.

"TSE" means the Test of Spoken English.

"Type 1" means continuing learning activities offered by an approved organization as specified in 18VAC112-20-131.

"Type 2" means continuing learning activities which may or may not be offered by an approved organization but shall be activities considered by the learner to be beneficial to practice or to continuing learning.

18VAC112-20-27. Fees.

A. Unless otherwise provided, fees listed in this section shall not be refundable.

B. Licensure by examination.

1. The application fee shall be $140 for a physical therapist and $100 for a physical therapist assistant.

2. The fees for taking all required examinations shall be paid directly to the examination services.

C. Licensure by endorsement. The fee for licensure by endorsement shall be $140 for a physical therapist and $100 for a physical therapist assistant.

D. Licensure renewal and reinstatement.

1. The fee for active license renewal for a physical therapist shall be $135 and for a physical therapist assistant shall be $70 and shall be due by December 31 in each even-numbered year.

2. The fee for an inactive license renewal for a physical therapist shall be $70 and for a physical therapist assistant shall be $35 and shall be due by December 31 in each even-numbered year.

3. A fee of $50 for a physical therapist and $25 for a physical therapist assistant for processing a late renewal within one renewal cycle shall be paid in addition to the renewal fee.

4. The fee for reinstatement of a license that has expired for two or more years shall be $180 for a physical therapist and $120 for a physical therapist assistant and shall be submitted with an application for licensure reinstatement.

E. Other fees.

1. The fee for an application for reinstatement of a license that has been revoked shall be $1,000; the fee for an application for reinstatement of a license that has been suspended shall be $500.

2. The fee for a duplicate license shall be $5, and the fee for a duplicate wall certificate shall be $15.

3. The handling fee for a returned check or a dishonored credit card or debit card shall be $50.

4. The fee for a letter of good ~~standing/verification~~ standing or verification to another jurisdiction shall be $10.

5. The application fee for direct access certification shall be $75 for a physical therapist to obtain certification to provide services without a referral.

6. The state fee for obtaining or renewing a compact privilege to practice in Virginia shall be $50.

18VAC112-20-60. Requirements for licensure by examination.

Every applicant for initial licensure by examination shall submit:

1. Documentation of having met the educational requirements specified in 18VAC112-20-40 or 18VAC112-20-50;

2. The required application, fees, and credentials to the board, including a criminal history background check as required by § 54.1-3484 of the Code of Virginia; and

3. Documentation of passage of the national examination as prescribed by the board.

18VAC112-20-65. Requirements for licensure by endorsement.

A. A physical therapist or physical therapist assistant who holds a current, unrestricted license in the United States, its territories, the District of Columbia, or Canada may be licensed in Virginia by endorsement.

B. An applicant for licensure by endorsement shall submit:

1. Documentation of having met the educational requirements prescribed in 18VAC112-20-40 or 18VAC112-20-50. In lieu of meeting such requirements, an applicant may provide evidence of clinical practice consisting of at least 2,500 hours of patient care during the five years immediately preceding application for licensure in Virginia with a current, unrestricted license issued by another ~~U.S.~~ United States jurisdiction;

2. The required application, fees, and credentials to the board, including a criminal history background check as required by § 54.1-3484 of the Code of Virginia;

3. A current report from the Healthcare Integrity and Protection Data Bank ~~(HIPDB)~~;

4. Evidence of completion of 15 hours of continuing education for each year in which the applicant held a license in another ~~U.S.~~ United States jurisdiction, or 60 hours obtained within the past four years;

5. Documentation of passage of an examination equivalent to the Virginia examination at the time of initial licensure or documentation of passage of an examination required by another state at the time of initial licensure in that state; and

6. Documentation of active practice in physical therapy in another ~~U.S.~~ United States jurisdiction for at least 320 hours within the four years immediately preceding his application for licensure. A physical therapist who does not meet the active practice requirement shall:

a. Successfully complete 320 hours in a traineeship in accordance with requirements in 18VAC112-20-140; or

b. Document that he attained at least Level 2 on the FSBPT assessment tool within the two years preceding application for licensure in Virginia and successfully complete 160 hours in a traineeship in accordance with the requirements in 18VAC112-20-140.

C. A physical therapist assistant seeking licensure by endorsement who has not actively practiced physical therapy for at least 320 hours within the four years immediately preceding his application for licensure shall successfully complete 320 hours in a traineeship in accordance with the requirements in 18VAC112-20-140.

18VAC112-20-82. Requirements for a compact privilege.

To obtain a compact privilege to practice physical therapy in Virginia, a physical therapist or physical therapist assistant licensed in a remote state shall comply with the rules adopted by the Physical Therapy Compact Commission in effect at the time of application to the commission.

18VAC112-20-90. General responsibilities.

A. The physical therapist shall be responsible for managing all aspects of the physical therapy care of each patient and shall provide:

1. The initial evaluation for each patient and its documentation in the patient record;

2. Periodic reevaluation, including documentation of the patient's response to therapeutic intervention; and

3. The documented status of the patient at the time of discharge, including the response to therapeutic intervention. If a patient is discharged from a health care facility without the opportunity for the physical therapist to reevaluate the patient, the final note in the patient record may document patient status.

B. The physical therapist shall communicate the overall plan of care to the patient or ~~his~~ the patient's legally authorized representative and shall also communicate with a referring doctor of medicine, osteopathy, chiropractic, podiatry, or dental surgery~~,~~; nurse practitioner; or physician assistant to the extent required by § 54.1-3482 of the Code of Virginia.

C. A physical therapist assistant may assist the physical therapist in performing selected components of physical therapy intervention to include treatment, measurement, and data collection~~,~~ but not to include the performance of an evaluation as defined in 18VAC112-20-10.

D. A physical therapist assistant's visits to a patient may be made under general supervision.

E. A physical therapist providing services with a direct access certification as specified in § 54.1-3482 of the Code of Virginia shall utilize the Direct Access Patient Attestation and Medical Release Form prescribed by the board or otherwise include in the patient record the information, attestation and written consent required by subsection B of § 54.1-3482 of the Code of Virginia.

F. A physical therapist or physical therapist assistant practicing in Virginia on a compact privilege shall comply with all applicable laws and regulations pertaining to physical therapy practice in Virginia.

18VAC112-20-130. Biennial renewal of license.

A. A physical therapist and physical therapist assistant who intends to continue practice shall renew his license biennially by December 31 in each even-numbered year and pay to the board the renewal fee prescribed in 18VAC112-20-27.

B. A licensee whose licensure has not been renewed by the first day of the month following the month in which renewal is required shall pay a late fee as prescribed in 18VAC112-20-27.

C. In order to renew an active license, a licensee shall be required to:

1. Complete a minimum of 160 hours of active practice in the preceding two years; and

2. Comply with continuing competency requirements set forth in 18VAC112-20-131.

D. In order to renew a compact privilege to practice in Virginia, the holder shall comply with the rules adopted by the Physical Therapy Compact Commission in effect at the time of the renewal.

18VAC112-20-140. Traineeship requirements.

A. The traineeship shall be approved by the board and under the direction and supervision of a licensed physical therapist.

B. Supervision and identification of trainees:

1. There shall be a limit of two physical therapists assigned to provide supervision for each trainee.

2. The supervising physical therapist shall countersign patient documentation (i.e., notes, records, charts) for services provided by a trainee.

3. The trainee shall wear identification designating them as a "physical therapist trainee" or a "physical therapist assistant trainee."

C. Completion of traineeship.

1. The physical therapist supervising the trainee shall submit a report to the board at the end of the required number of hours on forms supplied by the board.

2. If the traineeship is not successfully completed at the end of the required hours, as determined by the supervising physical therapist, the president of the board or his designee shall determine if a new traineeship shall commence. If the president of the board determines that a new traineeship shall not commence, then the application for licensure shall be denied.

3. The second traineeship may be served under a different supervising physical therapist and may be served in a different organization than the initial traineeship. If the second traineeship is not successfully completed, as

determined by the supervising physical therapist, then the application for licensure shall be denied.

D. A traineeship shall not be approved for an applicant who has not completed a criminal background check for initial licensure pursuant to § 54.1-3484 of the Code of Virginia.

18VAC112-20-200. Advertising ethics.

A. Any statement specifying a fee, whether standard, discounted, or free, for professional services that does not include the cost of all related procedures, services, and products ~~which~~ that, to a substantial likelihood, will be necessary for the completion of the advertised service as it would be understood by an ordinarily prudent person shall be deemed to be deceptive or misleading, or both. Where reasonable disclosure of all relevant variables and considerations is made, a statement of a range of prices for specifically described services shall not be deemed to be deceptive or misleading.

B. Advertising a discounted or free service, examination, or treatment and charging for any additional service, examination, or treatment that is performed as a result of and within 72 hours of the initial office visit in response to such advertisement is unprofessional conduct unless such professional services rendered are as a result of a bona fide emergency. This provision may not be waived by agreement of the patient and the practitioner.

C. Advertisements of discounts shall disclose the full fee that has been discounted. The practitioner shall maintain documented evidence to substantiate the discounted fees and shall make such information available to a consumer upon request.

D. A licensee or holder of a compact privilege shall not use the term "board certified" or any similar words or phrase calculated to convey the same meaning in any advertising for his practice unless he holds certification in a clinical specialty issued by the American Board of Physical Therapy Specialties.

E. A licensee or holder of a compact privilege of the board shall not advertise information that is false, misleading, or deceptive. For an advertisement for a single practitioner, it shall be presumed that the practitioner is responsible and accountable for the validity and truthfulness of its content. For an advertisement for a practice in which there is more than one practitioner, the name of the practitioner ~~or practitioners~~ responsible and accountable for the content of the advertisement shall be documented and maintained by the practice for at least two years.

F. Documentation, scientific and otherwise, supporting claims made in an advertisement shall be maintained and available for the board's review for at least two years.

VA.R. Doc. No. R20-6119; Filed August 6, 2020, 4:19 p.m.

BOARD OF COUNSELING

Fast-Track Regulation

Titles of Regulations: **18VAC115-20. Regulations Governing the Practice of Professional Counseling (amending 18VAC115-20-20).**

18VAC115-30. Regulations Governing the Certification of Substance Abuse Counselors and Substance Abuse Counseling Assistants (amending 18VAC115-30-30).

18VAC115-40. Regulations Governing the Certification of Rehabilitation Providers (amending 18VAC115-40-20).

18VAC115-50. Regulations Governing the Practice of Marriage and Family Therapy (amending 18VAC115-50-20).

18VAC115-60. Regulations Governing the Practice of Licensed Substance Abuse Treatment Practitioners (amending 18VAC115-60-20).

18VAC115-70. Regulations Governing the Registration of Peer Recovery Specialists (amending 18VAC115-70-20).

18VAC115-80. Regulations Governing the Registration of Qualified Mental Health Professionals (amending 18VAC115-80-20).

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: September 30, 2020.

Effective Date: October 15, 2020.

Agency Contact: Jaime Hoyle, Executive Director, Board of Counseling, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4406, FAX (804) 527-4435, or email jaime.hoyle@dhp.virginia.gov.

Basis: Regulations are promulgated under the general authority § 54.1-2400 of the Code of Virginia, which provides the Board of Counseling the authority to promulgate regulations to administer the regulatory system. The specific mandate for collection of a handling fee is found in § 2.2-4805 of the Virginia Debt Collection Act (§ 2.2-4800 et seq. of the Code of Virginia).

Purpose: The amendments conform the regulations to the Virginia Debt Collection Act, in which the General Assembly has determined that the cost for handling returned checks or dishonored credit or debit cards is $50. The department and its regulatory boards license and discipline health care practitioners with the mission of protecting the health and safety of the public, which must be supported by licensing and miscellaneous fees.

Rationale for Using Fast-Track Rulemaking Process: The Office of the Comptroller has advised the department that the costs for handling a returned check or dishonored credit card or debit card payment is $50, as set forth in § 2.2-4805 of the Code of Virginia. Therefore, all board regulations are being amended to delete the returned check fee of $35 and replace it with a handling fee of $50. The Office of the Attorney General

concurs with amending regulations accordingly but advised that it is not an exempt action.

The rulemaking is concurring with financial policy of the Commonwealth and is not expected to be controversial.

Substance: All board regulations are being amended to delete the returned check fee of $35 and replace it with a handling fee of $50 for a returned check, dishonored credit card or dishonored debit card.

Issues: There are no primary advantages or disadvantages to the public.

The primary advantage to the department is compliance with auditors from the Office of the Comptroller.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Counseling (Board) proposes to amend 18VAC115-20 Regulations Governing the Practice of Professional Counseling, 18VAC115-30 Regulations Governing the Certification of Substance Abuse Counselors, 18VAC115-40 Regulations Governing the Certification of Rehabilitation Providers, 18VAC115-50 Regulations Governing the Practice of Marriage and Family Therapy, 18VAC115-60 Regulations Governing the Licensure of Substance Abuse Practitioners, 18VAC115-70 Regulations Governing the Registration of Peer Recovery Specialists, and 18VAC115-80 Regulations Governing the Registration of Qualified Mental Health Professionals to state that the handling fee for a returned check or dishonored credit card or debit card is $50, replacing a current $35 charge.

Background. Code of Virginia § 2.2-614.1 specifies that:

> If any check or other means of payment tendered to a public body in the course of its duties is not paid by the financial institution on which it is drawn, because of insufficient funds in the account of the drawer, no account is in the name of the drawer, or the account of the drawer is closed, and the check or other means of payment is returned to the public body unpaid, the amount thereof shall be charged to the person on whose account it was received, and his liability and that of his sureties, shall be as if he had never offered any such payment. A penalty of $35 or the amount of any costs, whichever is greater, shall be added to such amount.

Based on this Code provision, the current regulations include a $35 returned check charge.

On the other hand, Code of Virginia § 2.2-4805 specifies that "Returned checks or dishonored credit card or debit card payments shall incur a handling fee of $50 unless a higher amount is authorized by statute to be added to the principal account balance." According to the Department of Health Professions (DHP), the Office of the Attorney General has advised that the handling fee of $50 in Virginia Code 2.2-4805 governs.

Estimated Benefits and Costs. Based on the view of the Office of the Attorney General that Virginia Code 2.2-4805 prevails, the fee by law for a returned check or dishonored credit card or debit card is $50. The Board's proposal therefore conforms the regulations to current law. DHP has indicated that in practice they will continue to charge the $35 fee until this proposed regulatory action becomes effective. The services provided by DHP are funded by the fees paid by the regulated individuals and entities. To the extent that the $50 fee more accurately represents the cost incurred by DHP, the proposed change may be beneficial in that the cost would need not be subsidized by other regulants who did not cause the cost to be incurred.

Businesses and Other Entities Affected. The proposal pertains to fee-paying individuals regulated by the Board. As of September 30, 2019, there were 1,899 certified substance abuse counselors, 894 licensed marriage and family therapists, 6004 licensed professional counselors, 344 marriage and family therapist residents, 9,030 post graduate trainees, 7,316 qualified mental health professionals-adult, 6,501 qualified mental health professionals-child, 253 registered peer recovery specialists, 228 rehabilitation providers, 241 substance abuse counseling assistants, 1,892 substance abuse trainees, 265 substance abuse treatment practitioners, 6 substance abuse treatment residents, and 2,715 qualified mental health professional trainees. The Board does not directly regulate businesses. If any of these individuals have a check returned or a credit card or debit card dishonored, the proposal would increase their cost by $15. Since adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits of the proposal exceed the costs for all entities combined, adverse impact is indicated for this action.

Small Businesses[1] Affected. No small businesses are directly affected by the proposal.

Localities[2] Affected.[3] The proposal does not disproportionately affect any particular localities or introduce costs for local governments.

Projected Impact on Employment. The proposal does not affect employment.

Effects on the Use and Value of Private Property. The proposal does not substantially affect the use and value of private property or real estate development costs.

[1]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."

[2]"Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

[3]§ 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

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

Summary:

The amendments replace the returned check fee of $35 with a fee of $50 for handling a returned check or dishonored credit card or debit card payment in compliance with § 2.2-4805 of the Code of Virginia.

18VAC115-20-20. Fees required by the board.

A. The board has established the following fees applicable to licensure as a professional counselor:

Active annual license renewal	$130
Inactive annual license renewal	$65
Initial licensure by examination: Application processing and initial licensure	$175
Initial licensure by endorsement: Application processing and initial licensure	$175
Registration of supervision	$65
Add or change supervisor	$30
Duplicate license	$10
Verification of licensure to another jurisdiction	$30
Late renewal	$45
Reinstatement of a lapsed license	$200
Replacement of or additional wall certificate	$25
Returned check or dishonored credit card or debit card	~~$35~~ $50
Reinstatement following revocation or suspension	$600

B. All fees are nonrefundable.

C. Examination fees shall be determined and made payable as determined by the board.

18VAC115-30-30. Fees required by the board.

A. The board has established the following fees applicable to the certification of substance abuse counselors and substance abuse counseling assistants:

Substance abuse counselor annual certification renewal	$65
Substance abuse counseling assistant annual certification renewal	$50
Substance abuse counselor initial certification by examination: Application processing and initial certification	$115
Substance abuse counseling assistant initial certification by examination: Application processing and initial certification	$115
Initial certification by endorsement of substance abuse counselors: Application processing and initial certification	$115
Registration of supervision	$65
Add or change to supervision	$30
Duplicate certificate	$10
Certificate verification	$25
Late renewal	$25
Reinstatement of a lapsed certificate	$125
Replacement of or additional wall certificate	$25
Returned check or dishonored credit card or debit card	~~$35~~ $50
Reinstatement following revocation or suspension	$600

B. All fees are nonrefundable.

C. Examination fees shall be paid directly to the examination services according to its requirements.

18VAC115-40-20. Fees required by the board.

A. The board has established the following fees applicable to the certification of rehabilitation providers:

Initial certification by examination: Processing and initial certification	$115
Initial certification by endorsement: Processing and initial certification	$115
Certification renewal	$65
Duplicate certificate	$10
Late renewal	$25
Reinstatement of a lapsed certificate	$125
Replacement of or additional wall certificate	$25
Returned check or dishonored credit card or debit card	~~$35~~ $50
Reinstatement following revocation or suspension	$600

B. Fees shall be paid to the board. All fees are nonrefundable.

18VAC115-50-20. Fees.

A. The board has established fees for the following:

Registration of supervision	$65
Add or change supervisor	$30
Initial licensure by examination: Processing and initial licensure	$175
Initial licensure by endorsement: Processing and initial licensure	$175
Active annual license renewal	$130
Inactive annual license renewal	$65
Penalty for late renewal	$45
Reinstatement of a lapsed license	$200
Verification of license to another jurisdiction	$30
Additional or replacement licenses	$10
Additional or replacement wall certificates	$25
Returned check or dishonored credit card or debit card	~~$35~~ $50
Reinstatement following revocation or suspension	$600

B. All fees are nonrefundable.

C. Examination fees shall be determined and made payable as determined by the board.

18VAC115-60-20. Fees required by the board.

A. The board has established the following fees applicable to licensure as a substance abuse treatment practitioner:

Registration of supervision (initial)	$65
Add/change supervisor	$30
Initial licensure by examination: Processing and initial licensure	$175
Initial licensure by endorsement: Processing and initial licensure	$175
Active annual license renewal	$130
Inactive annual license renewal	$65
Duplicate license	$10
Verification of license to another jurisdiction	$30
Late renewal	$45
Reinstatement of a lapsed license	$200
Replacement of or additional wall certificate	$25
Returned check or dishonored credit card or debit card	~~$35~~ $50
Reinstatement following revocation or suspension	$600

B. All fees are nonrefundable.

C. Examination fees shall be determined and made payable as determined by the board.

18VAC115-70-20. Fees required by the board.

A. The board has established the following fees applicable to the registration of peer recovery specialists:

Registration	$30
Renewal of registration	$30
Late renewal	$20
Reinstatement of a lapsed registration	$60
Duplicate certificate of registration	$10
Returned check or dishonored credit card or debit card	~~$35~~ $50
Reinstatement following revocation or suspension	$500

B. Unless otherwise provided, fees established by the board shall not be refundable.

18VAC115-80-20. Fees required by the board.

A. The board has established the following fees applicable to the registration of qualified mental health professionals:

Registration as a QMHP-A	$50
Registration as a QMHP-C	$50
Registration as a QMHP-trainee	$25
Renewal of registration	$30
Late renewal	$20
Reinstatement of a lapsed registration	$75
Duplicate certificate of registration	$10
Returned check or dishonored credit card or debit card	~~$35~~ $50
Reinstatement following revocation or suspension	$500

B. Unless otherwise provided, fees established by the board shall not be refundable.

VA.R. Doc. No. R21-6195; Filed August 6, 2020, 1:58 p.m.

Proposed Regulation

Titles of Regulations: **18VAC115-20. Regulations Governing the Practice of Professional Counseling (amending 18VAC115-20-10, 18VAC115-20-130).**

18VAC115-30. Regulations Governing the Certification of Substance Abuse Counselors and Substance Abuse Counseling Assistants (amending 18VAC115-30-10, 18VAC115-30-140).

18VAC115-50. Regulations Governing the Practice of Marriage and Family Therapy (amending 18VAC115-50-10, 18VAC115-50-110).

18VAC115-60. Regulations Governing the Practice of Licensed Substance Abuse Treatment Practitioners (amending 18VAC115-60-10, 18VAC115-60-130).

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

Public Hearing Information:

October 9, 2020 - 9:45 a.m. - WebEx meeting - A link and instructions to access the electronic meeting will be posted at https://townhall.virginia.gov/L/ViewMeeting.cfm?MeetingID=31193 on the Virginia Regulatory Town Hall.

Public Comment Deadline: October 30, 2020.

Agency Contact: Jaime Hoyle, Executive Director, Board of Counseling, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4406, FAX (804) 527-4435, or email jaime.hoyle@dhp.virginia.gov.

Basis: Regulations are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which provides the Board of Counseling the authority to promulgate regulations to administer the regulatory system and states that such regulation "shall not conflict with the purposes and intent of ... Chapter 1 (§ 54.1-100 et seq.)" of the Code of Virginia. Section 54.1-100 of the Code of Virginia specifies that a regulation shall not be imposed except for the purpose of protection of the health, safety, and welfare of the public, which is the intent of this action.

Purpose: The purpose of this regulatory action is to specify in regulations the interpretation of the board that conversion therapy has the potential for significant harm if practiced with persons younger than 18 years of age. The regulations define the term consistent with accepted usage within the profession and consistent with policy statements by state and national professional organizations.

Substance: For the purposes of the regulatory action, "conversion therapy" or "sexual orientation change efforts" is defined as any practice or treatment that seeks to change an individual's sexual orientation or gender identity, including efforts to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of any gender. "Conversion therapy" does not include counseling that provides assistance to a person undergoing gender transition or counseling that provides acceptance, support, and understanding of a person or facilitates a person's coping, social support, and identity exploration and development, including sexual-orientation-neutral interventions to prevent or address unlawful conduct or unsafe sexual practices, as long as such counseling does not seek to change an individual's sexual orientation or gender identity in any direction.

Issues: The primary advantage to the public is protection for children who might otherwise be subjected to reparative or conversion therapy. The board does not believe there are disadvantages because practitioners can provide assistance to a person undergoing gender transition or counseling that offers acceptance, support, and understanding of a person or facilitates a person's coping, social support, and identity exploration and development.

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 Counseling (Board) proposes to amend 18VAC115-20 Regulations Governing the Practice of Professional Counseling, 18VAC115-30 Regulations Governing the Certification of Substance Abuse Counselors, 18VAC115-50 Regulations Governing the Practice of Marriage and Family Therapy, and 18VAC115-60 Regulations Governing the Licensure of Substance Abuse Professionals (regulations) in order to add a definition of "conversion therapy" and a stipulation that licensees shall not engage in conversion therapy with individuals under 18 years of age.

Background. During the 2018 General Assembly Session, Delegates Patrick A. Hope and Betsy B. Carr introduced a bill (HB 363) that provided a definition of "sexual orientation change efforts" (SOCE) and would "prohibit any health care provider or person who performs counseling as part of his training for any profession licensed by a regulatory board of the Department of Health Professions (DHP) from engaging in sexual orientation change efforts with a person under 18 years of age."[1] The bill was referred to the Committee on Health, Welfare and Institutions and assigned to a subcommittee where, in the course of their deliberations, the question was raised as to why the issue had not already been addressed by licensing boards. The bill was passed by indefinitely and left in subcommittee.

Subsequently, the President of the Board of Psychology recommended that the Director of DHP convene a workgroup to discuss the issue. The workgroup met on October 5, 2018 and included representatives from the Boards of Counseling, Medicine, Psychology and Social Work. After substantial debate, most members concurred that there was a need for more protection of children. It was agreed that each board would have to make the decision whether to promulgate regulation.

The proposed amendments mirror the language of HB 363, and define conversion therapy in some detail:

> "Conversion therapy" means any practice or treatment that seeks to change an individual's sexual orientation or gender identity, including efforts to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same gender. Conversion therapy does not include:
>
> 1. Counseling that provides assistance to a person undergoing gender transition; or
>
> 2. Counseling that provides acceptance, support, and understanding of a person or facilitates a person's coping, social support, and identity exploration and development, including sexual-orientation-neutral interventions to prevent or address unlawful conduct or unsafe sexual practices, as long as such counseling does not seek to change an individual's sexual orientation or gender identity in any direction.

This definition appears to be consistent with those adopted by the American Psychological Association, the American Psychiatric Association, and other professional associations.[2]

In general, DHP reports that licensed providers are not taught conversion therapy as part of their professional training, and that the agency has not received any complaints or reports of licensees practicing conversion therapy. However, the counseling, social work, and medical professional communities have adopted resolutions and position statements based on research conducted over the past two decades regarding the effects of conversion therapy, particularly on minors.[3,4,5] The Virginia Counselors Association specifically posted a comment at the NOIRA stage saying, "it is our position that it is unprofessional and dangerous conduct for a counselor to engage in sexual orientation change efforts, known as "conversion therapy," especially in persons under age 18."[6] Hence, the Board is proposing these amendments based on its authority to impose regulations for the protection of the health, safety, and welfare of the public. The Boards of Social Work, Psychology, Medicine, and Nursing have also initiated regulatory actions with nearly identical proposed changes.[7]

In contrast, some religious organizations continue to offer conversion therapy. The organizations, including programs aimed at teenagers and young adults, may use different terminologies such as 'ex-gay ministry', 'reparative therapy', or 'promoting healthy sexuality' but the programs seek to change the individual's sexual orientation or gender identity, thus appearing to meet the Board's definition of conversion therapy. However, religious counselors (rabbis, priests, ministers, or clergymen) are exempt from the requirement for licensure.[8] As a result, the content of this regulation would not apply to them. Accordingly, the Board has no authority to take disciplinary action against religious organizations and affiliated counselors who continue to provide conversion therapy, unless they are also licensed by the Board.

Estimated Benefits and Costs. For the reasons described above, it is unlikely that counselors licensed by the Board presently provide conversion therapy. Moreover, programs that are conducted in a religious setting by rabbis, priests, ministers or clergymen are exempt from licensure. Hence, although the proposed regulation has received 692 public comments and appears to have been controversial, it is unlikely to have substantive economic impact.

To the extent that the Board's licensees are currently engaging in conversion therapy with individuals under 18 years of age, they may now have to change their practice, lose clients, or face disciplinary action if they fail to comply with the regulation. However, as mentioned previously, conversion therapy is not an evidence-based practice and is hence not included in the curriculum at accredited counseling programs and not practiced by the vast majority of licensed professionals. Any current license-holders choosing to forfeit their licensure in favor of continuing to practice conversion therapy may continue to do so if employed as a rabbi, priest, minister or clergyman, as long as they belong to "an established and legally cognizable church, denomination or sect" and remain "accountable to its established authority."[9]

Clients under age 18, who seek to receive, or continue receiving, conversion therapy from licensed providers, and their parents, may now face certain indirect costs if they choose to find other providers. The amount of the cost would depend upon the availability of providers, including religious counselors. Conversely, children and their parents may be benefited to the degree the board's action limits the availability of conversion therapy. The degree of this benefit would depend upon the extent to which the harms cited by the professional organizations noted above would have occurred but for this regulatory action.

Businesses and Other Entities Affected. As mentioned above, some licensed practitioners who may also have been working in a religious setting may have to alter their practice or face disciplinary action, but DHP estimates that these are most likely a very small fraction of the overall number of license-holders.[10] Although DHP does not have an estimate of the number of affected providers, the agency reports that the vast majority of current license-holders likely do not engage in conversion therapy at all (in either religious or secular settings) since it is not taught by any accredited program and has been considered contrary to the "professional code of ethics" in an informal capacity for more than a decade.

Small Businesses[11] Affected. Although many licensed practitioners may be employed in a small business setting, DHP estimates that only a very small fraction of the overall number of license-holders would be affected by the regulation at all, and there is no reason to suggest that those affected are more likely to be working in a small business. Even so, the cost of complying with the regulation is unlikely to be significant, and there are no alternatives to the regulation that would

provide greater flexibility while also meeting its policy objectives.

Localities[12] Affected.[13] The proposed amendments do not introduce new costs for local governments and are unlikely to affect any locality in particular.

Projected Impact on Employment. The proposed amendments are unlikely to affect the overall number of employed Licensed Professional Counselors, Licensed Marriage and Family Therapists, Licensed Substance Abuse Treatment Providers, and Certified Substance Abuse Counselors.

Effects on the Use and Value of Private Property. The proposed amendments are unlikely to affect the use and value of private property. Real estate development costs are not affected.

[1]See http://lis.virginia.gov/cgi-bin/legp604.exe?ses=181&typ=bil&val=hb363

[2]See https://williamsinstitute.law.ucla.edu/wp-content/uploads/Conversion-Therapy-LGBT-Youth-Jan-2018.pdf?response_type=embed and citations therein.

[3]See https://www.apa.org/about/policy/sexual-orientation For instance, the American Psychological Association convened a task force whose 2009 report Appropriate Therapeutic Responses to Sexual Orientation states "…Thus, the results of scientifically valid research indicate that it is unlikely that individuals will be able to reduce same-sex attractions or increase other-sex sexual attractions through SOCE. We found that there was some evidence to indicate that individuals experienced harm from SOCE." See https://www.apa.org/pi/lgbt/resources/therapeutic-response.pdf (Executive Summary)

[4]See https://www.psychiatry.org/newsroom/news-releases/apa-reiterates-strong-opposition-to-conversion-therapy. In a 2013 Position Statement, the American Psychiatric Association stated that it "does not believe that same-sex orientation should or needs to be changed, and efforts to do so represent a significant risk of harm by subjecting individuals to forms of treatment which have not been scientifically validated and by undermining self-esteem when sexual orientation fails to change. No credible evidence exists that any mental health intervention can reliably and safely change sexual orientation; nor, from a mental health perspective does sexual orientation need to be changed." Downloaded from https://www.psychiatry.org/home/policy-finder

[5]See https://www.ama-assn.org/press-center/press-releases/ama-adopts-new-policies-during-first-day-voting-interim-meeting

[6]See https://townhall.virginia.gov/L/viewcomments.cfm?commentid=75098.

[7]See Board of Social Work Action 5241 (https://townhall.virginia.gov/l/ViewAction.cfm?actionid=5241), Board of Psychology Action 5218 (https://townhall.virginia.gov/l/ViewAction.cfm?actionid=5218) and Board of Medicine Action 5412 (https://townhall.virginia.gov/L/viewaction.cfm?actionid=5412) and Board of Nursing Action 5430 (https://townhall.virginia.gov/l/ViewAction.cfm?actionid=5430).

[8]As per COV § 54.1-3501 *Exemption from requirements of licensure*: The activities, including marriage and family therapy, counseling, or substance abuse treatment, of rabbis, priests, ministers or clergymen of any religious denomination or sect when such activities are within the scope of the performance of their regular or specialized ministerial duties, and no separate charge is made or when such activities are performed, whether with or without charge, for or under auspices or sponsorship, individually or in conjunction with others, of an established and legally cognizable church, denomination or sect, and the person rendering service remains accountable to its established authority.

[9]Ibid.

[10]According to the ABD, the overall numbers of licensees are as follows: 5,784 Licensed Professional Counselors, 840 Marriage and Family Therapists, 260 Licensed Substance Abuse Treatment Providers, and 1,876 Certified Substance Abuse Counselors.

[11]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."

[12]"Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

[13]§ 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

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

Summary:

The amendments define conversion therapy and establish that the standard of practice for persons licensed, certified, or registered by the board preclude the provision of conversion therapy to persons younger than 18 years of age.

Part I
General Provisions

18VAC115-20-10. Definitions.

A. The following words and terms when used in this chapter shall have the meaning ascribed to them in § 54.1-3500 of the Code of Virginia:

"Board"

"Counseling"

"Professional counselor"

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

"Ancillary counseling services" means activities such as case management, recordkeeping, referral, and coordination of services.

"Applicant" means any individual who has submitted an official application and paid the application fee for licensure as a professional counselor.

"CACREP" means the Council for Accreditation of Counseling and Related Educational Programs.

"Candidate for licensure" means a person who has satisfactorily completed all educational and experience requirements for licensure and has been deemed eligible by the board to sit for its examinations.

"Clinical counseling services" means activities such as assessment, diagnosis, treatment planning, and treatment implementation.

"Competency area" means an area in which a person possesses knowledge and skill and the ability to apply them in the clinical setting.

"Conversion therapy" means any practice or treatment that seeks to change an individual's sexual orientation or gender

identity, including efforts to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same gender. Conversion therapy does not include:

1. Counseling that provides assistance to a person undergoing gender transition; or

2. Counseling that provides acceptance, support, and understanding of a person or facilitates a person's coping, social support, and identity exploration and development, including sexual-orientation-neutral interventions to prevent or address unlawful conduct or unsafe sexual practices, as long as such counseling does not seek to change an individual's sexual orientation or gender identity in any direction.

"CORE" means Council on Rehabilitation Education.

"Exempt setting" means an agency or institution in which licensure is not required to engage in the practice of counseling according to the conditions set forth in § 54.1-3501 of the Code of Virginia.

"Face-to-face" means the in-person delivery of clinical counseling services for a client.

"Group supervision" means the process of clinical supervision of no more than six persons in a group setting provided by a qualified supervisor.

"Internship" means a formal academic course from a regionally accredited college or university in which supervised, practical experience is obtained in a clinical setting in the application of counseling principles, methods, and techniques.

"Jurisdiction" means a state, territory, district, province, or country that has granted a professional certificate or license to practice a profession, use a professional title, or hold oneself out as a practitioner of that profession.

"Nonexempt setting" means a setting that does not meet the conditions of exemption from the requirements of licensure to engage in the practice of counseling as set forth in § 54.1-3501 of the Code of Virginia.

"Regional accrediting agency" means one of the regional accreditation agencies recognized by the U.S. Secretary of Education responsible for accrediting senior postsecondary institutions.

"Residency" means a postgraduate, supervised, clinical experience registered with the board.

"Resident" means an individual who has submitted a supervisory contract and has received board approval to provide clinical services in professional counseling under supervision.

"Supervision" means the ongoing process performed by a supervisor who monitors the performance of the person supervised and provides regular, documented individual or group consultation, guidance, and instruction that is specific to the clinical counseling services being performed with respect to the clinical skills and competencies of the person supervised.

Part V

Standards of Practice; Unprofessional Conduct; Disciplinary Actions; Reinstatement

18VAC115-20-130. Standards of practice.

A. The protection of the public health, safety, and welfare and the best interest of the public shall be the primary guide in determining the appropriate professional conduct of all persons whose activities are regulated by the board. Regardless of the delivery method, whether in person, by phone, or electronically, these standards shall apply to the practice of counseling.

B. Persons licensed or registered by the board shall:

1. Practice in a manner that is in the best interest of the public and does not endanger the public health, safety, or welfare;

2. Practice only within the boundaries of their competence, based on their education, training, supervised experience, and appropriate professional experience and represent their education, training, and experience accurately to clients;

3. Stay abreast of new counseling information, concepts, applications, and practices that are necessary to providing appropriate, effective professional services;

4. Be able to justify all services rendered to clients as necessary and appropriate for diagnostic or therapeutic purposes;

5. Document the need for and steps taken to terminate a counseling relationship when it becomes clear that the client is not benefiting from the relationship. Document the assistance provided in making appropriate arrangements for the continuation of treatment for clients, when necessary, following termination of a counseling relationship;

6. Make appropriate arrangements for continuation of services, when necessary, during interruptions such as vacations, unavailability, relocation, illness, and disability;

7. Disclose to clients all experimental methods of treatment and inform clients of the risks and benefits of any such treatment. Ensure that the welfare of the clients is in no way compromised in any experimentation or research involving those clients;

8. Neither accept nor give commissions, rebates, or other forms of remuneration for referral of clients for professional services;

9. Inform clients of the purposes, goals, techniques, procedures, limitations, potential risks, and benefits of services to be performed; the limitations of confidentiality; and other pertinent information when counseling is initiated and throughout the counseling process as necessary. Provide clients with accurate information regarding the implications of diagnosis, the intended use of tests and reports, fees, and billing arrangements;

10. Select tests for use with clients that are valid, reliable, and appropriate and carefully interpret the performance of individuals not represented in standardized norms;

11. Determine whether a client is receiving services from another mental health service provider, and if so, refrain from providing services to the client without having an informed consent discussion with the client and having been granted communication privileges with the other professional;

12. Use only in connection with one's practice as a mental health professional those educational and professional degrees or titles that have been earned at a college or university accredited by an accrediting agency recognized by the U.S. Department of Education, or credentials granted by a national certifying agency, and that are counseling in nature; ~~and~~

13. Advertise professional services fairly and accurately in a manner that is not false, misleading, or deceptive; and

14. Not engage in conversion therapy with any person younger than 18 years of age.

C. In regard to patient records, persons licensed by the board shall:

1. Maintain written or electronic clinical records for each client to include treatment dates and identifying information to substantiate diagnosis and treatment plan, client progress, and termination;

2. Maintain client records securely, inform all employees of the requirements of confidentiality, and provide for the destruction of records that are no longer useful in a manner that ensures client confidentiality;

3. Disclose or release records to others only with the client's expressed written consent or that of the client's legally authorized representative in accordance with § 32.1-127.1:03 of the Code of Virginia;

4. Ensure confidentiality in the usage of client records and clinical materials by obtaining informed consent from the client or the client's legally authorized representative before (i) videotaping, (ii) audio recording, (iii) permitting third party observation, or (iv) using identifiable client records and clinical materials in teaching, writing, or public presentations; and

5. Maintain client records for a minimum of five years or as otherwise required by law from the date of termination of the counseling relationship with the following exceptions:

a. At minimum, records of a minor child shall be maintained for five years after attaining the age of majority (18 years) or 10 years following termination, whichever comes later;

b. Records that are required by contractual obligation or federal law to be maintained for a longer period of time; or

c. Records that have been transferred to another mental health service provider or given to the client or his legally authorized representative.

D. In regard to dual relationships, persons licensed by the board shall:

1. Avoid dual relationships with clients that could impair professional judgment or increase the risk of harm to clients. Examples of such relationships include~~, but are not limited to,~~ familial, social, financial, business, bartering, or close personal relationships with clients. Counselors shall take appropriate professional precautions when a dual relationship cannot be avoided, such as informed consent, consultation, supervision, and documentation to ensure that judgment is not impaired and no exploitation occurs;

2. Not engage in any type of romantic relationships or sexual intimacies with clients or those included in a collateral relationship with the client and not counsel persons with whom they have had a romantic relationship or sexual intimacy. Counselors shall not engage in romantic relationships or sexual intimacies with former clients within a minimum of five years after terminating the counseling relationship. Counselors who engage in such relationship or intimacy after five years following termination shall have the responsibility to examine and document thoroughly that such relations do not have an exploitive nature, based on factors such as duration of counseling, amount of time since counseling, termination circumstances, client's personal history and mental status, or adverse impact on the client. A client's consent to, initiation of, or participation in sexual behavior or involvement with a counselor does not change the nature of the conduct nor lift the regulatory prohibition;

3. Not engage in any romantic relationship or sexual intimacy or establish a counseling or psychotherapeutic relationship with a supervisee or student. Counselors shall avoid any nonsexual dual relationship with a supervisee or student in which there is a risk of exploitation or potential harm to the supervisee or student or the potential for interference with the supervisor's professional judgment; and

4. Recognize conflicts of interest and inform all parties of the nature and directions of loyalties and responsibilities involved.

E. Persons licensed by this board shall report to the board known or suspected violations of the laws and regulations governing the practice of professional counseling.

F. Persons licensed by the board shall advise their clients of their right to report to the Department of Health Professions any information of which the licensee may become aware in his professional capacity indicating that there is a reasonable probability that a person licensed or certified as a mental health service provider, as defined in § 54.1-2400.1 of the Code of Virginia, may have engaged in unethical, fraudulent, or unprofessional conduct as defined by the pertinent licensing statutes and regulations.

Part I
General Provisions

18VAC115-30-10. Definitions.

A. The following words and terms when used in this chapter shall have the meaning ascribed to them in § 54.1-3500 of the Code of Virginia:

"Board"

"Certified substance abuse counselor"

"Certified substance abuse counseling assistant"

"Licensed substance abuse treatment practitioner"

"Practice of substance abuse treatment"

"Substance abuse" and "substance dependence"

"Substance abuse treatment"

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

"Applicant" means an individual who has submitted a completed application with documentation and the appropriate fees to be examined for certification as a substance abuse counselor or substance abuse counseling assistant.

"Candidate" means a person who has been approved to take the examinations for certification as a substance abuse counselor or substance abuse counseling assistant.

"Clinical supervision" means the ongoing process performed by a clinical supervisor who monitors the performance of the person supervised and provides regular, documented face-to-face consultation, guidance and education with respect to the clinical skills and competencies of the person supervised.

"Clinical supervisor" means one who provides case-related supervision, consultation, education and guidance for the applicant. The supervisor must be credentialed as defined in 18VAC115-30-60 C.

"Competency area" means an area in which a person possesses knowledge and skill and the ability to apply them in the clinical setting.

"Contact hour" means the amount of credit awarded for 60 minutes of participation in and successful completion of a continuing education program.

"Conversion therapy" means any practice or treatment that seeks to change an individual's sexual orientation or gender identity, including efforts to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same gender. Conversion therapy does not include:

1. Counseling that provides assistance to a person undergoing gender transition; or

2. Counseling that provides acceptance, support, and understanding of a person or facilitates a person's coping, social support, and identity exploration and development, including sexual-orientation-neutral interventions to prevent or address unlawful conduct or unsafe sexual practices, as long as such counseling does not seek to change an individual's sexual orientation or gender identity in any direction.

"Didactic" means teaching-learning methods that impart facts and information, usually in the form of one-way communication (includes directed readings and lectures).

"Group supervision" means the process of clinical supervision of no less than two nor more than six persons in a group setting provided by a clinical supervisor.

"NAADAC" means the Association of Addiction Professionals.

"NCC AP" means the National Certification Commission for Addiction Professionals, an affiliate of NAADAC.

"Regionally accredited" means accredited by one of the regional accreditation agencies recognized by the U.S. Department of Education as responsible for accrediting senior postsecondary institutions.

"Substance abuse counseling" means applying a counseling process, treatment strategies and rehabilitative services to help an individual to:

1. Understand his substance use, abuse, or dependency; and

2. Change his drug-taking behavior so that it does not interfere with effective physical, psychological, social, or vocational functioning.

Part V
Standards of Practice; Disciplinary Actions; Reinstatement

18VAC115-30-140. Standards of practice.

A. The protection of the public health, safety, and welfare and the best interest of the public shall be the primary guide in determining the appropriate professional conduct of all persons whose activities are regulated by the board.

B. Persons certified by the board shall:

1. Practice in a manner that is in the best interest of the public and does not endanger the public health, safety, or welfare.

2. Be able to justify all services rendered to clients as necessary for diagnostic or therapeutic purposes.

3. Practice only within the competency area for which they are qualified by training or experience.

4. Report to the board known or suspected violations of the laws and regulations governing the practice of certified substance abuse counselors or certified substance abuse counseling assistants.

5. Neither accept nor give commissions, rebates, or other forms of remuneration for referral of clients for professional services. Make appropriate consultations and referrals based on the best interest of clients.

6. Stay abreast of new developments, concepts, and practices that are necessary to providing appropriate services.

7. Document the need for and steps taken to terminate a counseling relationship when it becomes clear that the client is not benefiting from the relationship. Document the assistance provided in making arrangements for the continuation of treatment for clients when necessary, following termination of a counseling relationship.

8. Not willfully or negligently breach the confidentiality between a practitioner and a client. A breach of confidentiality that is required or permitted by applicable law or beyond the control of the practitioner shall not be considered negligent or willful.

9. Not engage in conversion therapy with any person younger than 18 years of age.

C. In regard to client records, persons certified by the board shall:

1. Disclose counseling records to others only in accordance with applicable law.

2. Maintain client records securely, inform all employees of the requirements of confidentiality, and provide for the destruction of records that are no longer useful in a manner that ensures client confidentiality.

3. Ensure confidentiality in the usage of client records and clinical materials by obtaining informed consent from the client or the client's legally authorized representative before (i) videotaping, (ii) audio recording, (iii) permitting third-party observation, or (iv) using identifiable client records and clinical materials in teaching, writing, or public presentations.

4. Maintain timely, accurate, legible, and complete written or electronic records for each client, to include counseling dates and identifying information to substantiate the substance abuse counseling plan, client progress, and termination.

5. Maintain client records for a minimum of five years or as otherwise required by law from the date of termination of the counseling relationship with the following exceptions:

a. At minimum, records of a minor child shall be maintained for five years after attaining the age of majority (18 years);

b. Records that are required by contractual obligation or federal law to be maintained for a longer period of time; or

c. Records that have been transferred to another mental health service provider or given to the client or the client's legally authorized representative.

D. In regard to dual relationships, persons certified by the board shall:

1. Not engage in dual relationships with clients, former clients, supervisees, and supervisors that are harmful to the client's or supervisee's well-being or that would impair the substance abuse counselor's, substance abuse counseling assistant's, or supervisor's objectivity and professional judgment or increase the risk of client or supervisee exploitation. This prohibition includes such activities as counseling close friends, former sexual partners, employees, or relatives or engaging in business relationships with clients.

2. Not engage in sexual intimacies or romantic relationships with current clients or supervisees. For at least five years after cessation or termination of professional services, certified substance abuse counselors and certified substance abuse counseling assistants shall not engage in sexual intimacies or romantic relationships with a client or those included in collateral therapeutic services. Because sexual or romantic relationships are potentially exploitative, certified substance abuse counselors and certified substance abuse counseling assistants shall bear the burden of demonstrating that there has been no exploitation. A client's consent to, initiation of, or participation in sexual behavior or involvement with a certified substance abuse counselor or certified substance abuse counseling assistants does not change the nature of the conduct nor lift the regulatory prohibition.

3. Recognize conflicts of interest and inform all parties of obligations, responsibilities, and loyalties to third parties.

E. Upon learning of evidence that indicates a reasonable probability that another mental health provider is or may be guilty of a violation of standards of conduct as defined in statute or regulation, persons certified by the board shall advise their clients of their right to report such misconduct to the Department of Health Professions in accordance with § 54.1-2400.4 of the Code of Virginia.

18VAC115-50-10. Definitions.

A. The following words and terms when used in this chapter shall have the meaning ascribed to them in § 54.1-3500 of the Code of Virginia: (i) "board," (ii) "marriage and family therapy," (iii) "marriage and family therapist," and (iv) "practice of marriage and family therapy."

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

"Ancillary counseling services" means activities such as case management, recordkeeping, referral, and coordination of services.

"CACREP" means the Council for Accreditation of Counseling and Related Educational Programs.

"COAMFTE" means the Commission on Accreditation for Marriage and Family Therapy Education.

"Clinical marriage and family services" means activities such as assessment, diagnosis, and treatment planning and treatment implementation for couples and families.

"Conversion therapy" means any practice or treatment that seeks to change an individual's sexual orientation or gender identity, including efforts to change behaviors or gender expressions or to eliminate or reduce sexual or romantic

attractions or feelings toward individuals of the same gender. Conversion therapy does not include:

1. Counseling that provides assistance to a person undergoing gender transition; or

2. Counseling that provides acceptance, support, and understanding of a person or facilitates a person's coping, social support, and identity exploration and development, including sexual-orientation-neutral interventions to prevent or address unlawful conduct or unsafe sexual practices, as long as such counseling does not seek to change an individual's sexual orientation or gender identity in any direction.

"Face-to-face" means the in-person delivery of clinical marriage and family services for a client.

"Internship" means a formal academic course from a regionally accredited university in which supervised practical experience is obtained in a clinical setting in the application of counseling principles, methods, and techniques.

"Regional accrediting agency" means one of the regional accreditation agencies recognized by the U.S. Secretary of Education as responsible for accrediting senior post-secondary institutions and training programs.

"Residency" means a postgraduate, supervised clinical experience registered with the board.

"Resident" means an individual who has submitted a supervisory contract to the board and has received board approval to provide clinical services in marriage and family therapy under supervision.

"Supervision" means an ongoing process performed by a supervisor who monitors the performance of the person supervised and provides regular, documented, individual or group consultation, guidance, and instruction with respect to the clinical skills and competencies of the person or persons being supervised.

18VAC115-50-110. Standards of practice.

A. The protection of the public's health, safety, and welfare and the best interest of the public shall be the primary guide in determining the appropriate professional conduct of all persons whose activities are regulated by the board. Regardless of the delivery method, whether in person, by phone or electronically, these standards shall apply to the practice of marriage and family therapy.

B. Persons licensed or registered by the board shall:

1. Practice in a manner that is in the best interest of the public and does not endanger the public health, safety, or welfare;

2. Practice only within the boundaries of their competence, based on their education, training, supervised experience, and appropriate professional experience and represent their education, training, and experience accurately to clients;

3. Stay abreast of new marriage and family therapy information, concepts, applications, and practices that are necessary to providing appropriate, effective professional services;

4. Be able to justify all services rendered to clients as necessary and appropriate for diagnostic or therapeutic purposes;

5. Document the need for and steps taken to terminate a counseling relationship when it becomes clear that the client is not benefiting from the relationship. Document the assistance provided in making appropriate arrangements for the continuation of treatment for clients, when necessary, following termination of a counseling relationship;

6. Make appropriate arrangements for continuation of services, when necessary, during interruptions such as vacations, unavailability, relocation, illness, and disability;

7. Disclose to clients all experimental methods of treatment and inform client of the risks and benefits of any such treatment. Ensure that the welfare of the client is not compromised in any experimentation or research involving those clients;

8. Neither accept nor give commissions, rebates or other forms of remuneration for referral of clients for professional services;

9. Inform clients of the purposes, goals, techniques, procedures, limitations, potential risks, and benefits of services to be performed; the limitations of confidentiality; and other pertinent information when counseling is initiated and throughout the counseling process as necessary. Provide clients with accurate information regarding the implications of diagnosis, the intended use of tests and reports, fees, and billing arrangements;

10. Select tests for use with clients that are valid, reliable, and appropriate and carefully interpret the performance of individuals not represented in standardized norms;

11. Determine whether a client is receiving services from another mental health service provider, and if so, refrain from providing services to the client without having an informed consent discussion with the client and having been granted communication privileges with the other professional;

12. Use only in connection with one's practice as a mental health professional those educational and professional degrees or titles that have been earned at a college or university accredited by an accrediting agency recognized by the U.S. Department of Education, or credentials granted by a national certifying agency, and that are counseling in nature; ~~and~~

13. Advertise professional services fairly and accurately in a manner that is not false, misleading or deceptive; and

14. Not engage in conversion therapy with any person younger than 18 years of age.

C. In regard to patient records, persons licensed by the board shall:

1. Maintain written or electronic clinical records for each client to include treatment dates and identifying information to substantiate diagnosis and treatment plan, client progress, and termination;

2. Maintain client records securely, inform all employees of the requirements of confidentiality and provide for the destruction of records that are no longer useful in a manner that ensures client confidentiality;

3. Disclose or release client records to others only with clients' expressed written consent or that of their legally authorized representative in accordance with § 32.1-127.1:03 of the Code of Virginia;

4. Ensure confidentiality in the usage of client records and clinical materials by obtaining informed consent from clients or their legally authorized representative before (i) videotaping, (ii) audio recording, (iii) permitting third party observation, or (iv) using identifiable client records and clinical materials in teaching, writing, or public presentations; and

5. Maintain client records for a minimum of five years or as otherwise required by law from the date of termination of the counseling relationship with the following exceptions:

a. At minimum, records of a minor child shall be maintained for five years after attaining the age of majority (18 years) or 10 years following termination, whichever comes later;

b. Records that are required by contractual obligation or federal law to be maintained for a longer period of time; or

c. Records that have transferred to another mental health service provider or given to the client or his legally authorized representative.

D. In regard to dual relationships, persons licensed by the board shall:

1. Avoid dual relationships with clients that could impair professional judgment or increase the risk of harm to clients. Examples of such relationships include~~, but are not limited to,~~ familial, social, financial, business, bartering, or close personal relationships with clients. Marriage and family therapists shall take appropriate professional precautions when a dual relationship cannot be avoided, such as informed consent, consultation, supervision, and documentation to ensure that judgment is not impaired and no exploitation occurs;

2. Not engage in any type of romantic relationships or sexual intimacies with clients or those included in a collateral relationship with the client and also not counsel persons with whom they have had a sexual intimacy or romantic relationship. Marriage and family therapists shall not engage in romantic relationships or sexual intimacies with former clients within a minimum of five years after terminating the counseling relationship. Marriage and family therapists who engage in such relationship or intimacy after five years following termination shall have the responsibility to examine and document thoroughly that such relations do not have an exploitive nature, based on factors such as duration of counseling, amount of time since counseling, termination circumstances, client's personal history and mental status, or adverse impact on the client. A client's consent to, initiation of or participation in sexual behavior or involvement with a marriage and family therapist does not change the nature of the conduct nor lift the regulatory prohibition;

3. Not engage in any romantic relationships or sexual relationship or establish a counseling or psychotherapeutic relationship with a supervisee or student. Marriage and family therapists shall avoid any nonsexual dual relationship with a supervisee or student in which there is a risk of exploitation or potential harm to the supervisee or student or the potential for interference with the supervisor's professional judgment; and

4. Recognize conflicts of interest and inform all parties of the nature and directions of loyalties and responsibilities involved.

E. Persons licensed by this board shall report to the board known or suspected violations of the laws and regulations governing the practice of marriage and family therapy.

F. Persons licensed by the board shall advise their clients of their right to report to the Department of Health Professions any information of which the licensee may become aware in his professional capacity indicating that there is a reasonable probability that a person licensed or certified as a mental health service provider, as defined in § 54.1-2400.1 of the Code of Virginia, may have engaged in unethical, fraudulent or unprofessional conduct as defined by the pertinent licensing statutes and regulations.

Part I
General Provisions

18VAC115-60-10. Definitions.

A. The following words and terms when used in this chapter shall have the meaning ascribed to them in § 54.1-3500 of the Code of Virginia:

"Board"

"Licensed substance abuse treatment practitioner"

"Substance abuse"

"Substance abuse treatment"

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

"Ancillary services" means activities such as case management, recordkeeping, referral, and coordination of services.

"Applicant" means any individual who has submitted an official application and paid the application fee for licensure as a substance abuse treatment practitioner.

"CACREP" means the Council for Accreditation of Counseling and Related Educational Programs.

"Candidate for licensure" means a person who has satisfactorily completed all educational and experience requirements for licensure and has been deemed eligible by the board to sit for its examinations.

"Clinical substance abuse treatment services" means activities such as assessment, diagnosis, treatment planning, and treatment implementation.

"COAMFTE" means the Commission on Accreditation for Marriage and Family Therapy Education.

"Competency area" means an area in which a person possesses knowledge and skill and the ability to apply them in the clinical setting.

"Conversion therapy" means any practice or treatment that seeks to change an individual's sexual orientation or gender identity, including efforts to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of the same gender. Conversion therapy does not include:

1. Counseling that provides assistance to a person undergoing gender transition; or

2. Counseling that provides acceptance, support, and understanding of a person or facilitates a person's coping, social support, and identity exploration and development, including sexual-orientation-neutral interventions to prevent or address unlawful conduct or unsafe sexual practices, as long as such counseling does not seek to change an individual's sexual orientation or gender identity in any direction.

"Exempt setting" means an agency or institution in which licensure is not required to engage in the practice of substance abuse treatment according to the conditions set forth in § 54.1-3501 of the Code of Virginia.

"Face-to-face" means the in-person delivery of clinical substance abuse treatment services for a client.

"Group supervision" means the process of clinical supervision of no more than six persons in a group setting provided by a qualified supervisor.

"Internship" means a formal academic course from a regionally accredited university in which supervised, practical experience is obtained in a clinical setting in the application of counseling principles, methods and techniques.

"Jurisdiction" means a state, territory, district, province, or country ~~which~~ that has granted a professional certificate or license to practice a profession, use a professional title, or hold oneself out as a practitioner of that profession.

"Nonexempt setting" means a setting ~~which~~ that does not meet the conditions of exemption from the requirements of licensure to engage in the practice of substance abuse treatment as set forth in § 54.1-3501 of the Code of Virginia.

"Regional accrediting agency" means one of the regional accreditation agencies recognized by the U.S. Secretary of Education responsible for accrediting senior postsecondary institutions.

"Residency" means a postgraduate, supervised, clinical experience registered with the board.

"Resident" means an individual who has submitted a supervisory contract and has received board approval to provide clinical services in substance abuse treatment under supervision.

"Supervision" means the ongoing process performed by a supervisor who monitors the performance of the person supervised and provides regular, documented individual or group consultation, guidance, and instruction with respect to the clinical skills and competencies of the person supervised.

Part V

Standards of Practice; Unprofessional Conduct; Disciplinary Actions; Reinstatement

18VAC115-60-130. Standards of practice.

A. The protection of the public health, safety, and welfare and the best interest of the public shall be the primary guide in determining the appropriate professional conduct of all persons whose activities are regulated by the board. Regardless of the delivery method, whether in person, by phone or electronically, these standards shall apply to the practice of substance abuse treatment.

B. Persons licensed or registered by the board shall:

1. Practice in a manner that is in the best interest of the public and does not endanger the public health, safety, or welfare;

2. Practice only within the boundaries of their competence, based on their education, training, supervised experience and appropriate professional experience and represent their education, training and experience accurately to clients;

3. Stay abreast of new substance abuse treatment information, concepts, application, and practices that are necessary to providing appropriate, effective professional services;

4. Be able to justify all services rendered to clients as necessary and appropriate for diagnostic or therapeutic purposes;

5. Document the need for and steps taken to terminate a counseling relationship when it becomes clear that the client is not benefiting from the relationship. Document the assistance provided in making appropriate arrangements for the continuation of treatment for clients, when necessary, following termination of a counseling relationship;

6. Make appropriate arrangements for continuation of services, when necessary, during interruptions such as vacations, unavailability, relocation, illness, and disability;

7. Disclose to clients all experimental methods of treatment and inform clients of the risks and benefits of any such

treatment. Ensure that the welfare of the clients is in no way compromised in any experimentation or research involving those clients;

8. Neither accept nor give commissions, rebates, or other forms of remuneration for referral of clients for professional services;

9. Inform clients of the purposes, goals, techniques, procedures, limitations, potential risks, and benefits of services to be performed; the limitations of confidentiality; and other pertinent information when counseling is initiated and throughout the counseling process as necessary. Provide clients with accurate information regarding the implications of diagnosis, the intended use of tests and reports, fees, and billing arrangements;

10. Select tests for use with clients that are valid, reliable, and appropriate and carefully interpret the performance of individuals not represented in standardized norms;

11. Determine whether a client is receiving services from another mental health service provider, and if so, refrain from providing services to the client without having an informed consent discussion with the client and having been granted communication privileges with the other professional;

12. Use only in connection with one's practice as a mental health professional those educational and professional degrees or titles that have been earned at a college or university accredited by an accrediting agency recognized by the U.S. Department of Education, or credentials granted by a national certifying agency, and that are counseling in nature; ~~and~~

13. Advertise professional services fairly and accurately in a manner that is not false, misleading or deceptive; and

14. Not engage in conversion therapy with any person younger than 18 years of age.

C. In regard to patient records, persons licensed by the board shall:

1. Maintain written or electronic clinical records for each client to include treatment dates and identifying information to substantiate diagnosis and treatment plan, client progress, and termination;

2. Maintain client records securely, inform all employees of the requirements of confidentiality and provide for the destruction of records that are no longer useful in a manner that ensures client confidentiality;

3. Disclose or release records to others only with clients' expressed written consent or that of their legally authorized representative in accordance with § 32.1-127.1:03 of the Code of Virginia;

4. Maintain client records for a minimum of five years or as otherwise required by law from the date of termination of the substance abuse treatment relationship with the following exceptions:

a. At minimum, records of a minor child shall be maintained for five years after attaining the age of majority (18 years) or 10 years following termination, whichever comes later;

b. Records that are required by contractual obligation or federal law to be maintained for a longer period of time; or

c. Records that have been transferred to another mental health service provider or given to the client; and

5. Ensure confidentiality in the usage of client records and clinical materials by obtaining informed consent from clients or their legally authorized representative before (i) videotaping, (ii) audio recording, (iii) permitting third party observation, or (iv) using identifiable client records and clinical materials in teaching, writing or public presentations.

D. In regard to dual relationships, persons licensed by the board shall:

1. Avoid dual relationships with clients that could impair professional judgment or increase the risk of harm to clients. Examples of such relationships include~~, but are not limited to,~~ familial, social, financial, business, bartering, or close personal relationships with clients. Counselors shall take appropriate professional precautions when a dual relationship cannot be avoided, such as informed consent, consultation, supervision, and documentation to ensure that judgment is not impaired and no exploitation occurs;

2. Not engage in any type of romantic relationships or sexual intimacies with clients or those included in a collateral relationship with the client and not counsel persons with whom they have had a romantic relationship or sexual intimacy. Licensed substance abuse treatment practitioners shall not engage in romantic relationships or sexual intimacies with former clients within a minimum of five years after terminating the counseling relationship. Licensed substance abuse treatment practitioners who engage in such relationship or intimacy after five years following termination shall have the responsibility to examine and document thoroughly that such relations do not have an exploitive nature, based on factors such as duration of counseling, amount of time since counseling, termination circumstances, client's personal history and mental status, or adverse impact on the client. A client's consent to, initiation of or participation in sexual behavior or involvement with a licensed substance abuse treatment practitioner does not change the nature of the conduct nor lift the regulatory prohibition;

3. Not engage in any sexual intimacy or romantic relationship or establish a counseling or psychotherapeutic relationship with a supervisee or student. Licensed substance abuse treatment practitioners shall avoid any nonsexual dual relationship with a supervisee or student in which there is a risk of exploitation or potential harm to the

supervisee or the potential for interference with the supervisor's professional judgment; and

4. Recognize conflicts of interest and inform all parties of the nature and directions of loyalties and responsibilities involved.

E. Persons licensed by this board shall report to the board known or suspected violations of the laws and regulations governing the practice of substance abuse treatment.

F. Persons licensed by the board shall advise their clients of their right to report to the Department of Health Professions any information of which the licensee may become aware in his professional capacity indicating that there is a reasonable probability that a person licensed or certified as a mental health service provider, as defined in § 54.1-2400.1 of the Code of Virginia, may have engaged in unethical, fraudulent or unprofessional conduct as defined by the pertinent licensing statutes and regulations.

VA.R. Doc. No. R19-5842; Filed August 6, 2020, 1:57 p.m.

BOARD OF PSYCHOLOGY

Proposed Regulation

Title of Regulation: **18VAC125-20. Regulations Governing the Practice of Psychology (amending 18VAC125-20-10, 18VAC125-20-150).**

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

Public Hearing Information:

October 27, 2020 - 9:45 a.m. - WebEx meeting - A link and instructions to access the electronic meeting will be posted at https://townhall.virginia.gov/L/ViewMeeting.cfm?MeetingID=31196 on the Virginia Regulatory Town Hall.

Public Comment Deadline: October 30, 2020.

Agency Contact: Jaime Hoyle, Executive Director, Board of Psychology, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4406, FAX (804) 327-4435, or email jaime.hoyle@dhp.virginia.gov.

Basis: Regulations are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which provides the Board of Psychology the authority to promulgate regulations to administer the regulatory system and states that such regulation "shall not conflict with the purposes and intent of ... Chapter 1 (§ 54.1-100 et seq.)" of the Code of Virginia. Section 54.1-100 of the Code of Virginia specifies that a regulation shall not be imposed except for the purpose of protection of the health, safety, and welfare of the public, which is the intent of this action.

Purpose: The purpose of this regulatory action is to specify in regulations the interpretation of the board that conversion therapy has the potential for significant harm if practiced with persons younger than 18 years of age. The regulations define the term consistent with accepted usage within the profession and consistent with policy statements by state and national professional organizations.

Substance: For the purposes of the regulatory action, "conversion therapy" or "sexual orientation change efforts" is defined as any practice or treatment that seeks to change an individual's sexual orientation or gender identity, including efforts to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of any gender. "Conversion therapy" does not include counseling that provides assistance to a person undergoing gender transition or counseling that provides acceptance, support, and understanding of a person or facilitates a person's coping, social support, and identity exploration and development, including sexual-orientation-neutral interventions to prevent or address unlawful conduct or unsafe sexual practices, as long as such counseling does not seek to change an individual's sexual orientation or gender identity in any direction.

Issues: The primary advantage to the public is protection for children who might otherwise be subjected to reparative or conversion therapy. The board does not believe there are disadvantages because practitioners can provide assistance to a person undergoing gender transition or counseling that offers acceptance, support, and understanding of a person or facilitates a person's coping, social support, and identity exploration and development.

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 Psychology (Board) proposes to amend 18VAC125-20 Regulations Governing the Practice of Psychology (regulations) in order to add a definition of "conversion therapy" and a stipulation that licensees shall not engage in conversion therapy with individuals under 18 years of age.

Background. During the 2018 General Assembly Session, Delegates Patrick A. Hope and Betsy B. Carr introduced a bill (HB 363) that provided a definition of "sexual orientation change efforts" (SOCE) and would "prohibit any health care provider or person who performs counseling as part of his training for any profession licensed by a regulatory board of the Department of Health Professions (DHP) from engaging in sexual orientation change efforts with a person under 18 years of age."[1] The bill was referred to the Committee on Health, Welfare and Institutions and assigned to a subcommittee where, in the course of their deliberations, the question was raised as to why the issue had not already been addressed by licensing boards. The bill was passed by indefinitely and left in subcommittee.

Subsequently, the President of the Board of Psychology recommended that the Director of DHP convene a workgroup to discuss the issue. The workgroup met on October 5, 2018, and included representatives from the Boards of Counseling,

Medicine, Psychology and Social Work. After substantial debate, most members concurred that there was a need for more protection of children. It was agreed that each board would have to make the decision whether to promulgate regulation.

The proposed amendments mirror the language of HB 363, and define conversion therapy in some detail:

> "Conversion therapy" means any practice or treatment that seeks to change an individual's sexual orientation or gender identity, including efforts to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of any gender. Conversion therapy does not include:
>
> 1. Psychological services that provide assistance to a person undergoing gender transition; or
>
> 2. Psychological services that provide acceptance, support, and understanding of a person or facilitates a person's coping, social support, and identity exploration and development, including sexual-orientation-neutral interventions to prevent or address unlawful conduct or unsafe sexual practices, as long as such services do not seek to change an individual's sexual orientation or gender identity in any direction.

This definition appears to be consistent with those adopted by the American Psychological Association, the American Psychiatric Association, and other professional associations.[2]

In general, DHP reports that licensed psychologists are not taught conversion therapy as part of their professional training, and that the agency has not received any complaints or reports of licensees practicing conversion therapy. However, national associations of psychologists and medical professionals have adopted resolutions and position statements based on research conducted over the past two decades regarding the effects of conversion therapy, particularly on minors.[3,4,5] Hence, the Board is proposing these amendments based on its authority to impose regulations for the protection of the health, safety, and welfare of the public. The Boards of Counseling, Psychology, Medicine, and Nursing have also initiated regulatory actions with nearly identical proposed changes.[6]

In contrast, some religious organizations continue to offer conversion therapy. The organizations, including programs aimed at teenagers and young adults, may use different terminologies such as 'ex-gay ministry', 'reparative therapy', or 'promoting healthy sexuality' but the programs seek to change the individual's sexual orientation or gender identity, thus appearing to meet the Board's definition of conversion therapy. However, religious counselors (rabbis, priests, ministers, or clergymen) are exempt from the requirement for licensure.[7] As a result, the content of this regulation would not apply to them. Accordingly, the Board has no authority to take disciplinary action against religious organizations and affiliated counselors who continue to provide conversion therapy, unless they are also licensed by the Board.

Estimated Benefits and Costs. For the reasons described above, it is unlikely that psychologists licensed by the Board presently provide conversion therapy. Moreover, programs that are conducted in a religious setting by rabbis, priests, ministers or clergymen are exempt from licensure. Hence, although the proposed regulation has received 351 public comments and may appear to be controversial, it is unlikely to have substantive economic impact.

To the extent that the Board's licensees are currently engaging in conversion therapy with individuals under 18 years of age, they may now have to change their practice, lose clients, or face disciplinary action if they fail to comply with the regulation. However, as mentioned previously, conversion therapy is not an evidence-based practice and is hence not included in the curriculum at accredited psychology programs and not practiced by the vast majority of licensed psychologists. Any current license-holders choosing to forfeit their licensure in favor of continuing to practice conversion therapy may continue to do so if employed as a rabbi, priest, minister or clergyman, as long as they belong to "an established and legally cognizable church, denomination or sect" and remain "accountable to its established authority."[8]

Clients under age 18, who seek to receive, or continue receiving, conversion therapy from licensed providers, and their parents, may now face certain indirect costs if they choose to find other providers. The amount of the cost would depend upon the availability of providers, including religious counselors. Conversely, children and their parents may be benefited to the degree the board's action limits the availability of conversion therapy. The degree of this benefit would depend upon the extent to which the harms cited by the professional organizations noted above would have occurred but for this regulatory action.

Businesses and Other Entities Affected. As mentioned above, some licensed psychologists who may also have been working in a religious setting may have to alter their practice or face disciplinary action, but DHP estimates that these are most likely a very small fraction of the overall number of license-holders.[9] Although DHP does not have an estimate of the number of affected providers, the agency reports that the vast majority of current license-holders likely do not engage in conversion therapy at all (in either religious or secular settings) since it has been considered contrary to the "professional code of ethics" for more than a decade.

Small Businesses[10] Affected. Although many licensed practitioners may be employed in a small business setting, DHP estimates that only a very small fraction of the overall number of license-holders would be affected by the regulation at all, and there is no reason to suggest that those affected are more likely to be working in a small business. Even so, the cost of complying with the regulation is unlikely to be significant. Finally, there are no alternatives to the regulation that would provide greater flexibility while also meeting its policy objectives.

Localities[11] Affected.[12] The proposed amendments do not introduce new costs for local governments and are unlikely to affect any locality in particular.

Projected Impact on Employment. The proposed amendments are unlikely to affect the overall number of psychologists.

Effects on the Use and Value of Private Property. The proposed amendments are unlikely to affect the use and value of private property. Real estate development costs are not affected.

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[1]See http://lis.virginia.gov/cgi-bin/legp604.exe?ses=181&typ=bil&val=hb363

[2]See https://williamsinstitute.law.ucla.edu/wp-content/uploads/Conversion-Therapy-LGBT-Youth-Jan-2018.pdf?response_type=embed and citations therein.

[3]See https://www.apa.org/about/policy/sexual-orientation The American Psychological Association convened a task force whose 2009 report Appropriate Therapeutic Responses to Sexual Orientation states "…Thus, the results of scientifically valid research indicate that it is unlikely that individuals will be able to reduce same-sex attractions or increase other-sex sexual attractions through SOCE. We found that there was some evidence to indicate that individuals experienced harm from SOCE." See https://www.apa.org/pi/lgbt/resources/therapeutic-response.pdf (Executive Summary)

[4]See https://www.psychiatry.org/newsroom/news-releases/apa-reiterates-strong-opposition-to-conversion-therapy. In a 2013 Position Statement, the American Psychiatric Association stated that it "does not believe that same-sex orientation should or needs to be changed, and efforts to do so represent a significant risk of harm by subjecting individuals to forms of treatment which have not been scientifically validated and by undermining self-esteem when sexual orientation fails to change. No credible evidence exists that any mental health intervention can reliably and safely change sexual orientation; nor, from a mental health perspective does sexual orientation need to be changed." Downloaded from https://www.psychiatry.org/home/policy-finder

[5]See https://www.ama-assn.org/press-center/press-releases/ama-adopts-new-policies-during-first-day-voting-interim-meeting

[6]See Board of Counseling Action 5225 (https://townhall.virginia.gov/l/ViewAction.cfm?actionid=5225), Board of Social Work Action 5241 (https://townhall.virginia.gov/l/ViewAction.cfm?actionid=5241), and Board of Medicine Action 5412 (https://townhall.virginia.gov/L/viewaction.cfm?actionid=5412) and Board of Nursing Actions 5430 (https://townhall.virginia.gov/l/ViewAction.cfm?actionid=5430 and (https://townhall.virginia.gov/l/ViewAction.cfm?actionid=5441).

[7]As per COV § 54.1-3501 *Exemption from requirements of licensure*: The activities, including marriage and family therapy, counseling, or substance abuse treatment, of rabbis, priests, ministers or clergymen of any religious denomination or sect when such activities are within the scope of the performance of their regular or specialized ministerial duties, and no separate charge is made or when such activities are performed, whether with or without charge, for or under auspices or sponsorship, individually or in conjunction with others, of an established and legally cognizable church, denomination or sect, and the person rendering service remains accountable to its established authority.

[8]Ibid.

[9]According to the ABD, the overall numbers of licensees are as 3,379 clinical psychologists, 100 school psychologists, 29 applied psychologists, and 865 residents in counseling.

[10]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."

[11]"Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

[12]§ 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

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

Summary:

The proposed amendments define conversion therapy and establish that the standard of practice for persons licensed or registered by the board preclude the provision of conversion therapy to persons younger than 18 years of age.

Part I
General Provisions

18VAC125-20-10. Definitions.

The following words and terms, in addition to the words and terms defined in § 54.1-3600 of the Code of Virginia, when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

"APA" means the American Psychological Association.

"APPIC" means the Association of Psychology Postdoctoral and Internship Centers.

"Board" means the Virginia Board of Psychology.

"Candidate for licensure" means a person who has satisfactorily completed the appropriate educational and experience requirements for licensure and has been deemed eligible by the board to sit for the required examinations.

"Conversion therapy" means any practice or treatment that seeks to change an individual's sexual orientation or gender identity, including efforts to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of any gender. Conversion therapy does not include:

1. Psychological services that provide assistance to a person undergoing gender transition; or

2. Psychological services that provide acceptance, support, and understanding of a person or facilitates a person's coping, social support, and identity exploration and development, including sexual-orientation-neutral interventions to prevent or address unlawful conduct or unsafe sexual practices, as long as such services do not seek to change an individual's sexual orientation or gender identity in any direction.

"Demonstrable areas of competence" means those therapeutic and assessment methods and techniques, and populations served, for which one can document adequate graduate training, workshops, or appropriate supervised experience.

"Internship" means an ongoing, supervised, and organized practical experience obtained in an integrated training program identified as a psychology internship. Other supervised

experience or on-the-job training does not constitute an internship.

"NASP" means the National Association of School Psychologists.

"NCATE" means the National Council for the Accreditation of Teacher Education.

"Practicum" means the pre-internship clinical experience that is part of a graduate educational program.

"Professional psychology program" means an integrated program of doctoral study designed to train professional psychologists to deliver services in psychology.

"Regional accrediting agency" means one of the six regional accrediting agencies recognized by the United States Secretary of Education established to accredit senior institutions of higher education.

"Residency" means a post-internship, post-terminal degree, supervised experience approved by the board.

"School psychologist-limited" means a person licensed pursuant to § 54.1-3606 of the Code of Virginia to provide school psychology services solely in public school divisions.

"Supervision" means the ongoing process performed by a supervisor who monitors the performance of the person supervised and provides regular, documented individual consultation, guidance, and instruction with respect to the skills and competencies of the person supervised.

"Supervisor" means an individual who assumes full responsibility for the education and training activities of a person and provides the supervision required by such a person.

Part VI
Standards of Practice; Unprofessional Conduct; Disciplinary Actions; Reinstatement

18VAC125-20-150. Standards of practice.

A. The protection of the public health, safety, and welfare and the best interest of the public shall be the primary guide in determining the appropriate professional conduct of all persons whose activities are regulated by the board. Psychologists respect the rights, dignity, and worth of all people, and are mindful of individual differences.

B. Persons licensed by the board shall:

1. Provide and supervise only those services and use only those techniques for which they are qualified by training and appropriate experience. Delegate to their employees, supervisees, residents, and research assistants only those responsibilities such persons can be expected to perform competently by education, training, and experience. Take ongoing steps to maintain competence in the skills they use;

2. When making public statements regarding credentials, published findings, directory listings, curriculum vitae, etc., ensure that such statements are neither fraudulent nor misleading;

3. Neither accept nor give commissions, rebates, or other forms of remuneration for referral of clients for professional services. Make appropriate consultations and referrals consistent with the law and based on the interest of patients or clients;

4. Refrain from undertaking any activity in which their personal problems are likely to lead to inadequate or harmful services;

5. Avoid harming patients or clients, research participants, students, and others for whom they provide professional services and minimize harm when it is foreseeable and unavoidable. Not exploit or mislead people for whom they provide professional services. Be alert to and guard against misuse of influence;

6. Avoid dual relationships with patients, clients, residents, or supervisees that could impair professional judgment or compromise their well-being (to include ~~but not limited to~~ treatment of close friends, relatives, employees);

7. Withdraw from, adjust, or clarify conflicting roles with due regard for the best interest of the affected party or parties and maximal compliance with these standards;

8. Not engage in sexual intimacies or a romantic relationship with a student, supervisee, resident, therapy patient, client, or those included in collateral therapeutic services (such as a parent, spouse, or significant other) while providing professional services. For at least five years after cessation or termination of professional services, not engage in sexual intimacies or a romantic relationship with a therapy patient, client, or those included in collateral therapeutic services. Consent to, initiation of, or participation in sexual behavior or romantic involvement with a psychologist does not change the exploitative nature of the conduct nor lift the prohibition. Since sexual or romantic relationships are potentially exploitative, psychologists shall bear the burden of demonstrating that there has been no exploitation;

9. Keep confidential their professional relationships with patients or clients and disclose client records to others only with written consent except: (i) when a patient or client is a danger to self or others, (ii) as required under § 32.1-127.1:03 of the Code of Virginia, or (iii) as permitted by law for a valid purpose;

10. Make reasonable efforts to provide for continuity of care when services must be interrupted or terminated;

11. Inform clients of professional services, fees, billing arrangements, and limits of confidentiality before rendering services. Inform the consumer prior to the use of collection agencies or legal measures to collect fees and provide opportunity for prompt payment. Avoid bartering goods and services. Participate in bartering only if it is not clinically contraindicated and is not exploitative;

12. Construct, maintain, administer, interpret, and report testing and diagnostic services in a manner and for purposes which are appropriate;

13. Keep pertinent, confidential records for at least five years after termination of services to any consumer;

14. Design, conduct, and report research in accordance with recognized standards of scientific competence and research ethics; ~~and~~

15. Report to the board known or suspected violations of the laws and regulations governing the practice of psychology; and

16. Not engage in conversion therapy with any person younger than 18 years of age.

VA.R. Doc. No. R19-5824; Filed August 6, 2020, 2:18 p.m.

BOARD OF SOCIAL WORK

Proposed Regulation

Title of Regulation: **18VAC140-20. Regulations Governing the Practice of Social Work (amending 18VAC140-20-10, 18VAC140-20-150).**

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

Public Hearing Information:

September 25, 2020 - 9:45 a.m. - WebEx meeting - A link and instructions to access the electronic meeting will be posted at https://townhall.virginia.gov/L/ViewMeeting.cfm?MeetingID=31195 on the Virginia Regulatory Town Hall

Public Comment Deadline: October 30, 2020.

Agency Contact: Jaime Hoyle, Executive Director, Board of Social Work, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4406, FAX (804) 527-4435, or email jaime.hoyle@dhp.virginia.gov.

Basis: Regulations are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which provides the Board of Social Work the authority to promulgate regulations to administer the regulatory system and states that such regulation "shall not conflict with the purposes and intent of ... Chapter 1 (§ 54.1-100 et seq.)" of the Code of Virginia. Section 54.1-100 of the Code of Virginia specifies that a regulation shall not be imposed except for the purpose of protection of the health, safety, and welfare of the public, which is the intent of this action.

Purpose: The purpose of this regulatory action is to specify in regulation the interpretation of the board that conversion therapy has the potential for significant harm if practiced with persons younger than 18 years of age. The regulation will define the term in a manner consistent with accepted usage within the profession and consistent with policy statements by state and national professional organizations.

Substance: For the purposes of the regulatory action, "conversion therapy" or "sexual orientation change efforts" is defined as any practice or treatment that seeks to change an individual's sexual orientation or gender identity, including efforts to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of any gender. "Conversion therapy" does not include social work that provides assistance to a person undergoing gender transition or social work services that provide acceptance, support, and understanding of a person or facilitates a person's coping, social support, and identity exploration and development, including sexual-orientation-neutral interventions to prevent or address unlawful conduct or unsafe sexual practices, as long as such social work services do not seek to change an individual's sexual orientation or gender identity in any direction.

Issues: The primary advantage to the public is protection for children who might otherwise be subjected to reparative or conversion therapy; the board does not believe there are disadvantages because practitioners can provide assistance to a person undergoing gender transition or social work services that offers acceptance, support, and understanding of a person or facilitates a person's coping, social support, and identity exploration and development.

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 Social Work (Board) proposes to amend 18VAC140-20 Regulations Governing the Practice of Social Work (regulations) in order to add a definition of "conversion therapy" and a stipulation that licensees shall not engage in conversion therapy with individuals under 18 years of age.

Background. During the 2018 General Assembly Session, Delegates Patrick A. Hope and Betsy B. Carr introduced a bill (HB 363) that provided a definition of "sexual orientation change efforts" (SOCE) and would "prohibit any health care provider or person who performs counseling as part of his training for any profession licensed by a regulatory board of the Department of Health Professions (DHP) from engaging in sexual orientation change efforts with a person under 18 years of age."[1] The bill was referred to the Committee on Health, Welfare and Institutions and assigned to a subcommittee where, in the course of their deliberations, the question was raised as to why the issue had not already been addressed by licensing boards. The bill was passed by indefinitely and left in subcommittee.

Subsequently, the President of the Board of Psychology recommended that the Director of DHP convene a workgroup to discuss the issue. The workgroup met on October 5, 2018, and included representatives from the Boards of Counseling, Medicine, Psychology and Social Work. After substantial debate, most members concurred that there was a need for more protection of children. It was agreed that each board would have to make the decision whether to promulgate regulation.

The proposed amendments mirror the language of HB 363, and define conversion therapy in some detail:

"Conversion therapy" means any practice or treatment that seeks to change an individual's sexual orientation or gender identity, including efforts to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of any gender. Conversion therapy does not include:

1. Social work services that provide assistance to a person undergoing gender transition; or

2. Social work services that provide acceptance, support, and understanding of a person or facilitates a person's coping, social support, and identity exploration and development, including sexual-orientation-neutral interventions to prevent or address unlawful conduct or unsafe sexual practices, as long as such services do not seek to change an individual's sexual orientation or gender identity in any direction.

This definition appears to be consistent with those adopted by the National Association of Social Workers, the American Psychological Association, the American Psychiatric Association, and other professional associations.[2]

In general, DHP reports that licensed social workers are not taught conversion therapy as part of their professional training, and that the agency has not received any complaints or reports of licensees practicing conversion therapy. However, the counseling, social work, and medical professional communities have adopted resolutions and position statements based on research conducted over the past two decades regarding the effects of conversion therapy, particularly on minors.[3,4,5,6] The American Foundation for Suicide Prevention specifically posted a comment at the NOIRA stage saying, "There is no credible evidence that any type of psychotherapy can change a person's sexual orientation or gender identity. In fact, conversion therapy poses critical health risks to lesbian, gay, bisexual, transgender, and queer young people, including depression, shame, decreased self-esteem, social withdrawal, substance abuse, risky behavior, and even suicide…Research shows that lesbian, gay, and bisexual (LGB) youth are 4 times more likely, and questioning youth are 3 times more likely to attempt suicide as their straight peers."[7] Hence, the Board is proposing these amendments based on its authority to impose regulations for the protection of the health, safety, and welfare of the public. The Boards of Counseling, Psychology, Medicine, and Nursing have also initiated regulatory actions with nearly identical proposed changes.[8]

In contrast, some religious organizations continue to offer conversion therapy. The organizations, including programs aimed at teenagers and young adults, may use different terminologies such as 'ex-gay ministry', 'reparative therapy', or 'promoting healthy sexuality' but the programs seek to change the individual's sexual orientation or gender identity, thus appearing to meet the Board's definition of conversion therapy. However, religious counselors (rabbis, priests, ministers, or clergymen) are exempt from the requirement for licensure.[9] As a result, the content of this regulation would not apply to them. Accordingly, the Board has no authority to take disciplinary action against religious organizations and affiliated counselors who continue to provide conversion therapy, unless they are also licensed by the Board.

Estimated Benefits and Costs. For the reasons described above, it is unlikely that social workers licensed by the Board presently provide conversion therapy. Moreover, programs that are conducted in a religious setting by rabbis, priests, ministers or clergymen are exempt from licensure. Hence, although the proposed regulation has received 211 public comments and may appear to be controversial, it is unlikely to have substantive economic impact.

To the extent that the Board's licensees are currently engaging in conversion therapy with individuals under 18 years of age, they may now have to change their practice, lose clients, or face disciplinary action if they fail to comply with the regulation. However, as mentioned previously, conversion therapy is not an evidence-based practice and is hence not included in the curriculum at accredited social work programs and not practiced by the vast majority of licensed social workers. Any current license-holders choosing to forfeit their licensure in favor of continuing to practice conversion therapy may continue to do so if employed as a rabbi, priest, minister or clergyman, as long as they belong to "an established and legally cognizable church, denomination or sect" and remain "accountable to its established authority."[10]

Clients under age 18, who seek to receive, or continue receiving, conversion therapy from licensed social workers, and their parents, may now face certain indirect costs if they choose to find other providers. The amount of the cost would depend upon the availability of providers, including religious counselors. Conversely, children and their parents may be benefited to the degree the board's action limits the availability of conversion therapy. The degree of this benefit would depend upon the extent to which the harms cited by the professional organizations noted above would have occurred but for this regulatory action.

Businesses and Other Entities Affected. As mentioned above, some licensed social workers who may also have been working in a religious setting may have to alter their practice or face disciplinary action, but DHP estimates that these are most likely a very small fraction of the overall number of social work license-holders.[11] Although DHP does not have an estimate of the number of affected providers, the agency reports that the vast majority of current license-holders likely do not engage in conversion therapy at all (in either religious or secular settings) since it is not taught by any accredited program and has been considered contrary to the "professional code of ethics" in an informal capacity for more than a decade.

Small Businesses[12] Affected. Although many licensed practitioners may be employed in a small business setting, DHP estimates that only a very small fraction of the overall number of license-holders would be affected by the regulation

at all, and there is no reason to suggest that those affected are more likely to be working in a small business. Even so, the cost of complying with the regulation is unlikely to be significant, and there are no alternatives to the regulation that would provide greater flexibility while also meeting its policy objectives.

Localities[13] Affected.[14] The proposed amendments do not introduce new costs for local governments and are unlikely to affect any locality in particular.

Projected Impact on Employment. The proposed amendments are unlikely to affect the overall number of employed Licensed Clinical Social Workers.

Effects on the Use and Value of Private Property. The proposed amendments are unlikely to affect the use and value of private property. Real estate development costs are not affected.

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[1]See http://lis.virginia.gov/cgi-bin/legp604.exe?ses=181&typ=bil&val=hb363

[2]See https://williamsinstitute.law.ucla.edu/wp-content/uploads/Conversion-Therapy-LGBT-Youth-Jan-2018.pdf?response_type=embed and citations therein.

[3]See https://www.socialworkers.org/LinkClick.aspx?fileticket=yH3UsGQQmYI%3d&portalid=0

[4]See https://www.apa.org/about/policy/sexual-orientation The American Psychological Association convened a task force whose 2009 report Appropriate Therapeutic Responses to Sexual Orientation states "…Thus, the results of scientifically valid research indicate that it is unlikely that individuals will be able to reduce same-sex attractions or increase other-sex sexual attractions through SOCE. We found that there was some evidence to indicate that individuals experienced harm from SOCE." See https://www.apa.org/pi/lgbt/resources/therapeutic-response.pdf (Executive Summary)

[5]See https://www.psychiatry.org/newsroom/news-releases/apa-reiterates-strong-opposition-to-conversion-therapy. In a 2013 Position Statement, the American Psychiatric Association stated that it "does not believe that same-sex orientation should or needs to be changed, and efforts to do so represent a significant risk of harm by subjecting individuals to forms of treatment which have not been scientifically validated and by undermining self-esteem when sexual orientation fails to change. No credible evidence exists that any mental health intervention can reliably and safely change sexual orientation; nor, from a mental health perspective does sexual orientation need to be changed." Downloaded from https://www.psychiatry.org/home/policy-finder

[6]See https://www.ama-assn.org/press-center/press-releases/ama-adopts-new-policies-during-first-day-voting-interim-meeting

[7]See https://townhall.virginia.gov/l/viewcomments.cfm?commentid=74782

[8]See Board of Counseling 5225 (https://townhall.virginia.gov/l/ViewAction.cfm?actionid=5225), Board of Psychology Action 5218 (https://townhall.virginia.gov/l/ViewAction.cfm?actionid=5218) and Board of Medicine Action 5412 (https://townhall.virginia.gov/L/viewaction.cfm?actionid=5412) and Board of Nursing Action 5430 (https://townhall.virginia.gov/l/ViewAction.cfm?actionid=5430).

[9]As per COV § 54.1-3501 Exemption from requirements of licensure: The activities, including marriage and family therapy, counseling, or substance abuse treatment, of rabbis, priests, ministers or clergymen of any religious denomination or sect when such activities are within the scope of the performance of their regular or specialized ministerial duties, and no separate charge is made or when such activities are performed, whether with or without charge, for or under auspices or sponsorship, individually or in conjunction with others, of an established and legally cognizable church, denomination or sect, and the person rendering service remains accountable to its established authority.

[10]Ibid.

[11]According to the ABD, the overall numbers of licensees are as follows: 7285 Clinical Social Workers and 2175 supervisees.

[12]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."

[13]"Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

[14]§ 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

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

Summary:

The proposed amendments define conversion therapy and establish that the standard of practice for licensed baccalaureate social workers, license master's social workers, and clinical social workers preclude the provision of conversion therapy to persons younger than 18 years of age.

Part I
General Provisions

18VAC140-20-10. Definitions.

A. The following words and terms when used in this chapter shall have the meanings ascribed to them in § 54.1-3700 of the Code of Virginia:

Baccalaureate social worker

Board

Casework

Casework management and supportive services

Clinical social worker

Master's social worker

Practice of social work

Social worker

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

"Accredited school of social work" means a school of social work accredited by the Council on Social Work Education.

"Active practice" means post-licensure practice at the level of licensure for which an applicant is seeking licensure in Virginia and shall include at least 360 hours of practice in a 12-month period.

"Ancillary services" means activities such as case management, recordkeeping, referral, and coordination of services.

"Clinical course of study" means graduate course work that includes specialized advanced courses in human behavior and

the social environment, social justice and policy, psychopathology, and diversity issues; research; clinical practice with individuals, families, and groups; and a clinical practicum that focuses on diagnostic, prevention, and treatment services.

"Clinical social work services" include the application of social work principles and methods in performing assessments and diagnoses based on a recognized manual of mental and emotional disorders or recognized system of problem definition, preventive and early intervention services, and treatment services, including psychosocial interventions, psychotherapy, and counseling for mental disorders, substance abuse, marriage and family dysfunction, and problems caused by social and psychological stress or health impairment.

"Conversion therapy" means any practice or treatment that seeks to change an individual's sexual orientation or gender identity, including efforts to change behaviors or gender expressions or to eliminate or reduce sexual or romantic attractions or feelings toward individuals of any gender. Conversion therapy does not include:

1. Social work services that provide assistance to a person undergoing gender transition; or

2. Social work services that provide acceptance, support, and understanding of a person or facilitates a person's coping, social support, and identity exploration and development, including sexual-orientation-neutral interventions to prevent or address unlawful conduct or unsafe sexual practices, as long as such services do not seek to change an individual's sexual orientation or gender identity in any direction.

"Exempt practice" is that which meets the conditions of exemption from the requirements of licensure as defined in § 54.1-3701 of the Code of Virginia.

"Face-to-face supervision" means the physical presence of the individuals involved in the supervisory relationship during either individual or group supervision or the use of technology that provides real-time, visual contact among the individuals involved.

"LBSW" means a licensed baccalaureate social worker.

"LMSW" means a licensed master's social worker.

"Nonexempt practice" ~~is~~ means that which does not meet the conditions of exemption from the requirements of licensure as defined in § 54.1-3701 of the Code of Virginia.

"Supervisee" means an individual who has submitted a supervisory contract and has received board approval to provide clinical services in social work under supervision.

"Supervision" means a professional relationship between a supervisor and supervisee in which the supervisor directs, monitors, and evaluates the supervisee's social work practice while promoting development of the supervisee's knowledge, skills, and abilities to provide social work services in an ethical and competent manner.

Part V
Standards of Practice

18VAC140-20-150. Professional conduct.

A. The protection of the public health, safety, and welfare and the best interest of the public shall be the primary guide in determining the appropriate professional conduct of all persons whose activities are regulated by the board. Regardless of the delivery method, whether in person, by telephone, or electronically, these standards shall apply to the practice of social work.

B. Persons licensed as LBSWs, LMSWs, and clinical social workers shall:

1. Be able to justify all services rendered to or on behalf of clients as necessary for diagnostic or therapeutic purposes.

2. Provide for continuation of care when services must be interrupted or terminated.

3. Practice only within the competency areas for which they are qualified by education and experience.

4. Report to the board known or suspected violations of the laws and regulations governing the practice of social work.

5. Neither accept nor give commissions, rebates, or other forms of remuneration for referral of clients for professional services.

6. Ensure that clients are aware of fees and billing arrangements before rendering services.

7. Inform clients of potential risks and benefits of services and the limitations on confidentiality and ensure that clients have provided informed written consent to treatment.

8. Keep confidential their therapeutic relationships with clients and disclose client records to others only with written consent of the client, with the following exceptions: (i) when the client is a danger to self or others; or (ii) as required by law.

9. When advertising their services to the public, ensure that such advertising is neither fraudulent nor misleading.

10. As treatment requires and with the written consent of the client, collaborate with other health or mental health providers concurrently providing services to the client.

11. Refrain from undertaking any activity in which one's personal problems are likely to lead to inadequate or harmful services.

12. Recognize conflicts of interest and inform all parties of the nature and directions of loyalties and responsibilities involved.

13. Not engage in conversion therapy with any person younger than 18 years of age.

C. In regard to client records, persons licensed by the board shall comply with provisions of § 32.1-127.1:03 of the Code of Virginia on health records privacy and shall:

1. Maintain written or electronic clinical records for each client to include identifying information and assessment that

substantiates diagnosis and treatment plans. Each record shall include a diagnosis and treatment plan, progress notes for each case activity, information received from all collaborative contacts and the treatment implications of that information, and the termination process and summary.

2. Maintain client records securely, inform all employees of the requirements of confidentiality, and provide for the destruction of records that are no longer useful in a manner that ensures client confidentiality.

3. Disclose or release records to others only with clients' expressed written consent or that of their legally authorized representative or as mandated by law.

4. Ensure confidentiality in the usage of client records and clinical materials by obtaining informed consent from clients or their legally authorized representative before (i) videotaping, (ii) audio recording, (iii) permitting third-party observation, or (iv) using identifiable client records and clinical materials in teaching, writing, or public presentations.

5. Maintain client records for a minimum of six years or as otherwise required by law from the date of termination of the therapeutic relationship with the following exceptions:

a. At minimum, records of a minor child shall be maintained for six years after attaining the age of majority or 10 years following termination, whichever comes later.

b. Records that are required by contractual obligation or federal law to be maintained for a longer period of time.

c. Records that have been transferred to another mental health professional or have been given to the client or his legally authorized representative.

D. In regard to dual relationships, persons licensed by the board shall:

1. Not engage in a dual relationship with a client or a supervisee that could impair professional judgment or increase the risk of exploitation or harm to the client or supervisee. (Examples of such a relationship include familial, social, financial, business, bartering, or a close personal relationship with a client or supervisee.) Social workers shall take appropriate professional precautions when a dual relationship cannot be avoided, such as informed consent, consultation, supervision, and documentation to ensure that judgment is not impaired and no exploitation occurs.

2. Not have any type of romantic relationship or sexual intimacies with a client or those included in collateral therapeutic services, and not provide services to those persons with whom they have had a romantic or sexual relationship. Social workers shall not engage in romantic relationship or sexual intimacies with a former client within a minimum of five years after terminating the professional relationship. Social workers who engage in such a relationship after five years following termination shall have the responsibility to examine and document thoroughly that such a relationship did not have an exploitive nature, based on factors such as duration of therapy, amount of time since therapy, termination circumstances, client's personal history and mental status, adverse impact on the client. A client's consent to, initiation of or participation in sexual behavior or involvement with a social worker does not change the nature of the conduct nor lift the regulatory prohibition.

3. Not engage in any romantic or sexual relationship or establish a therapeutic relationship with a current supervisee or student. Social workers shall avoid any nonsexual dual relationship with a supervisee or student in which there is a risk of exploitation or potential harm to the supervisee or student, or the potential for interference with the supervisor's professional judgment.

4. Recognize conflicts of interest and inform all parties of the nature and directions of loyalties and responsibilities involved.

5. Not engage in a personal relationship with a former client in which there is a risk of exploitation or potential harm or if the former client continues to relate to the social worker in his professional capacity.

E. Upon learning of evidence that indicates a reasonable probability that another mental health provider is or may be guilty of a violation of standards of conduct as defined in statute or regulation, persons licensed by the board shall advise their clients of their right to report such misconduct to the Department of Health Professions in accordance with § 54.1-2400.4 of the Code of Virginia.

VA.R. Doc. No. R19-5872; Filed August 6, 2020, 2:16 p.m.

Fast-Track Regulation

Title of Regulation: **18VAC140-20. Regulations Governing the Practice of Social Work (amending 18VAC140-20-51).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: September 30, 2020.

Effective Date: October 15, 2020.

Agency Contact: Jaime Hoyle, Executive Director, Board of Social Work, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4406, FAX (804) 527-4435, or email jaime.hoyle@dhp.virginia.gov.

Basis: Regulations are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which provides the board the authority to promulgate regulations to administer the regulatory system.

Purpose: The proposed amendment is a correction of an oversight from a previous action. The requirements for licensure by examination for a licensed baccalaureate social worker (LBSW) include completion of a degree in social work and passage of a board-approved examination, so public health and safety are adequately protected without the reference to a regulatory section that has been repealed.

Rationale for Using Fast-Track Rulemaking Process: The amendment corrects an oversight in the action previously promulgated to repeal the requirements for hours of supervised practice for licensure as an LBSW. Since this is a housekeeping action, it is not controversial and is appropriate for the fast-track rulemaking process.

Substance: In an action that became effective March 5, 2020, the board eliminated the requirement for hours of supervised practice to qualify for licensure as an LBSW. The requirement for an applicant to submit documentation of supervised practice was overlooked in that action. Therefore, that documentation requirement is deleted for consistency.

Issues: There are no advantages or disadvantages to the public. Persons who are applying for LBSW licensure will not be confused by reference to a requirement that has been removed from the regulations.

There are no advantages and 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 Social Work (Board) seeks to amend 18VAC140-20 Regulations Governing the Practice of Social Work in order to correct Section 51 Requirements for licensure by examination as an LBSW (Licensed Baccalaureate Social Worker) or LMSW (Licensed Master's Social Worker). The Board previously repealed the supervised experience requirement for LBSW applicants, but overlooked a reference to the requirement in section 51. Thus, the Board proposes to amend Section 51 to remove the requirement that LBSW applicants submit documentation showing the completion of the supervised work experience.

Background. The Board previously amended the regulation to eliminate the requirement that LBSW applicants undergo 3000 hours of supervised work experience – that action went into effect March 5, 2020.[1] However, the Board overlooked the reference to the requirement in Section 51 at the time. The Board now seeks to amend Section 51 to remove the requirement for LBSW applicants to provide documentation demonstrating completion of the supervised work experience, to make it consistent with the rest of the chapter.

Estimated Benefits and Costs. Since the Board only proposes to correct the regulation to make it conform to changes that have previously been approved and are currently in effect, the proposed amendment would have no substantive effect beyond eliminating potential confusion for readers of the regulation.

Businesses and Other Entities Affected. The correction proposed here, as with the Board's previous action that removed the supervised experience requirement, would affect current and future LBSW applicants.

Small Businesses[2] Affected. The proposed amendments do not directly affect any small businesses, nor would they face any new costs as a result of the proposed amendments.

Localities[3] Affected.[4] The proposed amendments are not expected to disproportionately affect particular localities or introduce new costs for local governments.

Projected Impact on Employment. The proposed amendments are unlikely to affect total employment in the industry.

Effects on the Use and Value of Private Property. The proposed amendments are unlikely to affect the use or value of private property. Real estate development costs are unlikely to be affected.

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[1]See https://townhall.virginia.gov/l/ViewStage.cfm?stageid=8766

[2]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."

[3]"Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

[4]§ 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

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

Summary:

The amendment removes the requirement for an applicant to submit documentation of supervised practice to qualify for licensure as a licensed baccalaureate social worker because the requirement for such supervised practice has been eliminated.

18VAC140-20-51. Requirements for licensure by examination as an LBSW or LMSW.

A. In order to be approved to sit for the board-approved examination as an LBSW or an LMSW, an applicant shall:

1. Meet the education requirements prescribed in 18VAC140-20-60.

2. Submit a completed application to the board office to include:

a. The application fee prescribed in 18VAC140-20-30; and

b. Official transcripts submitted from the appropriate institutions of higher education.

B. In order to be licensed by examination as an LBSW or an LMSW, an applicant shall:

1. Meet the requirements prescribed in 18VAC140-20-60; and

2. Submit, in addition to the application requirements of subsection A of this section, the following:

a. Verification of a passing score on the board-approved national examination;

b. Documentation of any other health or mental health licensure or certification, if applicable; and

c. A current report from the U.S. Department of Health and Human Services National Practitioner Data Bank (NPDB).

~~3. For licensure as a LBSW, submit documentation, on the appropriate forms, of the successful completion of the supervised experience requirements of 18VAC140-20-60 along with documentation of the supervisor's out-of-state license where applicable. An applicant, whose former supervisor is deceased or whose whereabouts is unknown, shall submit to the board a notarized affidavit from the present chief executive officer of the agency, corporation, or partnership in which the applicant was supervised. The affidavit shall specify dates of employment, job responsibilities, supervisor's name and last known address, and the total number of hours spent by the applicant with the supervisor in face-to-face supervision.~~

VA.R. Doc. No. R21-6338; Filed August 6, 2020, 2:13 p.m.

TITLE 20. PUBLIC UTILITIES AND TELECOMMUNICATIONS

STATE CORPORATION COMMISSION

Final Regulation

REGISTRAR'S NOTICE: The State Corporation Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

Title of Regulation: **20VAC5-314. Regulations Governing Interconnection of Small Electrical Generators (amending 20VAC5-314-10 through 20VAC5-314-170; adding 20VAC5-314-35, 20VAC5-314-38, 20VAC5-314-39, 20VAC5-314-165).**

Statutory Authority: §§ 12.1-13 and 56-578 of the Code of Virginia.

Effective Date: October 15, 2020.

Agency Contact: Mike Cizenski, Utilities Engineer, Public Utility Regulation Division, State Corporation Commission, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9441, or email mike.cizenski@scc.virginia.gov.

Summary:

The amendments add definitions; establish a preapplication process; provide further information regarding (i) the treatment of queue numbers and interdependent projects, (ii) the modification of interconnection requests, and (iii) the Level 1, Level 2, and Level 3 interconnection requirements and processes; and modify and add schedules.

Changes since publication of the proposed regulation include (i) simplifying the definition of "small generating facility" by removing the reference to "storage for later injection"; (ii) clarifying that the regulation applies to utilities providing interconnections to retail electric customers, independently owned generators, and any other parties operating or intending to operate a distributed generating facility parallel with utility systems and to equipment used for the storage of electricity for later injection to utility systems; and (iii) adding 20VAC5-314-165 regarding sale of an existing or proposed small generating facility.

AT RICHMOND, AUGUST 3, 2020

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUR-2018-00107

Ex Parte: In the matter of revising
the Commission's Regulations Governing
Interconnection of Small Electrical Generators

AMENDING ORDER

On July 29, 2020, the State Corporation Commission ("Commission") issued its Order Adopting Regulations in the above-captioned docket. Thereafter, a scribal error was discovered on page 19 of 178 of Appendix A to the Order Adopting Regulations.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that this error should be corrected.

Accordingly, IT IS ORDERED THAT:

(1) This case is reopened to consider the amendment described herein.

(2) Appendix A to the Commission's Order Adopting Regulations, specifically 20 VAC 5-314-39 C, hereby is amended. The sentence, "Changes that qualify as material modifications are described as follows: . . ." is stricken and replaced with the sentence, "Changes that do not qualify as material modifications are described as follows: . . ."

(3) Page 19 of Appendix A, as amended, is attached to this Amending Order.

(4) Copies of the revised Regulations Governing Interconnection of Small Electrical Generators, 20 VAC 5-314-10 et seq., including the amendment herein, shall be published in the Virginia Register of Regulations and shall be posted on the website of the Commission's Division of Utility Regulation.

(5) The Staff of the Division of Public Utility Regulation also shall email a copy of the Order Adopting Regulations and attached regulations, including the amendment described herein, to all persons and entities who participated in the workgroup held to receive input on the regulations and/or who filed comments in this docket.

(6) The Interim Clerk of the Commission hereby is directed to serve a copy of this Amending Order on every investor-owned electric utility and electric cooperative in the

Commonwealth, who shall forthwith thereafter notify all their interconnection customers of this amendment.

(7) This case is dismissed.

A COPY HEREOF shall be sent by the Clerk of the Commission to all persons on the official Service List in this matter. The Service List is available from the Clerk of the Commission.

AT RICHMOND, JULY 29, 2020

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUR-2018-00107

Ex Parte: In the matter of revising
the Commission's Regulations Governing
Interconnection of Small Electrical Generators

ORDER ADOPTING REGULATIONS

On May 8, 2009, the State Corporation Commission ("Commission") adopted Regulations Governing Interconnection of Small Electrical Generators, 20 VAC 5-314-10 et seq. ("Interconnection Regulations"), in Case No. PUE-2008-00004.[1] The Commission initiated that rulemaking in accordance with § 56-578 of the Code of Virginia ("Code") which provides, in part:

> The Commission shall establish interconnection standards to ensure transmission and distribution safety and reliability, which standards shall not be inconsistent with nationally recognized standards acceptable to the Commission. In adopting standards pursuant to this subsection, the Commission shall seek to prevent barriers to new technology and shall not make compliance unduly burdensome and expensive.

In that case, the Commission noted that "all electric energy distributors have the obligation to connect any retail customer, including those using distributed generation, located within its service territory to the distributor's facilities used for delivery of retail electric energy, subject to [the Commission's] rules and regulations and approved tariff provisions relating to connection of service."[2] Given the passage of time since the Commission established the Interconnection Regulations, recent changes in applicable laws and Federal Energy Regulatory Commission ("FERC") guidelines, and technological changes in the power industry, the Commission has concluded that it is appropriate to revisit the Interconnection Regulations.[3]

On September 5, 2018, the Commission entered an Order Initiating Rulemaking Proceeding in this docket to determine whether, and the extent to which, any of the Interconnection Regulations should be revised. In this regard, the Commission directed Commission Staff ("Staff") to solicit comments from, and to schedule a meeting or meetings (as necessary) with, stakeholders and persons having an interest in the Interconnection Regulations and the interconnection of small electrical generators in the Commonwealth of Virginia; to develop, with appropriate input from interested persons, a proposal for any necessary revisions to the current Interconnection Regulations; and to prepare and file a report ("Staff Report") on its findings and recommendations.

Subsequent to the Commission's Order Initiating Rulemaking, Staff developed initial draft revisions to the Interconnection Regulations ("Initial Draft Revisions") and shared them with interested stakeholders, who were provided an opportunity to comment on the Initial Draft Revisions and participate in a multiple-day working group meeting. Written comments were received from eight entities, and ten entities in addition to Staff participated in the working group meetings.[4]

In response to the written and verbal comments received from the interested stakeholders, Staff made updates to the Initial Draft Revisions. On September 12, 2019, the Staff filed its Staff Report, which included these proposed updates ("Proposed Rules").

On December 3, 2019, the Commission entered an Order for Notice and Comment ("Notice Order"). In the Notice Order, we found that the Proposed Rules should be considered for adoption; provided interested persons an opportunity to comment on, or to suggest modifications or supplements to, the Proposed Rules, or to request a hearing thereon, on or before February 21, 2020; and provided Staff an opportunity to respond to any comments on or before March 20, 2020 ("Staff comments"). We also directed that a copy of the Proposed Rules be sent to the Registrar of Regulations for publication in the Virginia Register of Regulations.[5]

Comments were filed by Virginia Electric and Power Company ("Dominion"); the Virginia, Maryland & Delaware Association of Electric Cooperatives ("VMDAEC" or "Cooperatives"); Cypress Creek Renewables ("Cypress Creek"); Virginia Solar, LLC ("VA Solar"); and Staff.[6] No participant requested a hearing on the Proposed Rules.[7]

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that the revised regulations attached hereto as Appendix A should be adopted as final rules, as discussed herein. In developing these revised regulations, we have reviewed the Proposed Rules and considered and weighed the arguments and comments presented in this proceeding in support of each participant's requests.[8]

Before turning to the participants' requests, we first note that we have simplified the definition of "small generating facility" ("SGF") by removing the reference to "storage for later injection." We find that this change to the definition better describes a generating facility as that term is used at the present time and is therefore appropriate. However, this change should not be construed as a finding that storage devices are exempted from the requirements of the Interconnection Regulations. We therefore also find that it is appropriate to clarify in both the title of the Interconnection Regulations and in 20 VAC 5-314-10 that the regulations shall apply to utilities providing interconnections to retail electric customers, independently owned generators, and any other parties operating, or intending

to operate, a distributed generating facility in parallel with utility systems, and to equipment used for the storage of electricity for later injection to utility systems.[9]

VMDAEC's Recommended Changes to the Proposed Rules

VMDAEC submitted comments recommending numerous changes to the Proposed Rules. VMDAEC divided its comments into: (i) matters of most important concern; (ii) matters of moderate concern; and (iii) matters of minor concern.[10]

The Commission adopts the following edits to the Proposed Rules to address concerns raised by VMDAEC:

• 20 VAC5-314-20, Schedule 1 of 20 VAC5-314-170, and Schedule 10 of 20 VAC 5-314-170 at Attachment 1, shall all be amended to include the following definition:

"Processing fee" means a non-refundable cost to administer or file an application.[11]

• 20 VAC 5-314-35 C is amended as follows:

Using the information provided in the Preapplication Report Request Form in subsection B of this section, and as described in Schedule 4 of 20 VAC 5-314-170, the utility will identify the substation or area bus, bank, or circuit likely to serve the proposed point of interconnection….[12]

• 20 VAC 5-314-40 D (6) shall be amended to state as follows:

The [interconnection customer ("IC")] has paid, or has made arrangements satisfactory to the utility to pay, the cost of the SGF metering pursuant to 20 VAC 5-314-80, and any costs associated with minor modifications;[13]

• 20 VAC 5-314-40 D (7)(e) shall be amended to state:

Voltage balance limitation. The SGF shall not create a voltage imbalance of more than 3.0% measured from phase to phase or phase to ground at any other customer's revenue meter if the utility distribution transformer, with the secondary connected to the point of interconnection, is a three-phase transformer, unless the IC reimburses the utility for its cost to modify any facilities needed to accommodate the interconnection and such modifications are completed.[14]

• Schedule 6 of 20 VAC 5-314-170 at Section 2 shall be amended as shown below:

If the interconnection request is submitted as Level 2, the nonrefundable processing fee payable to the utility is $1,000.

If the interconnection request is submitted as Level 3, the IC shall submit to the utility~~:~~

~~a. The~~ a nonrefundable processing fee of $1,000. Upon being designated by the Utility as a Project A or if the IC elects to proceed with the Project B, Level 3 Interconnection Customers shall also be obligated to submit

~~b. An~~ an interconnection request study deposit of $10,000 plus $1.00 per kW_{AC}~~, pursuant to 20VAC5-314-38~~.

An IC transferring from the Level 1 process shall pay the nonrefundable processing fee of $1,000 minus any previously paid Level 1 processing fee.

An IC transferring from the Level 2 to the Level 3 process shall not be required to pay an additional $1,000 processing fee.

If the SGF is a standby generating facility, the interconnection request shall be designated a Project A and the IC shall be obligated to submit an interconnection request study deposit ~~is~~ of $5,000 in conjunction with the initial study agreement as provided for in 20 VAC 5-314-38 and 20 VAC 5-314-70.

If the interconnection request is submitted solely due to a transfer of ownership or change of control of the SGF, the nonrefundable processing fee is $500.[15]

• Schedule 10 of 20 VAC 5-314-170 at Article 3.3 shall be amended to state:

No termination shall become effective until the Parties have complied with all laws and regulations applicable to such termination, such as any local or Virginia Department of Environmental Quality decommissioning requirements….[16]

• Schedule 10 of 20 VAC 5-314-170 at Articles 3.1 and 3.3 shall be amended to state:

3.1 Effective date. This Agreement shall become effective upon execution by the Parties. ~~The Utility shall promptly file this Agreement with the Division of Public Utility Regulation upon execution.~~

3.3 Termination. No termination shall become effective until the Parties have complied with all laws and regulations applicable to such termination, ~~including the filing with the Division of Public Utility Regulation of a notice of termination of this Agreement~~ such as any local or Virginia Department of Environmental Quality decommissioning requirements.[17]

• Schedule 10 of 20 VAC 5-314-170 at Article 14 shall be amended as set forth in Staff's comments to add affected parties as signatories to the Small Generator Interconnection Agreement ("SGIA").[18]

The Commission declines to adopt the following recommended changes made by VMDAEC for the reasons discussed herein.

First, VMDAEC requests that the definition of "distribution upgrades" in the Proposed Rules be amended to include "existing facilities for the use of the IC as a direct result of the interconnection" and that Article 4 of the SGIA[19] state specifically that ICs shall be responsible for the cost of any existing facilities for their use as a result of the interconnection.[20] According to the Cooperatives, such amendments to the Interconnection Regulations would prevent ICs from being able to "'ride for free' on facilities that have been paid for, or are currently being paid for, by Cooperative member-consumers."[21] VMDAEC states that it could develop the formulae or excess facilities analyses used to calculate the

operations and maintenance ("O&M") cost for these facilities and submit the formulae as a compliance filing in this docket.[22]

The Commission finds that it is not necessary for this issue to be addressed in the Proposed Rules and, further, concludes that it is reasonable not to allow for the filing of such formulae or analyses as a compliance filing for purposes of the instant rulemaking proceeding.[23] As Staff noted in its comments, this issue is specific to the Cooperatives.[24] Moreover, the Cooperatives are seeking ongoing, long-term O&M payments, going well beyond the actual interconnection process, which is the focus of the Interconnection Regulations. For these reasons, to the extent the Cooperatives would like to address such matters further, we find that they would be better considered in a separate formal petition in which other interested persons have an opportunity to participate.

Similarly, VMDAEC seeks to modify the definition of "network upgrades" as follows:

> "Network upgrades" means additions, modifications, and enhancements and other direct costs to the utility's transmission system that are required in order to accommodate the interconnection of the small generating facility with the utility's system. Network upgrades do not include distribution upgrades.[25]

The Cooperatives state that this modification is necessary to ensure an IC would properly pay the costs of any line losses that are created due to the IC generating behind an Old Dominion Electric Cooperative delivery point, and which would otherwise be borne by the Cooperative's member-consumers.[26] Like above, this issue goes beyond the actual interconnection process and appears to be specific to the Cooperatives; therefore, it would be best considered in a different proceeding where the relevant issues could be fully evaluated and interested parties would have an opportunity to participate.

Next, the Cooperatives "encourage the Commission to reconcile terminology and/or processes that may be at odds with the [PJM Interconnection, L.L.C. ("PJM")] interconnection process."[27] Code § 56-578 C states, "The Commission shall establish interconnection standards to ensure transmission and distribution safety and reliability, which standards shall not be inconsistent with nationally recognized standards acceptable to the Commission." As Staff noted in its September 12, 2019 Staff Report, the proposed revisions are intended to update the regulations the Commission previously adopted in 2009 and to align them with recent standards, including the FERC Small Generator Interconnection Procedures Rules ("FERC Rules").[28] In addition to the PJM interconnection process and the FERC Rules, many states have their own interconnection regulations.[29] As a result, it may be impossible for the Commission to develop regulations that do not conflict in some way with regulations promulgated by other entities. The FERC Rules served as the basis for the Interconnection Regulations that we adopted in 2009,[30] and we find that it is appropriate for the FERC Rules, as updated, to continue to serve as a basis for these regulations.[31]

VMDAEC further seeks amendment of 20 VAC 5-314-130 to alleviate the Cooperatives of all reporting requirements.[32] As proposed, 20 VAC 5-314-30 states in pertinent part that each utility shall annually file a written report with Staff that includes certain information concerning the utility's SGF queue, and a listing of those facilities interconnected during the preceding calendar year. The Proposed Rules direct the utilities to include ten items of data for each SGF in their annual reports.[33] According to the Cooperatives, "While it may be considered simply a 'cost of doing business' to some, we consider it a burden on the time, personnel, and resources that should be devoted to serving our member-consumers" and therefore VMDAEC "cannot support, and will request a waiver of, the reporting requirements."[34]

The regular provision of such information to Staff is necessary to ensure the Commission and its Staff have an accurate understanding of the Virginia distributed generation queue and will also facilitate the Commission's and Staff's knowledge of the overall electric system in Virginia. The reports will also help the Commission determine whether the ten items set forth in the Proposed Rules that utilities must provide are adequate to improve our understanding of the generation queue and the overall electric system, or whether future amendments to 20 VAC 5-314-130 are needed to obtain that understanding. We therefore find the reports to be of significant value. We also note that the Cooperatives state in their comments that they do not object to collecting or maintaining this data.[35] Further, the reports are only to be submitted annually, which we do not find to be unduly burdensome. We therefore decline to remove the Cooperatives from the reporting requirements of 20 VAC 5-314-130.[36] As VMDAEC notes, the Commission may waive any or all provisions of the Interconnection Regulations for good cause shown.[37] However, any request for waiver would be evaluated based on the facts and circumstances set forth in the request.

Next, the Cooperatives recommend "a fail-safe date" by which a Level 3 IC should be interconnected or forced to re-start the process.[38] They also recommend that the IC file interim updates with the utility at 6-month intervals.[39] Staff opposes these recommendations, stating in part that the SGIA already in essence includes such a fail-safe date, as it includes language stating that the agreement shall remain in effect for a period of 10 years, with opportunities to annually renew the agreement thereafter.[40] At this time, the Commission declines to adopt these proposals. VMDAEC cites no evidence or example of a situation where the current 10-year term of the SGIA was problematic for a cooperative. Concerning the suggested 6-month reports, the Commission declines to adopt such a rule for every Level 3 interconnection. We note that a utility and an IC are free to agree to 6-month reporting requirements if deemed necessary; the Proposed Rules require a construction planning meeting where such terms could be discussed.[41] Furthermore, the construction planning meeting

requires the utility and IC to determine and document construction milestones. The failure of either party to meet a milestone obligation requires, among other things, notification to the other party and amendments to the milestones.[42]

Next, the Cooperatives state that the Proposed Rules "should be clear that a Level 1 IC must sign an SGIA."[43] The current Interconnection Regulations do not require a Level 1 IC to sign an SGIA. Further, the FERC Rules do not require an equivalent-sized IC to sign an SGIA.[44] Given this, and as the Cooperatives have provided no support for this requested change, we do not find that a Level 1 IC should be required to sign an SGIA at this time.

VMDAEC further recommends that the Proposed Rules be modified to acknowledge that the inclusion of storage will necessitate additional studies, and to require energy storage to be evaluated on the basis of maximum generating/output capacity.[45] The Proposed Rules do not limit the types of evaluations, or number of studies, that may be performed. Moreover, the Commission does not believe such particulars should be specifically detailed in the Proposed Rules, as certain types or numbers of studies may be necessary in some, but not all, circumstances. Including such detailed information would reduce the flexibility and efficiency of the Interconnection Regulations.

The Cooperatives propose changing the fee set forth in 20 VAC 5-314-40 D that utilities may charge a Level 1 IC to inspect certain equipment settings from $50 to $150-200 to better align with the Cooperative's observed inspection costs.[46] We find the $50 inspection fee, which is comparable to the inspection fee in the Commission's Regulations Governing Net Energy Metering, to be reasonable at this time.[47]

VMDAEC also raises several concerns that we find are already adequately addressed in the Proposed Rules, and therefore the Commission declines to adopt the following recommended changes at this time:

- No additional language is needed to further clarify that costs related to interconnection requests should be borne by the IC;[48]
- As is discussed further below, due to concerns that the funds from the interconnection request deposit are usually exhausted by the time the facilities study occurs, the Proposed Rules increase the interconnection request study deposit for a Level 3 interconnection request from the lesser of $1,000 or 50% of the estimated cost of the feasibility study to $10,000 plus $1.00 per kilowatt of alternating current ("kW_{AC}") generating capacity, and we do not find further changes to the schedule of deposits for the Level 3 interconnection process to be necessary at this time;[49]
- Further requirements for ICs that construct their own interconnection facilities are not needed because the Proposed Rules include language allowing the utility to request additional technical information from any IC as may reasonably become necessary while conducting its interconnection studies;[50]
- Section 20 VAC 5-314-39 of the Proposed Rules describes the specific changes in a project that are significant enough to be considered material modifications, and a utility could require a re-study of an existing interconnection should an IC make such a material modification. As such, we decline to include any further language defining changes in technology or setting specific periods of time that require a re-study of a facility's impact on the grid;[51]
- We will not at this time modify the definition of "network upgrades" to include "enhancements, and other direct costs…" in order to ensure that any North American Electric Reliability Corporation reliability reporting costs that may result from an IC interconnecting on a cooperative's system are borne by the IC and not the cooperative's member-consumers, because we concur with Staff that "the definition for 'network upgrades,' whose costs are recoverable from the IC per the Proposed Rules, is sufficient to address this VMDAEC concern;"[52] and
- The SGIA already reflects the power factor and voltage and compels the IC to abide by those determinations.[53]

Dominion's Recommended Changes to the Proposed Rules

In its comments, Dominion recommends several revisions to the Proposed Rules. Except as described below, the Commission adopts the additional changes proposed by Dominion, as set forth in its comments and its attached redline version of the Proposed Rules ("redline").

First, Dominion proposes changes to 20 VAC 5-314-39. Specifically, in the Proposed Rules, 20 VAC 5-314-39 states as follows:

> B. Changes that qualify as material modifications are described as follows: …
>
> 7. A change reducing the maximum generating capacity of the SGF (i) by more than 25% before the Feasibility Study Agreement or Combined Study Agreement has been executed or (ii) by more than 10% after the Feasibility Study Agreement or Combined Study Agreement has been executed.

Dominion requests that an IC instead be permitted to reduce its generating capacity by only up to 10% without triggering a material modification because the higher limit of 25% "may have significant downstream effects on other queued projects…."[54] In response, Staff stated that the proposed 25% reduction is only allowed to occur early in the process and thus would likely cause, at most, only minor downstream impacts on other queued projects.[55] Staff further stated, "During the working group, solar developers expressed concern that the 10% limit was too restrictive and, therefore, caused them to sometimes submit multiple interconnection requests for the same point of interconnection…."[56] We find that allowing ICs to reduce their generating capacity by up to 25% before execution of any initial study agreement, and only limiting the reduction to 10% after the IC has executed its initial study agreement, provides important flexibility to the IC without

causing major negative impacts to the utility.[57] We therefore decline to adopt the change requested by Dominion.

Next, Dominion has proposed including a new section to the Interconnection Regulations: 20 VAC 5-314-165 (Assignment; Sale of an Existing or Proposed SGF).[58] Subsection D of the proposed section states, in part, "Where the IC has not executed an interconnection agreement, the utility may continue to study the IC under a pre-existing study agreement or may require the new owner to execute a new study agreement."[59] In response, Staff noted that it does not oppose this language, but suggested including additional language to ensure the new owner would still retain the existing queue position:

> Where the IC has not executed an [i]nterconnection [a]greement, the utility may continue to study the IC under a pre-existing study agreement or may require the new owner to execute a new study agreement, though under either scenario the new owner would retain the existing queue position.[60]

We approve the inclusion of 20 VAC 5-314-165 in the Interconnection Regulations, as amended to include the additional language recommended by Staff.

VA Solar's Recommended Changes to the Proposed Rules

VA Solar opposes the proposed changes in fees outlined in Schedule 6 of 20 VAC 5-314-170 for Level 3 interconnection requests, specifically the interconnection request study deposit of $10,000 plus $1.00 per kW_{AC} of the nameplate capacity.[61] Instead, VA Solar supports approval of a flat interconnection request study deposit of $10,000.[62] In contrast, Staff believes the larger up-front deposit will help deter ICs from filing multiple requests for the same point of interconnection that could overwhelm the queue, and that the proposed study costs better align the interconnection study deposit with the projected costs of the studies.[63] We agree that the study deposit fee of $10,000 plus $1.00 per kW_{AC} of the nameplate capacity more adequately represents the significant investment in time and money that utilities spend to develop the interconnection request studies. Further, if the deposit provided by the IC for the study costs exceeds the invoiced fees, the Proposed Rules specifically require the utility to refund the excess to the IC.[64] This requirement ensures that an IC is only responsible for the actual costs of the studies and nothing more.[65] For these reasons, we reject VA Solar's proposed changes to the fees in Schedule 6 of 20 VAC 5-314-170.

Next, VA Solar asserts that "it would be beneficial" for the Interconnection Regulations to allow for solar projects to be able to provide reactive power to the grid through the use of smart inverters, in part because the use of such technology may reduce costs related to voltage issues that ICs must bear.[66] VA Solar also recommends amending Article 1.8.2 of the SGIA to require a utility to pay the IC if the IC provides reactive power to the utility and the utility receives compensation for the ability to provide reactive power, stating: "In addition, if the [u]tility pays its own or affiliated generators for reactive power service within the specified range or receives compensation for the ability to provide reactive power, it must similarly pay the IC."[67]

However, as Staff notes in its September 12, 2019 Staff Report, the Institute of Electrical and Electronics Engineers' ("IEEE") Standard 1547[68] is the primary standard that establishes criteria and requirements for interconnection of distributed energy resource ("DER") equipment, including smart inverters, to the power system.[69] While the IEEE Standard 1547 was recently updated ("IEEE 1547-2018" or "IEEE Standard 1547-2018"),

> no DER equipment has yet been certified as compliant with the new IEEE Standard 1547-2018 and Staff is unaware as to when this certification will be available. IEEE Standard 1547-2018 covers only the performance, capabilities, and functions of DER equipment, rather than the certification testing required for the equipment. A companion standard, IEEE Standard 1547.1, is being revised to specify the type, production, commissioning, and periodic tests required in order to certify DER equipment to the IEEE 1547-2018 Standard. This certification standard is not complete. It is Staff's understanding that IEEE 1547-2018 cannot be fully implemented until the companion testing IEEE Standard 1547.1 is published and DERs are certified by an approved national testing lab. In addition to finalizing the certification standard, the specific operational set-points for certified equipment needs to be defined by regional transmission operators such as [PJM], and/or electric utilities before IEEE 1547-2018 certified DER equipment can be deployed. Finally, the Underwriters Laboratories' UL 1741 Standard, which specifies requirements for utility-interactive equipment such as inverters, converters, charge controllers, and interconnection system equipment, and which is intended to supplement and be used in conjunction with the IEEE Standard 1547, has not completed revisions to reflect changes in IEEE Standards 1547-2018 and 1547.1. In short, significant work must still be completed before IEEE 1547-2018 compliant DERs will be available.[70]

As such, the key industry certification and testing standards necessary to support approval of the usage of smart inverters for reactive power applications are not yet available.[71] For these reasons, we find that it is premature to require a utility to accept reactive power on its grid at this time or to require the utility to pay an IC because the utility receives compensation for the ability to provide reactive power.[72] However, the Commission recognizes that this topic may need to be revisited, and the Interconnection Regulations may need to be reopened for further possible revisions, as a result of the changes to IEEE 1547-2018 and IEEE 1547.1,[73] once all of the necessary testing and certification processes have been completed.[74]

Cypress Creek's Recommended Changes to the Proposed Rules

Cypress Creek recommends several changes to the Proposed Rules. First, Cypress Creek proposes the following change to 20 VAC 5-314-10:

> Any IC that has not executed an interconnection agreement with the utility prior to [the effective date of the 2019 revisions to this chapter] shall have 30 calendar days following the later of [the effective date of the 2019 revisions to this chapter], or the posted date of notice in writing from the utility to demonstrate site control pursuant to Schedules 5 or 6 of 20VAC5-314-l70~~, and to post an additional deposit as specified in Schedule 6 of 20VAC5-314-l70~~.[75]

According to Cypress Creek, the above language should be stricken because the new fee schedule should apply only to projects that enter the queue after the adoption of these regulations, and projects that are already in the queue should not be subject to the proposed deposit requirements.[76] We disagree with Cypress Creek that all projects in the queue, regardless of where in the queue the project is, whether the project has begun being studied, or whether a deposit has already been made, automatically should be relieved of the deposit requirements. We also note that the Proposed Rules are not imposing any new fees, as ICs will continue to be responsible for the total actual study costs, but instead are simply increasing the required upfront deposit amounts to align more closely with actual study costs. However, we agree that the language should be clarified with respect to projects that have already begun to be studied or have already paid some deposit. The Commission therefore makes the following change to the relevant portion of 20 VAC 5-314-10:

> Any IC that has not executed an interconnection agreement with the utility prior to October 15, 2020, shall have 30 calendar days following the later of October 15, 2020, or the posted date of notice in writing from the utility to (i) demonstrate site control pursuant to Schedules 5 or 6 of 20VAC5-314-l70, (ii) execute a combined study agreement as provided for in 20VAC5-314-70 or individual revised study agreements conforming with those set forth in Schedules 7, 8, and 9 of 20 VAC 5-314-170, and (iii) to post ~~an additional~~ the deposit as specified in Schedule 6 of 20VAC5-314-l70 minus any study costs previously paid.

Next, Cypress Creek recommends adding language to the SGIA to prohibit the reissuance of SGIAs at a higher cost than the original agreement to ensure utilities "[b]ear the risk of signing contracts that have significant inaccuracies."[77] We recognize Cypress Creek's concerns but also find it appropriate for ICs to pay the actual project costs, even if those actual costs exceed the utility's initial estimates.[78] We note that the Proposed Rules newly introduce a construction planning meeting that precedes execution of the SGIA. This meeting should provide an additional opportunity for parties to review project details and potentially identify inaccuracies in the SGIA before it is executed, reducing the probability that additional changes in the SGIA will become necessary after it has been executed.[79] The Proposed Rules and the SGIA also include a dispute resolution procedure to address situations where the IC and utility cannot come to agreement on an issue.[80]

Cypress Creek also recommends changes to the Proposed Rules to permit the provision of reactive power to the grid and to require a utility to pay the IC if the utility receives compensation for its ability to provide reactive power. We decline to adopt such changes at this time for the reasons previously discussed.

Finally, to the extent that a requested revision by any participant in this proceeding is not specifically addressed above, we find that the requested revision is not necessary or appropriate at this time for purposes of implementing these Interconnection Regulations. However, our denial of any proposals herein does not preclude participants from recommending the same or similar changes in future rulemaking proceedings.

Accordingly, IT IS ORDERED THAT:

(1) The Regulations Governing Interconnection of Small Electrical Generators and Storage, 20 VAC 5-314-10 et seq., as shown in Appendix A to this Order, hereby are adopted and are effective as of October 15, 2020.

(2) The Commission's Information Resources Division forthwith shall send a copy of this Final Order and the attached regulations to the Registrar of Regulations for publication in the Virginia Register of Regulations.

(3) A copy of this Final Order and the attached regulations forthwith shall be posted on the website of the Division of Public Utility Regulation. In addition, the Staff of the Division of Public Utility Regulation shall email a copy of the Final Order and attached regulations to all persons and entities who participated in the workgroup held to receive input on the regulations and/or who filed comments in this docket.

(4) The Interim Clerk of the Commission hereby is directed to serve a copy of the attached regulations on every investor-owned electric utility and electric cooperative in the Commonwealth, who shall forthwith thereafter notify all their interconnection customers of this Final Order and the attached regulations.

(5) This case is dismissed.

AN ATTESTED COPY hereof shall be sent electronically by the Clerk of the Commission to: C. Meade Browder, Jr., Senior Assistant Attorney General, Office of the Attorney General, Division of Consumer Counsel.

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[1]Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: In the matter of establishing interconnection standards for distributed electric generation, Case No. PUE-2008-00004, 2009 S.C.C. Ann. Rept. 287, Order Adopting Regulations (May 8, 2009).

[2]Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: In the matter of establishing interconnection standards for distributed electric

generation, Case No. PUE-2008-00004, 2008 S.C.C. Ann. Rept. 469, Order Establishing Proceeding (Feb. 26, 2008).

[3]In 2013, the Commission amended numerous rules and regulations, including the Interconnection Regulations, to: (1) recognize certain internal organizational changes; (2) correct outdated references to statutes in the Code and remove obsolete rules and schedules that are no longer required; and (3) bring the regulations into compliance with the Virginia Register Form, Style and Procedures Manual issued by the Virginia Code Commission. See Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: In the matter of amending regulations, Case No. PUE-2013-00016, 2013 S.C.C. Ann. Rept. 367, Order Amending Regulations (June 18, 2013).

[4]Staff Report at 2-3.

[5]The Proposed Rules were published in the Virginia Register of Regulations on December 23, 2019.

[6]Appalachian Power Company filed a letter stating it would not file comments.

[7]In its comments, VMDAEC did not request a hearing but stated that "a hearing on this matter would be helpful to the overall rulemaking process [and the Cooperatives] intend to participate in such a hearing if the Commission deems a hearing to be appropriate." VMDAEC comments at 13. We do not deem a hearing to be necessary in this proceeding.

[8]See Board of Supervisors of Loudoun County v. State Corp. Comm'n, 292 Va. 444, 454 n.10 (2016) ("We note that even in the absence of this representation by the Commission, pursuant to our governing standard of review, the Commission's decision comes to us with a presumption that it considered all of the evidence of record.") (citation omitted).

[9]Related changes were also made to the following provisions of the Interconnection Regulations: 20 VAC 5-314-39; 20 VAC 5-314-150; Schedule 1 of 20 VAC 5-314-170; and Schedule 10 of 20 VAC 5-314-170 at Attachment 1.

[10]See VMDAEC comments at 3-13.

[11]Id. at 12; Staff comments at 26.

[12]VMDAEC comments at 11; Staff comments at 23.

[13]VMDAEC comments at 12; Staff comments at 25.

[14]VMDAEC comments at 12; Staff comments at 25.

[15]VMDAEC comments at 11.

[16]Staff comments at 15-16; VMDAEC comments at 7.

[17]VMDAEC comments at 8-9; Staff comments at 6, 17. See also Dominion comments at 16-17.

[18]VMDAEC comments at 10; Staff comments at 21.

[19]Schedule 10 of 20 VAC 5-314-170 at Article 4.

[20]VMDAEC comments at 4.

[21]Id. at 3.

[22]Id. at 4.

[23]See, e.g., Staff comments at 9-11.

[24]Id. at 11.

[25]See 20 VAC 5-314-20; VMDAEC comments at 9-10.

[26]VMDAEC comments at 9-10.

[27]Id. at 7.

[28]Staff Report at 3-4.

[29]See, e.g., id. at 4.

[30]See Staff comments at 16, n.39.

[31]The FERC Rules have been revised since 2009. See Requirements for Frequency and Voltage Ride Through Capability of Small Generating Facilities, Order No. 828, 156 FERC 61,062 (2016); Small Generator Interconnection Agreements and Procedures, Order No. 792, 145 FERC 61,159 (2013).

[32]VMDAEC comments at 8-9.

[33]20 VAC 5-314-130.

[34]VMDAEC comments at 8.

[35]Id. at 9. Collecting and maintaining the data likely represents a significant portion of the effort required to make the annual reports.

[36]However, we do find that the following edit should be made to 20 VAC 5-314-130 B: "Each utility shall annually, on or before January 31, file submit a written report with to the commission staff …."

[37]See 20 VAC 5-314-10 B.

[38]VMDAEC comments at 10.

[39]Id.

[40]Staff comments at 20-21.

[41]See 20 VAC 5-314-70 F.

[42]See id; Schedule 10 of 20 VAC 5-314-170 at Article 6.2.

[43]VMDAEC comments at 10.

[44]See Staff comments at 20.

[45]VMDAEC comments at 10-12.

[46]Id. at 12.

[47]See 20 VAC 5-315-40 A; Staff comments at 26.

[48]VMDAEC comments at 5; Staff comments at 12. See, e.g., Schedule 10 of 20 VAC 5-314-170 at Articles 4.2-4.3.

[49]VMDAEC comments at 5. See also Schedule 6 of 20 VAC 5-314-170 at Section 2. The Facilities Study Agreement also requires ICs to pay any study costs that exceed the deposit within 20 business days. See Schedule 9 of 20 VAC 5-314-170 at Section 5.2.

[50]VMDAEC comments at 6-7; Staff comments at 12-15. See also 20 VAC 5-314-70 C(5); 20 VAC 5-314-70 D(5); and Schedule 9 of 20 VAC 5-314-170 at Section 9.0.

[51]VMDAEC comments at 7; Staff comments at 16.

[52]VMDAEC comments at 9; Staff comments at 19. We further decline to amend the definition of "network upgrades" for the reasons discussed above.

[53]VMDAEC comments at 11; Staff comments at 22; Schedule 10 of 20 VAC 5-314-170 at Article 1.8.1.

[54]Dominion comments at 15.

[55]Staff comments at 4.

[56]Id.

[57]Id. We also note that ICs may reduce their generating capacity by up to 60% prior to the commencement of the feasibility study under the PJM interconnection process, which is significantly higher than the proposed 25% reduction that we approve herein. Id. at 5.

[58]See Dominion comments at 17.

[59]Dominion redline at 51.

[60]Staff comments at 7.

[61]VA Solar comments at 1.

[62]Id.

[63]Staff comments at 27-28.

[64]See, e.g., Schedule 7 of 20 VAC 5-314-170 at Section 4.2; Schedule 8 of 20 VAC 5-314-170 at Section 4.2; and Schedule 9 of 20 VAC 5-314-170 at Section 5.2. See also Schedule 10 of 20 VAC 5-314-170 at Article 6.1.

[65]Should a utility undertake certain grid improvement projects, such as, for example, engaging in a hosting capacity analysis, the costs of such analysis should not be borne by ICs as part of these regulations, and any benefits, such as a decrease in study costs, that would result from these grid improvements should be passed along to ICs so that the ICs pay only the true costs of interconnecting.

[66]VA Solar comments at 2.

[67]Id. at 2 (emphasis omitted).

[68]IEEE Standard for Interconnection and Interoperability of Distributed Energy Resources with Associated Electric Power Systems Interfaces, The Institute of Electrical and Electronics Engineers, Inc., Standard 1547, 2018.

[69]Staff Report at 5.

[70]Id. at 6-7 (internal citations omitted).

[71]Subsequent to the filing of the September 12, 2019 Staff Report, IEEE 1547.1 ("IEEE1547.1-2020") was published. However, it does not appear that all of the processes described in the Staff Report have been completed, including the update to the UL 1741 Standard. Nor does the record in this case suggest that any smart inverters have yet been certified to operate consistent with the recently published IEEE 1547.1-2020. See IEEE Standard Conformance Test Procedures for Equipment Interconnecting Distributed Energy Resources with Electric Power Systems and Associated Interfaces, The Institute of Electrical and Electronics Engineers, Inc., Standard 1547.1-2020, 2020.

[72]We note that the Proposed Rules do address reactive power and would allow the IC and utility to mutually agree upon the power factor range of the output of the SGF. See Schedule 10 of 20 VAC 5-314-170 at Article 1.8. As Staff discusses, "This added language gives more latitude to the IC but still gives the utility the ability to dictate the required limits for its system." Staff comments at 28. We further note that Article 1.8.2 of Schedule 10 does require the utility to pay the IC for reactive power in certain circumstances:

> The [u]tility is required to pay the IC for reactive power that the IC provides or absorbs from the SGF when the [u]tility requests the IC to operate its SGF outside the range specified in Section 1.8.1 of this Agreement, unless mutually agreed upon by the [p]arties. In addition, if the [u]tility pays its own or affiliated generators for reactive power service within the specified range, it must similarly pay the IC.

[73]IEEE Standard Conformance Test Procedures for Equipment Interconnecting Distributed Resources with Electric Power Systems, The Institute of Electrical and Electronics Engineers, Inc., Standard 1547.1, July 1, 2005.

[74]In addition, we note that the National Association of Regulatory Utility Commissioners ("NARUC") recently adopted a resolution recommending that states examine the possibility of adopting or implementing the determinations and requirements set forth in IEEE Standard 1547-2018. See NARUC Resolution Recommending State Commissions Act to Adopt and Implement Distributed Energy Resource Standard IEEE 1547-2018, Feb. 12, 2020.

[75]Cypress Creek comments at 1.

[76]Id.

[77]Id. at 3.

[78]While we recognize that actual construction costs encountered after an SGIA is executed may in some cases differ from utilities' engineering estimates determined during the study process, we nevertheless expect utilities to give accurate good-faith estimates at all stages of the study process.

[79]See 20 VAC 5-314-70 F.

[80]See 20 VAC 5-314-100; Schedule 10 of 20 VAC 5-314-170 at Article 10.

[CHAPTER 314
REGULATIONS GOVERNING INTERCONNECTION OF SMALL ELECTRICAL GENERATORS AND STORAGE]

20VAC5-314-10. Applicability and scope; waiver.

A. ~~These regulations are~~ This chapter is promulgated pursuant to § 56-578 of the Virginia Electric Utility Regulation Act (§ 56-576 et seq. of the Code of Virginia). ~~They establish~~ This chapter establishes standardized interconnection and operating requirements for the safe operation of electric generating facilities ~~with a rated capacity of 20 megawatts (MW) or less connected to electric utility distribution (and in certain cases transmission) systems~~ in Virginia. ~~These regulations apply~~ This chapter applies to utilities providing interconnections to retail electric customers, independently owned generators, and any other parties operating, or intending to operate, a distributed ~~generation~~ generating facility in parallel with utility systems. [This chapter also applies to equipment used for the storage of electricity for later injection to utility systems.] ~~These regulations do~~ This chapter does not apply to customer generators operating pursuant to the Virginia State Corporation Commission's Regulations Governing Net Energy Metering (20VAC5-315) or those that fall under the jurisdiction of the Federal Energy Regulatory Commission (FERC).

If the utility has turned over control of its transmission system to a Regional Transmission Entity (RTE), and if the small generator interconnection process identifies upgrades to the transmission system as necessary to interconnect the small generating facility, then the utility will coordinate with the RTE, and the procedures ~~herein~~ in this chapter will be adjusted as necessary to satisfy the RTE's requirements with respect to such upgrades.

There are three review paths for the interconnection of ~~generation~~ generating facilities subject to this chapter in Virginia ~~having an output of not more than 20 MW~~:

Level 1 - A request to interconnect a certified small generating facility (SGF) no larger than 500 kilowatts (kW) shall be evaluated under the Level 1 process.

Level 2 - A request to interconnect a certified SGF no larger than 2 MW and not qualifying for the Level 1 process shall be evaluated under the Level 2 process.

Level 3 - A request to interconnect an SGF ~~no larger than 20 MW and~~ not qualifying for the Level 1 process or Level 2 process, shall be evaluated under the Level 3 process.

The utility may ~~limit~~ place restrictions upon the interconnection of an SGF to a distribution feeder ~~to a capacity substantially less than 20 MW,~~ depending upon the characteristics of that feeder and the potential for upgrading it, as well as the nature of the loads and other generation on the feeder relative to the proposed point of interconnection. If the SGF cannot be safely and reliably interconnected to the utility's distribution feeder, the utility shall work with the ~~IC~~ interconnection customer (IC) to interconnect the SGF to the utility's transmission system. In such cases, the interconnection of the SGF may be governed by the regulations promulgated by FERC rather than the regulation of the Virginia State Corporation Commission.

The utility shall designate an employee or office from which the ~~interconnection customer (IC)~~ IC may ~~informally~~ request information concerning the interconnection application process. The name, telephone number, and email address of such contact employee or office shall be made available on the utility's ~~Internet~~ website. ~~Electric~~ Readily available electric system information relevant to the location of the proposed SGF shall be provided to the IC upon request, in writing, and may include interconnection studies and any other relevant materials, to the extent such provision does not violate confidentiality provisions of prior agreements or release critical infrastructure information. The utility shall comply with reasonable requests for such information unless the information is proprietary or confidential and cannot be provided pursuant to a prior confidentiality agreement. If the information is proprietary or confidential and cannot be

provided, the utility shall state as such. [Any one developer shall have no more than five active informal requests for information at one time.]

The utility shall make reasonable efforts to meet all ~~time frames~~ timeframes provided in these regulations unless the utility and the IC agree to a different schedule. If the utility cannot meet a deadline provided ~~herein~~ in this chapter, it shall notify the IC in writing, explain the reason for the failure to meet the deadline, and provide an estimated time by which it will complete the applicable interconnection procedure in the process.

Should an IC fail to meet a timeframe or default on another requirement under this chapter or fail to respond to a request for information from the utility, the utility shall also provide the IC written notice identifying the missed deadline or requirement and allow the IC an opportunity to cure on or before the close of business on the 10th business day following the posted date of such notice to cure, prior to the utility taking action to withdraw the IC's interconnection request.

Each utility shall have on file with the commission terms and conditions applicable to the interconnection of SGFs. Such terms and conditions shall, at a minimum, incorporate this chapter by reference, shall set forth terms and conditions applicable to SGFs for which no Small Generator Interconnection Agreement (SGIA) is executed, and shall not conflict with the provisions of this chapter. The terms and conditions applicable to SGFs for which no SGIA is executed shall be reasonably consistent with the terms and conditions of the SGIA.

B. The commission may waive any or all parts of the provisions of this chapter for good cause shown.

C. This chapter shall not apply to SGFs already interconnected as of [~~(insert the effective date of this chapter)~~ October 15, 2020], unless:

1. The IC proposes a material modification; or

2. Application of this chapter is agreed to in writing by the utility and the IC.

D. This chapter shall apply if the IC has not actually interconnected the SGF as of [~~(insert the effective date of this chapter)~~ October 15, 2020].

Any IC that has not executed an interconnection agreement with the utility prior to [~~(insert the effective date of this chapter)~~ October 15, 2020,] shall have 30 calendar days following the later of [~~(insert the effective date of this chapter)~~ October 15, 2020,] or the posted date of notice in writing from the utility to [(i)] demonstrate site control pursuant to Schedule 5 or 6 of 20VAC5-314-170 [; (ii) execute a combined study agreement as provided for in 20VAC5-314-70 or individual revised study agreements conforming with those set forth in Schedules 7, 8, and 9 of 20VAC5-314-170;] and [(iii)] to post [~~an additional~~ the] deposit as specified in Schedule 6 of 20VAC5-314-170 [minus any study costs previously paid].

Any IC that has executed an interconnection agreement with the utility prior to [~~(insert the effective date of this chapter)~~ October 15, 2020,] but where the utility has not actually interconnected the SGF or where the IC has not begun making payments, shall have 60 calendar days following the later of [~~(insert the effective date of this chapter)~~ October 15, 2020,] or the posted date of notice in writing from the utility to submit upgrade and interconnection facility payments (or financial security acceptable to the utility for attachment facilities and distribution upgrades) required pursuant to 20VAC5-314-50 F 2. Any amount previously paid by the IC at the time the deposit or payment is due under this subsection shall be credited toward the deposit amount or other payment required under this subsection.

Should an IC fail to comply with the provisions of this subsection following receipt of a written notice specifying how the IC failed to comply and the expiration of an opportunity to cure by the close of business on the 10th business day following the posted date of such notice to cure, the IC will lose its queue number and the interconnection request shall be deemed withdrawn.

20VAC5-314-20. Definitions.

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

"Affected system" means an electric utility system other than that of the utility that may be affected by the proposed interconnection.

"Affected system operator" means an entity that operates an affected system or, if the affected system is under the operational control of an independent system operator or a regional transmission entity, such independent entity.

"Applicable laws and regulations" means all duly promulgated applicable federal, state, and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders, permits, and other duly authorized actions of any government authority.

"Attachment facilities" means the facilities and equipment owned, operated, and maintained by the utility that are built new in order to physically connect the customer's interconnection facilities to the utility system. Attachment facilities shall not include distribution upgrades or previously existing distribution and transmission facilities.

"Business day" means Monday through Friday, excluding federal holidays.

"Calendar day" means Sunday through Saturday, including all holidays.

"Certified" has the meaning ascribed to it in Schedule 2 of ~~this chapter~~ 20VAC5-314-170.

"Commission" means the Virginia State Corporation Commission.

~~"Competitive service provider" means any entity, other than the utility, supplying electric energy service to the interconnection customer.~~

"Customer's interconnection facilities" means all of the facilities and equipment owned, operated, and maintained by the ~~interconnection customer~~ IC, between the small generating facility and the point of interconnection necessary to physically and electrically interconnect the small generating facility to the utility system.

"Default" means the failure of a breaching party to cure its breach under the ~~small generator interconnection agreement~~ SGIA.

"Distribution system" means the utility's facilities and equipment generally delivering electricity to ultimate customers from substations supplied by higher voltages (usually at transmission level). For purposes of ~~these regulations~~ this chapter, all portions of the utility's transmission system regulated by the commission for which interconnections are not within ~~Federal Energy Regulatory Commission (FERC)~~ FERC jurisdiction are considered also to be subject to ~~these interconnection regulations~~ this chapter.

"Distribution upgrades" means the additions, modifications, and ~~upgrades~~ enhancements made to the utility's distribution system ~~at or beyond~~ on the utility's side of the point of interconnection necessary to ~~abate problems~~ ensure continued system reliability and power quality on the utility's distribution system caused by the interconnection of the ~~small generating facility~~ SGF. Distribution upgrades do not include network upgrades or the customer's interconnection facilities or the utility's attachment facilities.

"Facilities study" has the meaning ascribed to it in 20VAC5-314-70 E.

"Feasibility study" has the meaning ascribed to it in 20VAC5-314-70 C.

"FERC" means the Federal Energy Regulatory Commission.

"Good Utility Practice" means any of the practices, methods, and acts engaged in or approved by a significant portion of the electric industry during the relevant time period, or any of the practices, methods, and acts ~~which~~ that, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost, consistent with good business practices, reliability, safety, and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to ~~be acceptable~~ include practices, methods, or acts generally accepted in the region.

"Governmental authority" means any federal, state, local, or other governmental regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority having jurisdiction over the parties, their respective facilities, or the respective services they provide, and exercising or entitled to exercise any administrative, executive, police, or taxing authority or power; provided that such term does not include the ~~interconnection customer~~ IC, the utility, or a utility affiliate.

"Interconnection customer" or "IC" means any entity proposing to interconnect a new small generating facility with the utility system.

"Interconnection request" means the IC's request, in accordance with this chapter, to interconnect a new small generating facility, or to increase the capacity of, or make a material modification to the operating characteristics of, an existing small generating facility that is interconnected with the utility system.

"Interconnection studies" means the studies conducted by the utility, or, if agreed to by the utility and the IC, a third party ~~agreed to by the utility and the interconnection customer~~ supervised by the utility, in order to determine the interaction of the small generating facility with the utility system and the affected systems in order to specify any modifications to the small generating facility or the electric systems studied to ensure safe and reliable operation of the small generating facility in parallel with the utility system.

"Interdependent customer" or "interdependent project" means an IC or project whose upgrades to the utility system or attachment facilities are impacted by another earlier-queued generating facility, as determined by the utility.

"Material modification" ~~means a modification that has a material impact on the cost or timing of any interconnection request with a later queue priority date~~ has the meaning ascribed to it in 20VAC5-314-39.

"Maximum generating capacity" means the maximum continuous electrical output of the SGF at any time as measured at the point of interconnection or the maximum kW delivered to the utility during any metering period, whichever is greater. Requested maximum generating capacity will be specified by the IC in the interconnection request and an approved maximum generating capacity will subsequently be included as a limitation in the interconnection agreement.

"Network upgrades" means additions, modifications, and enhancements to the utility's transmission system that are required in order to accommodate the interconnection of the small generating facility with the utility's system. Network upgrades do not include distribution upgrades.

"Operating requirements" means any operating and technical requirements that may be applicable due to regional transmission entity, independent system operator, control area, or the utility's requirements, including those set forth in the ~~Small Generator Interconnection Agreement~~ SGIA.

"Party" ~~or "parties"~~ means the utility~~, interconnection customer or both~~ or the IC.

"Point of interconnection" means the point where the customer's interconnection facilities connect physically and electrically to the ~~utility~~ utility's system.

["Processing fee" means a nonrefundable cost to administer or file an application.]

"Project A" means any interconnection request that is not interdependent with another interconnection request.

"Project B" means any interconnection request that [is interdependent with only one other interconnection request and] has a higher queue number than [a designated] Project A.

"Queue number" refers to the number assigned by the utility, establishing a customer's interconnection request position in the study queue relative to all other valid interconnection requests. A lower queue number will be studied prior to a higher queue number, except in the case of interdependent projects.

"Regional Transmission Entity" or "RTE" means an entity having the management and control of a utility's transmission system as further set forth in § 56-579 of the Code of Virginia.

"Small generating facility" or "generating facility" or "generator" or "SGF" means the ~~interconnection customer's~~ IC's equipment used for the production of electricity [~~or storage for later injection~~], as identified in the interconnection request.

"Small Generator Interconnection Agreement" or "SGIA" means the agreement between the utility and the ~~interconnection customer~~ IC as set forth in Schedule ~~6~~ 10 of 20VAC5-314-170.

"Standby generating facility" means an electric generating facility primarily designed for standby or backup power in the event of a loss of power supply from the utility. Such facilities may operate in parallel with the utility for a brief period of time when transferring load back to the utility after an outage, or when testing the operation of the facility and transferring load from and back to the utility.

"Supplemental review" has the meaning ascribed to it in 20VAC5-314-60 ~~I~~ H.

"System" or "utility system" means the distribution and transmission facilities owned, controlled, or operated by the utility that are used to deliver electricity.

"System impact study" has the meaning ascribed to in 20VAC5-314-70 D.

"System upgrades" means distribution upgrades and network upgrades collectively.

"Tariff" means the rates, terms, and conditions filed by the utility with the commission for the purpose of providing commission-regulated electric service to retail customers.

"Transmission system" means the utility's facilities and equipment delivering electric energy to the distribution system, such facilities being operated at ~~voltages~~ voltage levels above the utility's typical distribution system ~~voltages~~ voltage levels.

"Utility" means the public utility company subject to regulation by the commission pursuant to Chapter 10 (§ 56-232 et seq.) of Title 56 of the Code of Virginia with regard to rates ~~and/or~~ or service quality, to ~~which~~ whose system the ~~interconnection customer~~ IC proposes to interconnect a small generating facility.

20VAC5-314-30. Siting of distributed generation facilities.

Prior to installing ~~a small generating facility~~ an SGF, the ~~interconnection customer~~ IC must ensure compliance with local, state, and federal laws and regulations, including all applicable easements and permits, and §§ 56-265.2 and 56-580 of the Code of Virginia, as applicable.

20VAC5-314-35. Preapplication.

A. The IC may informally request electric system information for a proposed project for a specific site by providing in writing details of the potential generating facility project, including site address, grid coordinates, project size, and proposed point of interconnection, to the utility's designated employee or office described in 20VAC5-314-10. Electric system information provided to the IC in response to the informal requests shall include relevant system studies, interconnection studies, and other materials useful to providing an understanding of an interconnection at a particular point on the utility's distribution system, to the extent such provision does not violate confidentiality provisions of prior agreements or critical infrastructure requirements. The utility shall comply with reasonable requests for such information in a timely manner, not to exceed 10 business days. The information produced by the utility is nonbinding, does not confer any rights, and the IC shall still successfully apply to interconnect to the utility's system. The IC shall still meet the requirements of 20VAC5-314-40 or 20VAC5-314-50 to apply to interconnect to the utility's system and to obtain a queue number. Any one developer shall have no more than five active informal requests for information at one time.

B. In addition to the option of informally requesting information described in subsection A of this section, an IC may submit a formal written request form along with a nonrefundable fee of $500 for a preapplication report on a proposed project at a specific site. The utility shall provide the preapplication data described in subsection C of this section to the IC within 20 business days of receipt of the completed request form and payment of the fee. The preapplication report produced by the utility is nonbinding, does not confer any rights, and the IC must still successfully apply to interconnect to the utility's system. The written Preapplication Report Request Form shall include all of the information as described in Schedule 4 of 20VAC5-314-170. The utility shall notify the IC if there are any deficiencies in the IC's submittal within five business days of submission of the Preapplication Report Request Form. [Any one developer shall have no more than five active formal requests for information at one time.]

C. Using the information provided in the Preapplication Report Request Form in subsection B of this section, [and as described in Schedule 4 of 20VAC5-314-170,] the utility will identify the substation or area bus, bank, or circuit likely to serve the proposed point of interconnection. This selection by

the utility does not necessarily indicate, after application of the Level 2 screens or Level 3 study process, that this point of interconnection will be suitable or the most costs effective for interconnection. The IC must request additional preapplication reports if information about multiple points of interconnection is requested. Subject to subsection D of this section, the preapplication report will provide the following information:

1. Total capacity (in MW) of substation or area bus, bank, or circuit based on normal or operating ratings likely to serve the proposed point of interconnection.

2. Existing aggregate generation capacity (in MW) interconnected to a substation or area bus, bank, or circuit (i.e., amount of generation online) likely- to serve the proposed point of interconnection.

3. Aggregate queued generation capacity (in MW) for a substation or area bus, bank, or circuit (i.e., amount of generation in the queue) likely to serve the proposed point of interconnection.

4. Substation nominal distribution voltage or transmission nominal voltage if applicable.

5. Nominal distribution circuit voltage at the proposed point of interconnection.

6. Approximate circuit distance between the proposed point of interconnection and the substation.

7. Relevant line sections actual or estimated peak load and minimum load data, including daytime minimum load and absolute minimum load, when available.

8. Number and rating of protective devices and number and type (standard, bidirectional) of voltage regulating devices between the proposed point of interconnection and the substation or area. At the substation, identify the number of capacitors and if the substation has a load tap changer.

9. Number of phases available at the proposed point of interconnection. If a single phase, distance from the three-phase circuit.

10. Limiting conductor ratings from the proposed point of interconnection to the distribution substation.

11. Whether the proposed point of interconnection is located on a spot network, grid network, or radial supply.

12. Based on the proposed point of interconnection, existing or known constraints such as, but not limited to, electrical dependencies at that location, short circuit interrupting capacity issues, power quality or stability issues on the circuit, capacity constraints, or secondary networks.

13. Other information regarding an affected system the utility deems relevant to the IC (e.g., substation upgrades that allow bidirectional power flows).

D. The preapplication report need only include existing data that is readily available to the utility. A preapplication report request does not obligate the utility to conduct a study or other analysis of the proposed generator in the event that data is not readily available. If the utility cannot complete all or some of a preapplication report due to lack of available data, the utility shall provide the IC with a preapplication report that includes the data that is available as well as a description of any data that was not available. Notwithstanding any of the provisions of this section, the utility shall, in good faith, include data in the preapplication report that represents the best available information at the time of reporting.

20VAC5-314-38. Queue number and interdependent projects.

A. Queue number and queue position. The utility shall assign a queue number to an interconnection request based upon the date-stamp and time-stamp of receipt of a completed Interconnection Request Form by the utility. A later received Interconnection Request Form shall be assigned a higher numerical queue number than an earlier received Interconnection Request Form. The queue number and relative position of each interconnection request will be used to determine the cost responsibility for the upgrades necessary to accommodate the interconnection.

B. Interdependent projects.

1. Upon an IC's submission of an interconnection request for the 20VAC5-314-40 Level 1 interconnection process,20VAC5-314-60 Level 2 interconnection process, or 20VAC5-314-70 Level 3 interconnection process, the utility shall review the interconnection request and make a preliminary determination of whether any interdependencies exist between the IC's proposed SGF and any other IC with a lower queue number. If the interconnection request is for a standby SGF with zero export, then the proposed SGF shall be studied as a Project A. For all other interconnections, any preliminary determination by the utility that the SGF does not create an interdependency will result in the interconnection request being preliminarily designated as a Project A, and the utility shall proceed immediately to either the 20VAC5-314-40, 20VAC5-314-60, or 20VAC5-314-70 Level 1, 2, or 3 study process, as applicable. At the 20VAC5-314-70 B scoping meeting, the utility shall advise the IC regarding its preliminary determination of whether interdependency would be created by the SGF. If no 20VAC5-314-70 B scoping meeting is scheduled, then the utility shall notify the IC in writing within five business days after making its preliminary determination of whether interdependency would be created by the SGF. If applicable, the Project A IC will pay the interconnection request study deposit required for the 20VAC5-314-70 Level 3 study process as identified in Schedule 6 of 20VAC5-314-170 [in conjunction with the execution of the initial study agreement delivered by the utility pursuant to 20VAC5-314-70]. An SGF preliminarily reviewed for system impacts and designated as a Project A may still be determined later to create an interdependency and may then be redesignated by the utility as an

interdependent project during the 20VAC314-70 D system impact study process, thereby losing its Project A designation. Once the system impact study report is issued by the utility and the report designates an SGF as a Project A for purposes of the 20VAC314-70 E facilities study, the interconnection request shall retain this Project A designation during the facilities study, without change.

2. If the utility determines that the IC's proposed SGF is interdependent with one [~~or more~~] other interconnection [~~requests~~ request] with a lower queue number (i.e., an earlier submitted interconnection request), the utility shall notify the IC in writing or at the 20VAC5-314-70 B scoping meeting that the interconnection request is designated as a Project B.

a. Following the 20VAC5-314-70 B scoping meeting, the Project B IC shall then have the option to either:

(1) Wait without further advancement of the interconnection request until Project A has executed a final interconnection agreement and begun making payments for any required upgrades, customer interconnection facilities, and other charges under 20VAC314-50 [~~D~~ F]. Under this option, Project B is not required to adhere to the timeline in 20VAC5-314-70 C until Project A has signed an SGIA and begun making payments or withdrawn its interconnection request; or

(2) Proceed to the 20VAC314-70 D system impact study process. If the Project B IC chooses this option, the utility shall provide the Project B IC a Feasibility Study Agreement pursuant to 20VAC5-314-70 C or a System Impact Study Agreement pursuant to 20VAC5-314-70 D within 10 business days. If the Project B IC signs a System Impact Study Agreement and pays the interconnection request study deposit pursuant to Schedule 6 of 20VAC5-314-170, the Project B shall receive a system impact study report that assumes the Project A interconnection request with the lower queue number completes construction and interconnection, and another system impact study report that assumes the Project A interconnect request with the lower queue number is not constructed and is withdrawn. The Project B IC is responsible for all costs for studying with and without Project A.

b. The utility shall not proceed to a Project B facilities study until after the Project B IC returns a signed Facilities Study Agreement to the utility and the utility has issued the 20VAC314-70 E facilities study report for Project A. Once the Project A facilities study report has been issued, the Project B IC shall then have the option to either:

(1) Wait without further advancement of the interconnection request until Project A has executed a final interconnection agreement and begun making payments for any required upgrades, customer interconnection facilities, and other charges under 20VAC314-50 [~~D~~ F]. Under this option, Project B is not required to adhere to the timeline in 20VAC5-314-70 E until Project A has signed an SGIA and begun making payments or withdrawn its interconnection request; or

(2) Proceed with a 20VAC314-70 E facilities study process. If the Project B IC chooses this option, the utility shall provide the Project B IC a Facilities Study Agreement pursuant to 20VAC5-314-70 E within 10 business days. If the Project B IC signs a Facilities Study Agreement prior to Project A committing to construction by signing the final interconnection agreement and beginning to make payments, then Project B's facilities study shall assume that the Project A interconnection request with the lower queue number will complete construction and interconnection. If Project A is later canceled prior to the Project A IC making payment for the required upgrades, the utility shall revise the Project B facilities study at the Project B IC's expense.

3. If the utility determines that the IC's proposed SGF is interdependent with more than one other interconnection request with a lower queue number (i.e., an earlier submitted interconnection request), the utility shall notify the IC at the 20VAC5-314-70 B scoping meeting and describe generally the number and type of interdependencies of interconnection requests with lower queue numbers.

a. The utility shall not study a project if it is interdependent with more than one earlier queued project. The utility will study a project when interdependency with only one earlier queued project exists. The removal of interdependency with multiple projects may be the result of (i) upgrades to the utility system that eliminate the cause of the interdependency, (ii) withdrawal of interdependent projects with lower queue numbers, or (iii) a lower queue number project signing an interconnection agreement and making payments identified in their SGIA.

b. Within five business days of an interconnection request becoming a Project B interconnection request that is interdependent with only one other interconnection request with a lower queue number, the utility shall schedule the 20VAC5-314-70 B scoping meeting and provide the new Project B IC the options specified in subdivision 2 a of this subsection. Upon being designated by the utility as a Project B, the IC's queue number shall be used to determine the order in which the interconnection request is studied under 20VAC314-70 D relative to all other interconnection requests.

C. Interconnection requests submitted prior to [~~(insert the effective date of this chapter)~~ October 15, 2020]. Other than as set forth in 20VAC5-314-10 C, nothing in this chapter affects an IC's queue number assigned before [~~(insert the effective date of this chapter)~~ October 15, 2020]. Interconnection requests that have received a system impact study report as of [~~(insert the effective date of this chapter)~~ October 15, 2020,] that did not identify any interdependency with another project shall be deemed a Project A. Any interconnection requests for which the utility has not

completed the system impact study and issued a system impact study report (or combined study report, as applicable) to the IC as of [~~(insert the effective date of this chapter)~~ October 15, 2020,] shall be reviewed for interdependency pursuant to this section.

Should an IC fail to comply with 20VAC5-314-10 C following receipt of written notice specifying how the IC failed to comply and the expiration of an opportunity to cure by the close of business on the 10th business day following the posted date of such notice to cure, the IC shall lose its queue number and the interconnection request shall be deemed withdrawn.

20VAC5-314-39. Modification of the interconnection request.

A. As used in this chapter, "material modification" means a modification to machine data or equipment configuration or to the interconnection site of the SGF that has a material impact on the cost, timing, or design of any customer interconnection facilities or upgrades or that may adversely impact other interdependent interconnection requests with higher queue numbers. Material modifications include certain project revisions as defined in [~~subdivision~~ subsection] B of this section, but exclude certain project revisions as defined in [~~subdivision~~ subsection] C of this section.

B. Changes that qualify as material modifications are described as follows:

1. A change in point of interconnection to a new location, unless the change in a point of interconnection is on the same circuit less than two poles away from the original location, and the new point of interconnection is within the same protection zone as the original location;

2. A change or replacement of generating equipment, such as generators, inverters, transformers, relaying, or controls, that is not a like-kind substitution in size, ratings, impedances, efficiencies, or capabilities of the equipment specified in the original or preceding interconnection request;

3. A change from certified to noncertified devices ("Certified" means certified by an Occupational Safety and Health Administration recognized Nationally Recognized Test Laboratory, to relevant Underwriters Laboratories and Institute of Electrical and Electronics Engineers standards, authorized to perform tests to such standards.);

4. A change of transformer connections or grounding from that originally proposed;

5. A change to certified inverters with different specifications or different inverter control specifications or set-up than originally proposed;

6. An increase of the maximum generating capacity of an SGF; or

7. A change reducing the maximum generating capacity of the SGF (i) by more than 25% before the Feasibility Study Agreement or Combined Study Agreement has been executed or (ii) by more than 10% after the Feasibility Study Agreement or Combined Study Agreement has been executed.

C. Changes that [do not] qualify as material modifications are described as follows:

1. A change in ownership of an SGF; the new owner, however, will be required to execute a new Interconnection Request Form and study agreements for any study that has not been completed and the report issued by the utility;

2. A change or replacement of generating equipment, such as generators, inverters, solar panels, transformers, relaying, or controls, that is a like-kind substitution in size, ratings, impedances, efficiencies, or capabilities of the equipment specified in the original or preceding interconnection request;

3. An increase in the DC/AC ratio that does not increase the maximum AC output capability of the generating facility;

4. A decrease in the DC/AC ratio that does not reduce the AC output capability of the generating facility by more than the amount specified in subdivision B 7 of this section.

5. A change in the DC system configuration to include additional equipment that does not impact the maximum generating capacity, daily production profile, or the proposed AC configuration of the SGF [or energy storage device], including DC optimizers, DC-DC converters, DC charge controllers, powerplant controllers, and energy storage devices such that the output is delivered during the same periods and with the same profile considered during the system impact study.

D. To the extent an IC proposes to modify any information provided in the interconnection request deemed complete by the utility, the IC shall submit any such modifications to the utility in writing. If the utility determines that the proposed modifications constitute a material modification, the utility shall notify the IC in writing within 10 business days that the modification is a material modification, and the interconnection request shall be withdrawn from the queue unless the IC withdraws the proposed material modification within 10 business days of receipt of the utility's written notification. If the modification is determined by the utility not to be a material modification, then the utility shall notify the IC in writing that the modification has been accepted and that the IC shall retain its queue number. An IC may seek an informal determination from the utility of whether a proposed modification constitutes a material modification in accordance with subdivision E of this section.

E. Modification inquiry.

1. Prior to making any modification, the IC may submit an informal modification inquiry in writing that requests the utility to evaluate whether the proposed modifications to the original or most recent interconnection request is a material modification. The IC shall provide specific details on all changes that are to be considered by the utility.

2. In response to IC's informal request, if the utility evaluates the proposed modifications and determines that the changes are not material modifications, the utility shall inform the IC in writing within 10 business days. If the IC wishes to proceed with the proposed modifications, the IC shall submit a revised Interconnection Request Form that reflects the approved modifications.

20VAC5-314-40. Level 1 interconnection process.

A. The Level 1 interconnection process is available to any ~~interconnection customer~~ IC proposing to interconnect a ~~small generating facility~~ certified SGF with the utility system if the SGF is no larger than 500 kW.

B. The IC shall submit (i) a complete Level 1 Interconnection Request Form (Schedule ~~1 in~~ 5 of 20VAC5-314-170) ~~to the utility with~~; (ii) site control documentation pursuant to Schedule 5 of 20VAC5-314-170; and (iii) the required $100 processing fee ~~attached~~ to the utility. Alternatively, the utility may require use of a commission-approved Interconnection Request Form similar to Schedule ~~1~~ 5 of 20VAC5-314-170, which shall be made available to customers on the utility's ~~Internet~~ website. The Interconnection Request Form shall be date-stamped and time-stamped by the utility upon receipt ~~by the utility~~ of (i) a substantially complete Interconnection Request Form submitted by a valid legal entity and signed by the IC, (ii) site control documentation, and (iii) processing fee. The date-stamp and time-stamp shall be used as the qualifying start date-stamp and time-stamp for the purpose of any timetable in these procedures.

~~The IC shall be notified of receipt by the utility within~~ Within three business days of receiving the interconnection request, the utility shall notify the IC of receipt, which notification ~~may~~ shall be made by United States mail, email address, or fax number provided by the IC. As soon as practicable after receipt, but not later than 10 business days after the date of receipt of the interconnection request, the utility shall notify the IC if there are any deficiencies in the IC's submittal. If there are deficiencies, such notice shall include a written list detailing all information that must be provided by the IC to complete the interconnection request.

The IC shall have 10 business days after receipt of the notice of incomplete information to submit the listed information or to request an extension of time to provide such information. The acceptance of such request for time extension shall be at the utility's discretion. If the IC does not provide the listed information or a request for an extension of time within the deadline, the Interconnection Request Form will be deemed withdrawn.

~~The utility shall provide a copy of the final completed date- and time-stamped Interconnection Request Form to the Commission's Division of Energy Regulation.~~

C. Within 15 business days after the date the IC submits a complete Interconnection Request Form and requisite fee, the utility shall evaluate the request to determine whether the IC's project is interdependent with one or more earlier-queued projects. If it is determined that the IC's project does not create an interdependency, the utility shall designate the IC's project as Project A, and, if so, shall inform the IC what utility modifications are required to interconnect the SGF. If the utility determines that the IC's project is interdependent with one or more earlier-queued projects, the utility may delay study of the IC request until the interdependency is resolved and the IC becomes a Project A as further addressed in 20VAC5-314-38 B. If the utility delays study of the IC's project, the utility shall notify the IC in writing and identify the number of earlier-queued interdependent projects.

1. If the interconnection can be accomplished with minor modifications (e.g., changing meters, fuses, and relay settings) to the utility system, the IC and the utility may informally agree upon a plan to effectuate the required installations and modifications. The utility shall perform all installations and modifications of the utility system and the IC shall reimburse the utility for the cost of such installations and modifications. The IC shall perform all required modifications to its SGF.

2. ~~Absent~~ If the interconnection cannot be accomplished with minor modifications or the parties cannot come to an agreement ~~between the parties~~ regarding modifications to the utility system within 10 business days of study results being provided by the utility, the interconnection request will be transferred to the Level 2 process or handled according to 20VAC5-314-100 (Disputes) at the IC's option.

3. If the utility cannot reasonably determine that the modifications to the utility's system can be completed without additional study, the utility shall provide the IC, in writing, justification for that determination, and the interconnection request will be transferred to the Level 2 process or handled according to 20VAC5-314-100 at the IC's option.

D. An IC may begin operation of an SGF when any required modifications or additions as provided for in subsection C of this section are complete and when the following additional requirements are satisfied:

1. If required by the utility's tariff, the IC has installed a lockable, utility-accessible, load breaking manual disconnect switch;

2. A licensed electrician has certified, by signing the Interconnection Request Form, that any required manual disconnect switch has been installed properly and that the ~~small generating facility~~ SGF has been installed in accordance with the manufacturer's specifications as well as all applicable provisions of the National Electrical Code;

3. The vendor of the SGF has certified on the Interconnection Request Form that the SGF equipment is in compliance with the requirements established by Underwriters Laboratories or other national testing laboratories in accordance with IEEE ~~Standard~~ 1547, Standard for ~~Interconnecting~~ Interconnection and

Interoperability of Distributed Energy Resources with Associated Electric Power Systems Interfaces, 2018;

4. In the case of a static inverter-connected SGF with an alternating current capacity in excess of 10 kilowatts, the IC has had the inverter settings inspected by the utility. The utility may ~~not~~ impose a ~~charge for the~~ fee on the customer of no more than $50 for each generator that requires this inspection;

5. In the case of a nonstatic inverter-connected SGF, the IC has interconnected according to the utility's interconnection guidelines, and the utility has inspected all protective equipment settings. The utility may ~~not~~ impose a ~~charge for such~~ fee on the customer of no more than $50 for each generator that requires this inspection~~.~~;

6. The IC has paid, or has made arrangements satisfactory to the utility to pay, the cost of the SGF metering pursuant to 20VAC5-314-80~~.~~ [, and any costs associated with minor modifications];

7. An SGF having an alternating current capacity ~~greater than~~ in excess of 25 kilowatts shall meet the following additional requirements before interconnection may occur:

a. Distribution facilities and customer impact limitations. An SGF shall not be permitted to interconnect to distribution facilities if the ~~interconnection would reasonably~~ utility has reasonably determined that the proposed IC could lead to damage to any of the utility's facilities or ~~would reasonably~~ could lead to voltage regulation or power quality problems at other customer revenue meters due to the incremental effect of the SGF on the performance of the system, unless the IC reimburses the utility for its cost to modify any facilities needed to accommodate the interconnection and such modifications are completed.

b. Secondary, service, and service entrance limitations. The capacity of the SGF shall be less than the capacity of the utility-owned secondary, service, and service entrance cable connected to the point of interconnection, unless the IC reimburses the utility for its cost to modify any facilities needed to accommodate the interconnection and such modifications are completed.

c. Transformer loading limitations. The SGF shall not have the ability to overload the utility's distribution transformer~~,~~ or any distribution transformer winding~~, beyond manufacturer or nameplate ratings,~~ unless the IC reimburses the utility for its cost to modify any facilities needed to accommodate the interconnection and such modifications are completed.

d. Integration with utility's grounding. The grounding scheme of the SGF shall comply with ~~the~~ IEEE 1547~~, Standard for Interconnecting Distributed Resources with Electric Power Systems,~~ and shall be consistent with the grounding scheme used by the utility. If requested by an IC, the utility shall assist the IC in selecting a grounding scheme that coordinates with ~~its~~ the utility's distribution system.

e. Voltage ~~Balance~~ balance limitation. The SGF shall not create a voltage imbalance of more than 3.0% measured from phase to phase [or phase] to ground at any other customer's revenue meter if the utility distribution transformer, with the secondary connected to the point of interconnection, is a three-phase transformer, unless the IC reimburses the utility for its cost to modify any facilities needed to accommodate the interconnection and such modifications are completed.

~~E. Site control documentation must be submitted with the Interconnection Request Form. Any information appearing in public records may not be labeled Confidential. (Confidential information is discussed in 20VAC5-314-110.) Site control may be demonstrated through:~~

~~1. Ownership of, a leasehold interest in, or a right to develop a site for the purpose of constructing the SGF;~~

~~2. An option to purchase or acquire a leasehold site for such purpose;~~

~~3. An exclusive or other business relationship between the IC and the entity having the right to sell, lease, or grant the IC the right to possess or occupy a site for such purpose; or~~

~~4. An existing permanent service metered account with the utility at the site and in the name of the IC.~~

~~F.~~ E. Except as otherwise provided ~~herein~~ in this chapter, ~~neither~~ the utility ~~nor the competitive service provider~~ shall not impose any charges upon an IC for any interconnection requirements specified by this chapter.

~~G.~~ F. The IC shall immediately notify the utility in writing of any changes in the ownership or control of, operational responsibility for, or contact information for the SGF and pay a $500 processing fee.

~~H.~~ G. The utility shall not be required to maintain an interconnection with an SGF if the SGF or associated equipment is found to be out of compliance with the codes, standards, ~~and~~ or certifications applicable to the SGF.

~~I.~~ H. Any IC that is not able to interconnect under the Level 1 interconnection process may apply for interconnection under the Level 2 process or Level 3 process.

20VAC5-314-50. Levels 2 and 3 interconnection request general requirements.

A. The ~~interconnection customer~~ IC shall submit (i) a completed Levels 2 and 3 Interconnection Request Form (Schedule ~~4~~ 6 of 20VAC5-314-170 ~~to the utility, with the~~); (ii) site control documentation pursuant to Schedule 6 of 20VAC5-315-170, and (iii) the required $1,000 processing fee ~~or deposit specified in the Interconnection Request Form~~. The Interconnection Request Form shall be date-stamped and time-stamped by the utility to establish the IC's queue number upon receipt ~~by the utility~~ of (i) a substantially complete Interconnection Request Form submitted by a valid legal entity

and signed by the IC, (ii) site control documentation, and (iii) the processing fee. The date-stamp and time-stamp of a completed Interconnection Request Form shall be used as the qualifying start date-stamp and time-stamp for the purposes of any timetable in these procedures. ~~The interconnection customer shall be notified of receipt by the utility within~~ Within three business days of receiving the interconnection request, the utility shall notify the IC of receipt, which notification ~~may~~ shall be made by ~~US~~ United States mail, email address, or fax number provided by the IC.

The utility shall notify the ~~interconnection customer~~ IC within 10 business days of the receipt of the Interconnection Request Form and site control documentation as to whether the ~~Interconnection Request Form~~ documentation is complete or incomplete. If the Interconnection Request Form is incomplete, the utility shall so notify the IC, including a written list detailing all information that must be provided by the IC to complete the Interconnection Request Form.

The ~~interconnection customer~~ IC shall have 10 business days after receipt of the notice of incomplete information to submit the listed information or to request an extension of time to provide such information. The acceptance of such request for time extension shall be at the utility's discretion but shall not exceed an additional 10 business days. If the IC does not provide the listed information or a request for an extension of time within the deadline, the Interconnection Request Form will be deemed withdrawn.

~~The utility shall provide a copy of the final completed date- and time-stamped Interconnection Request Form to the commission's Division of Energy Regulation.~~

B. Any material modification ~~to machine data or equipment configuration or to the interconnection site of the small generating facility as specified in the Interconnection Request Form~~ pursuant to 20VAC5-314-39 made by the IC but not agreed to in writing by the utility and the IC may be deemed by the utility as a withdrawal of the ~~Interconnection Request Form~~ interconnection request and may require submission of a new ~~Interconnection Request Form~~ interconnection request, unless proper notification of each party by the other and a reasonable time to cure the problems created by the changes are undertaken.

~~C. Site control documentation must be submitted with the Interconnection Request Form. Any information appearing in public records may not be labeled Confidential. (Confidential information is discussed in 20VAC5-314-110.) Site control may be demonstrated through:~~

~~1. Ownership of, a leasehold interest in, or a right to develop a site for the purpose of constructing the small generating facility;~~

~~2. An option to purchase or acquire a leasehold site for such purpose;~~

~~3. An exclusivity or other business relationship between the interconnection customer and the entity having the right to sell, lease, or grant the IC the right to possess or occupy a site for such purpose;~~

~~4. An existing permanent service metered account with the utility at the site and in the name of the IC.~~

~~D. The utility shall place interconnection requests into a first-come, first-served queue that is based on the interconnection's distribution feeder and distribution substation. The queue position shall be based upon the date- and time-stamp of the completed Interconnection Request Form. The queue position of an interconnection request will be used to determine the cost responsibility for the necessary upgrades.~~

C. The utility shall prioritize interdependent projects pursuant to 20VAC5-314-38. If applicable, the interconnection request study deposit specified in the Interconnection Request Form will be required pursuant to 20VAC5-314-38. At the utility's option, interconnection requests may be studied serially or in clusters for the purpose of the system impact study.

D. The IC shall immediately notify the utility in writing of any changes in the ownership or control of, operational responsibility for, or contact information for the SGF and pay a $500 processing fee.

E. The utility shall not be required to maintain an interconnection with an SGF if the SGF or associated equipment is found to be out of compliance with the codes, standards, and certification applicable to the SGF.

F. Small Generator Interconnection Agreement.

1. The steps describing the utility's determination of whether an SGF can be safely interconnected to its system and the utility's subsequent issuance of an executable SGIA to the IC are provided in 20VAC5-314-60 and 20VAC5-314-70 for the Level 2 and Level 3 interconnection processes respectively. After receiving the SGIA from the utility, the IC shall have 30 business days to sign and return the SGIA. If the IC does not return the SGIA within the deadline, the interconnection request shall be deemed withdrawn, and the IC shall lose its place in the utility's queue. After the SGIA is signed by the parties, the interconnection of the SGF shall proceed under the provisions of the SGIA.

2. The SGIA shall specify milestones for prepayment of estimated costs for all system upgrades identified by the utility during the study process. The SGIA shall also specify the prepayment or the provision of financial security for system upgrades or attachment facilities if acceptable to the utility prior to the start of the final design and construction of system upgrades and attachment facilities. Payment and financial security must be received by close of business 30 business days after the date the SGIA is delivered to the IC for signature. Failure to comply with the requirements of this section after an opportunity to cure shall result in the interconnection request being deemed withdrawn. [~~Should an IC fail to comply with the provisions of this section following receipt of a written notice specifying how the IC failed to comply and the expiration of an opportunity to cure~~

~~by the close of business on the 10th business day following the posted date of such notice to cure, the IC will lose its queue number and the interconnection request shall be deemed withdrawn.~~]

20VAC5-314-60. Level 2 interconnection process.

A. The Level 2 interconnection process is available to an ~~interconnection customer~~ IC proposing to interconnect a ~~small generating facility~~ certified SGF with the utility system if the SGF is no larger than 2 MW and does not qualify for the Level 1 process, and meets the codes, standards, and certification requirements of Schedules 2 and 3 ~~in~~ of 20VAC5-314-170.

B. Within 15 business days after the utility notifies the IC it has received a complete Interconnection Request Form, the utility shall perform an initial review using the screens set forth ~~below (20VAC5-314-60~~ in subsection C or ~~20VAC5-314-60~~ D of this section, as [~~applicable)~~ applicable] and shall notify the IC of the results, including copies of the analysis and data underlying the utility's determinations under the screens.

C. Screens for interconnections to radial circuits.

1. For interconnection of ~~a small generating facility~~ an SGF to a radial distribution circuit, the aggregated generation, including the proposed ~~small generating facility~~ SGF, on the circuit shall not exceed 15% of the line section's annual peak load as most recently measured at the substation or calculated for the line section. A line section is that portion of a distribution circuit connected to a customer that is bounded by automatic sectionalizing devices or the end of the circuit.

2. The SGF, in aggregation with other generation on the distribution circuit, shall not contribute more than 10% to the circuit's maximum fault current at the point on the distribution feeder's (primary) voltage level that is nearest the point of interconnection.

3. The SGF, in aggregate with other generation on the distribution circuit, shall not cause any distribution protective devices and equipment (including~~, but not limited to,~~ substation breakers, fused cutouts, and line reclosers)~~,~~ or ~~interconnection customer~~ IC equipment on the system to exceed 87.5% of the short circuit interrupting capability~~;~~ nor shall the interconnection be permitted on a circuit where 87.5% of the short circuit interrupting capability is already exceeded.

4. For interconnections to the distribution primary voltage, use the table ~~below,~~ in this subdivision to determine the acceptable type of interconnection to a primary distribution circuit. This screen includes a review of the type of electrical service provided to the IC, including line configuration and the transformer connection, to limit the potential for creating over-voltages on the utility's distribution system due to a loss of ground during the operating time of any anti-islanding function.

Primary Distribution Line Type	Type of Interconnection to Primary Distribution Line	Result/Criteria
Three-phase, three wire	Three-phase, or ~~single phase~~ single-phase, phase-to-phase	Pass screen
Three-phase, four wire	Effectively-grounded ~~three phase~~ three-phase, or single-phase, line-to-neutral	Pass screen

5. If the ~~small generating facility~~ SGF is to be interconnected to a single-phase shared secondary, the aggregate generation capacity on the shared secondary, including the proposed SGF, shall not exceed 20 kW.

6. If the SGF is single-phase and is to be interconnected on a center tap neutral of a 240 volt service, its addition shall not create an imbalance between the two sides of the 240 volt service of more than 20% of the nameplate rating of the service transformer.

7. The SGF, in aggregate with generation interconnected to the transmission side of the substation transformer that feeds the distribution circuit where the SGF proposes to interconnect, shall not exceed 10 MW in an area where there are known, or posted, transient stability limitations to generating units located in the general electrical vicinity (e.g., within three or four transmission busses from the point of interconnection).

8. No construction of facilities by the utility on its own system shall be required to accommodate the SGF.

D. Screens for interconnections involving networks.

1. For interconnection of ~~a small generating facility~~ an SGF to the load side of spot network protectors serving more than a single customer, the SGF must utilize an inverter-based equipment package and, together with the aggregated other inverter-based generation, shall not exceed the smaller of 5.0% of a spot network's maximum load or 300 kW. For spot networks serving a single customer, the SGF must use an inverter-based equipment package and either meet the requirements ~~above~~ of this subdivision, or use a protection scheme, or operate the generator so as not to exceed on-site load or otherwise prevent nuisance operation of the spot network protectors.

2. For interconnection of an SGF to the load side of area network protectors, the SGF must utilize an inverter-based equipment package and, together with the aggregated other inverter-based generation, shall not exceed the smaller of 10% of an area network's minimum load~~,~~ or 500 kW.

3. If the SGF is single-phase, the IC's load, net of generation on each phase, shall not create an imbalance between the phases of a polyphase service, or if applicable, between each leg of single-phase service.

4. For interconnection of an SGF to a distribution circuit in an area where there are known or posted transient stability limitations to generating units located in the general electrical vicinity (e.g., within three or four transmission busses from the point of interconnection), the SGF, in aggregate with generation interconnected to the transmission side of the substation transformer that feeds the distribution circuit, shall not exceed the following limits:

a. For a distribution circuit that supplies only secondary voltage networks, 30% of the distribution circuit's load.

b. For a distribution circuit not exclusively supplying secondary networks, 10 MW.

5. For interconnection of an SGF to the line side of network protectors:

a. For a distribution circuit that supplies only secondary networks, the interconnection fails the screen.

b. For a distribution circuit not exclusively supplying secondary networks, the interconnections shall be evaluated in accordance with 20VAC5-314-60 C.

6. No construction of facilities by the utility on its own system shall be required to accommodate the SGF.

7. To the extent any new IEEE standards conflict with this chapter, in particular IEEE 1547, Standard for Interconnection and Interoperability of Distributed Energy Resources with Associated Electric Power Systems Interfaces, 2018, the new standards shall apply. In addition, utility consent shall not be unreasonably withheld from an SGF interconnecting to a spot or area network provided the SGF utilizes a protection scheme that will prevent any power export from the IC's site, including inadvertent export under fault conditions, and otherwise prevent nuisance operation of the network protectors.

E. If the interconnection passes the screens, the interconnection request shall be approved and the utility ~~will~~ shall provide the ~~interconnection customer~~ IC an ~~executable interconnection agreement~~ SGIA within ~~five~~ 10 business days after the determination.

F. If the interconnection fails any screens, but the utility determines that the ~~small generating facility~~ SGF may nevertheless be interconnected consistent with safety, reliability, and power quality standards, the utility shall provide the IC an ~~executable interconnection agreement~~ SGIA within ~~five~~ 10 business days after the determination.

~~G. If the interconnection fails any screens, but the utility does not or cannot determine from the initial review that the SGF may nevertheless be interconnected consistent with safety, reliability, and power quality standards, unless the IC is willing to consider minor modifications or further study, the utility shall provide the IC with the opportunity to attend a customer options meeting.~~

~~H.~~ G. If the interconnection fails any screen and the utility determines that the interconnection cannot be approved without (i) minor modifications at minimal cost; (ii) a supplemental review or other additional studies or actions; or ~~modifications or installations at~~ (iii) incurring significant cost to address safety, reliability, or power quality problems, the utility shall notify the IC and provide copies of the data and analyses underlying its conclusion within ~~five~~ 10 business days after that determination. Within 10 business days of the determination, the utility shall offer to convene a customer options meeting to review possible IC facility modifications, or the screen analysis and related results, to determine what further steps are needed to permit the SGF to be connected safely and reliably. At the time of notification of the utility's determination, or at the customer options meeting, the utility shall:

1. Offer to perform facility modifications or minor modifications to the utility system (e.g., changing meters, fuses, and relay settings) and provide an estimate of the cost to make such modifications to the utility system. If the IC agrees to pay for the modifications to the utility's electric system, the utility shall provide the IC with an SGIA within 10 business days after the customer options meeting;

2. Offer to perform a supplemental review ~~if the utility concludes that the supplemental review might determine that the SGF could continue to qualify for interconnection pursuant to the Level 2 process,~~ in accordance with subsection H of this section and provide the IC with information on the studies potentially required to be performed under the supplemental review, and an estimate of the costs and ~~time~~ timing of such review; or

3. ~~Offer~~ Obtain the IC's agreement to continue evaluating the interconnection request, but under the Level 3 interconnection process.

~~I.~~ H. Supplemental review. If a supplemental review is offered to the ~~interconnection customer~~ IC and the IC agrees to the supplemental review, the utility shall, within 10 business days of the request, provide to the IC an appropriate supplemental review agreement. To maintain its position in the utility's interconnection queue, the IC must execute the supplemental review agreement and return it to the utility, along with a deposit for the estimated cost of the supplemental review, within 15 business days after receipt of the agreement. If the IC fails to return the executed supplemental review agreement along with the deposit within 15 business days after receipt, the interconnection request shall be deemed withdrawn, and the IC shall lose its place in the utility's interconnection queue.

The IC shall be responsible for the utility's actual costs of conducting the supplemental review. The IC shall pay any review costs that exceed the deposit within 30 business days of receipt of the invoice or resolution of any dispute. If the deposit

exceeds the invoiced costs, the utility ~~will~~ shall return such excess within 30 business days of the invoice without interest.

Within ~~10~~ 30 business days following receipt of the supplemental review agreement and deposit, the utility will determine if the SGF can be interconnected safely and reliably.

1. If so, and if the supplemental review reveals that no modifications are required to the IC's interconnection facilities, or to the system, or to an affected system, the utility shall forward an executable SGIA to the ~~interconnection customer~~ IC within ~~five~~ 10 business days after the determination.

2. If so, and modifications are required to the IC's interconnection facilities ~~that~~ to allow the SGF to be interconnected consistent with safety, reliability, and power quality standards ~~under these procedures~~ in this chapter, the utility shall forward an executable SGIA to the IC within ~~five~~ 10 business days after confirmation that the IC has agreed to make the necessary changes at the IC's cost.

3. If so, and minor modifications to the utility system are required to allow the SGF to be interconnected consistent with safety, reliability, and power quality standards ~~under these procedures~~ in this chapter, the utility shall, within 10 business days after the determination, forward an executable SGIA to the IC that requires the IC to pay the costs of such system modifications prior to interconnection.

4. If not, the interconnection request will be elevated to the Level 3 interconnection process.

Interconnection may occur when, as may be required under the applicable ~~subdivisions~~ subdivision 1, 2, or 3 of this subsection, the SGIA is fully executed and returned to the utility, the IC has made required payments to the utility, and required modifications are complete. If subdivision ~~I~~ 4 of this ~~section~~ subsection is applicable, interconnection shall occur in accordance with the Level 3 interconnection process.

~~J.~~ I. Small generating facilities of 500 kW or less. For an SGF of 500 kW or less, the requirements in this section shall be deemed satisfied when~~:~~ (i) an Interconnection Request Form as required under 20VAC5-314-40 B is properly completed and all of the certifications and ~~acknowledgements~~ acknowledgments required in Sections 5, 6, and 7 of the Interconnection Request Form are affixed, and (ii) the IC and the utility have exchanged appropriate written commitments to effect the necessary installations and modifications to the SGF and the utility system. ~~The timing of such~~ Such commitments shall follow the timing prescribed in this section.

20VAC5-314-70. Level 3 interconnection process.

A. The Level 3 interconnection process shall be used by an ~~interconnection customer~~ IC proposing to interconnect ~~a small generating facility~~ an SGF with the utility system if the SGF ~~is no larger than 20 MW and~~ does not pass or qualify for the Level 1 or Level 2 interconnection processes. As needed, a scoping meeting, feasibility study, system impact study, and facilities study shall precede the preparation of ~~a Small Generator Interconnection Agreement~~ an SGIA (Schedule ~~6~~ 10 of 20VAC5-314-170). Any of the studies may be combined by mutual, written agreement of the parties along with payment of applicable interconnection study deposit, set forth in Schedule 6 of 20VAC5-314-170. Such agreement for a combined study shall, at a minimum, include milestones for completion. The combined study timeframes and fees shall not exceed the aggregate timeframes and fees of the individual studies as specified in this section. [To maintain its position in the utility's interconnection queue, the IC must execute the agreement for combined study, return it to the utility, and pay the interconnection request study deposit set forth in Schedule 6 of 20VAC5-314-170 within 15 business days after receipt of the agreement. If the IC fails to return the executed agreement for combined study or make the full payment of the interconnection request study deposit within 15 business days after receipt of the agreement, the interconnection request shall be deemed withdrawn, and the interconnection request shall lose its place in the utility's interconnection queue.]

B. Scoping meeting.

1. The purpose of the scoping meeting is to discuss the interconnection request and the utility's preliminary interdependency determination. The parties shall discuss the studies potentially required to safely and reliably interconnect the IC to the utility's system, including the cost responsibilities for the studies.

~~1.~~ 2. A scoping meeting ~~will~~ shall be held ~~within~~ no later than 10 business days after the Interconnection Request Form is deemed complete~~,~~ or as otherwise mutually agreed to in writing by the parties. The utility and the IC shall bring to the meeting ~~personnel, including system engineers and other~~ all resources as may be reasonably required to accomplish the purpose of the meeting, such as system engineers and other personnel.

~~2. The purpose of the scoping meeting is to discuss the interconnection request. The parties shall discuss the studies and the cost responsibilities for the studies.~~

3. The scoping meeting may be omitted by mutual, written agreement of the parties.

C. Feasibility study.

1. If the parties agree that a feasibility study should be performed, the utility shall provide the IC with a ~~feasibility study agreement~~ Feasibility Study Agreement (Schedule 7 of 20VAC5-314-170), including an outline of the scope of the feasibility study and an estimate of the cost to perform the study, no later than ~~five~~ 10 business days after the scoping meeting or ~~five~~ 10 business days after the decision is made to not have a scoping meeting and otherwise pursuant to subsection D of this section.

If the parties agree to not perform a feasibility study, the utility shall provide the IC a ~~system impact study agreement~~ System Impact Study Agreement (Schedule 8 of 20VAC5-314-170) including an outline of the scope of the study and

an estimate of the cost to perform the study no later than ~~five~~ 10 business days after the scoping meeting~~,~~ or five business days after the decision is made to not have a scoping meeting.

2. To maintain its position in the utility's interconnection queue, the IC must execute the ~~feasibility study agreement and~~ Feasibility Study Agreement, return it to the utility ~~along with the deposit for the feasibility study~~, and pay the interconnection request study deposit set forth in Schedule 6 of 20VAC5-314-170 within 15 business days after receipt of the agreement. If the IC fails to return the executed ~~feasibility study agreement along with the~~ Feasibility Study Agreement or make the full payment of the interconnection request study deposit within 15 business days after receipt of the agreement, the interconnection request shall be deemed withdrawn and the interconnection request shall lose its place in the utility's interconnection queue.

3. A feasibility study shall identify any potential adverse system impacts that would result from the interconnection of the SGF.

~~4. A deposit of no more than 50% of the estimated feasibility study costs or earnest money of $1,000 may be required from the interconnection customer. a. Study costs shall be the utility's actual incremental costs and will be invoiced to the IC after the study is completed and delivered and will include a summary of professional time. b. The IC shall pay any study costs that exceed the deposit without interest within 30 calendar days on receipt of the invoice or resolution of any dispute. If the deposit exceeds the invoiced fees, the utility shall refund such excess within 30 calendar days of the invoice without interest~~ 4. Feasibility study costs will be deducted from the interconnection request study deposit pursuant to Schedule 7 of 20VAC5-314-170.

5. The feasibility study shall be based on the technical information provided by the IC in the Interconnection Request Form, as may be modified as the result of the scoping meeting. The utility reserves the right to request additional technical information from the IC as may reasonably become necessary consistent with Good Utility Practice during the course of the feasibility study and as designated in accordance with the standard small generator interconnection procedures. All ~~modification~~ modifications made to the interconnection request shall be made in writing to the utility. If the ~~interconnection customer modifies~~ IC submits a modification to its interconnection request in writing and the utility determines the modification is not a material modification, the time to complete the feasibility study may be extended by mutual, written agreement of the parties.

6. In performing the feasibility study, the utility shall rely, to the extent reasonably practicable, on recent studies. The IC shall not be charged for such existing studies; however, the IC shall be responsible for charges associated with any new study or modifications to existing studies that are reasonably necessary to perform the feasibility study.

7. The feasibility study report shall provide the following analyses for the purpose of identifying any potential adverse system impacts that would result from the interconnection of the SGF:

a. Initial identification of any circuit breaker short circuit capability limits exceeded;

b. Initial identification of any thermal overload or voltage limit violations;

c. Initial review of grounding requirements and electric system protection; and

d. Description and estimated cost of facilities and estimated construction time required to interconnect the SGF and to address the identified short circuit and power flow issues.

8. The feasibility study shall model the impact of the SGF for all purposes identified in the Interconnection Request Form in order to avoid the further expense and interruption of operation for reexamination of feasibility and impacts if the IC later changes the purpose for which the SGF is being installed.

9. The feasibility study shall include a determination of the feasibility of all potential points of interconnection~~,~~ for an SGF at the specified site as requested by the IC and shall be at the IC's cost.

10. A feasibility study report shall be prepared and transmitted to the IC within 30 business days of the utility's receipt of the complete executed ~~feasibility study agreement~~ Feasibility Study Agreement and required deposit.

11. If the feasibility study shows no potential for adverse system impacts, then within ~~five~~ 10 business days of the completion of the study, the utility shall send the IC either an ~~executable Small Generator Interconnection Agreement~~ SGIA (Schedule ~~5,~~ 10 of 20VAC5-314-170) or a ~~facilities study agreement~~ Facilities Study Agreement (Schedule 9 of 20VAC5-314-170), including an outline of the scope of the facilities study and an estimate of the cost to perform the study.

12. If the feasibility study shows potential for adverse system impacts, the review process shall proceed to the system impact study.

D. System impact study.

1. No later than ~~five~~ 10 business days after the parties agree that a system impact study should be performed, the utility shall provide the IC a ~~system impact study agreement~~ System Impact Study Agreement (Schedule 8 of 20VAC5-314-170), including an outline of the scope of the system impact study and an estimate of the cost to perform the study.

2. To maintain its position in the utility's interconnection queue, the IC must execute the ~~system impact study~~

~~agreement and~~ System Impact Study Agreement, return it to the utility ~~along with the~~, and if applicable, pay the interconnection request study deposit ~~for the system impact study~~ set forth in Schedule 6 of 20VAC5-314-170 within 15 business days after receipt of the agreement. If the IC fails to return the executed ~~system impact study agreement along with the~~ System Impact Study Agreement or make the full payment of the applicable interconnection request study deposit within 15 business days after receipt of the agreement, the interconnection request shall be deemed withdrawn, and the interconnection request shall lose its place in the utility's interconnection queue.

~~3. A deposit equal to the estimated cost of a system impact study may be required from the IC.~~

~~a. Study cost shall be the utility's actual incremental costs and will be invoiced to the IC after the study is completed and delivered and will include a summary of professional time.~~

~~b. The IC shall pay any study costs that exceed the deposit within 30 calendar days on receipt of the invoice or resolution of any dispute. If the deposit exceeds the invoiced fees, the utility shall refund the excess within 30 calendar days of the invoice without interest~~

3. System impact study costs will be deducted from the interconnection request study deposit pursuant to Schedule 8 of 20VAC5-314-170.

4. A system impact study shall identify and detail the electric system impacts that would result if the SGF were interconnected without project modifications or electric system modifications, ~~focusing on the~~ including addressing any adverse electric system impacts identified in the feasibility study~~,~~ or in the scoping meeting. A system impact study shall evaluate the impact of the proposed interconnection on the reliability of the electric system.

5. A system impact study will be based upon the results of the feasibility study, if applicable, and the technical information provided by the ~~interconnection customer~~ IC in the interconnection request. The utility reserves the right to request additional technical information from the IC as may reasonably become necessary consistent with Good Utility Practice during the course of the system impact study. If the IC modifies its designated point of interconnection~~,~~ or interconnection request~~,~~ or the technical information provided ~~therein~~ in the connection request, the time to complete the system impact study may be extended by written, mutual agreement.

6. A system impact study shall consist of a study of the potentially impacted transmission and distribution systems, a short circuit analysis, a stability analysis, a power flow analysis, voltage drop and flicker studies, grounding reviews, distribution load flow study, analysis of equipment interrupting ratings, protection coordination study, communications study, and impacts on electric system operation, as necessary. A system impact study shall state the assumptions upon which it is based, state the results of the analyses, and provide the requirement or potential impediments to providing the requested interconnection service, including a preliminary indication of the cost and length of time that would be necessary to correct any problems identified in those analyses and implement the interconnection. A system impact study shall provide a list of facilities and modifications that would be required as a result of the interconnection along with estimates of cost responsibility and time to construct. If arranged with the utility prior to the utility preparing the ~~system impact study agreement~~ System Impact Study Agreement, the system impact study may, at the IC's cost, include one or more alternatives to the point of interconnection; however, such alternative points must be on the same distribution circuit as the point of interconnection the IC specified as the proposed point of interconnection and the SGF must be at the same site.

7. Affected systems may participate in the preparation of a system impact study, with a division of costs among such entities as they may agree. All affected systems shall be afforded an opportunity to review and comment upon a system impact study that covers potential adverse system impacts on their electric systems, and the utility has 20 additional business days to complete a system impact study requiring review by affected systems.

8. If the utility uses a queuing procedure for sorting or prioritizing projects and their associated cost responsibilities for any required network upgrades, the system impact study shall consider all generating facilities ~~(and~~, and with respect to clause iii ~~below~~ of this subdivision, any identified upgrades associated with such higher queued ~~interconnection)~~ interconnection) that, on the date the system impact study is commenced are~~:~~ (i) directly interconnected with the utility system~~;~~ or (ii) interconnected with affected systems and may have an impact on the proposed interconnection~~;~~ and (iii) have a pending higher queued interconnection request to interconnect with the utility system.

9. A system impact study, if required, shall be completed and the results transmitted to the IC within 45 business days after ~~an agreement~~ the System Impact Study Agreement is signed by the parties~~, or in accordance with the utility's queuing procedures~~.

10. If the system impact study shows that facility modifications are needed to accommodate the SGF, then within ~~five~~ 10 business days following transmittal of the system impact study report, the utility shall send the IC a ~~facilities study agreement~~ Facilities Study Agreement (Schedule 9 of 20VAC5-314-170), including an outline of the scope of the study and an estimate of the cost to perform the study.

E. Facilities study.

1. The facilities study shall specify and estimate the cost of the equipment, engineering, procurement, and construction work needed to implement the conclusion of the feasibility ~~and/or~~ impact study or system impact study and to allow the SGF to be interconnected and operate safely and reliably.

2. To maintain its position in the utility's interconnection queue, the IC must execute the ~~facilities study agreement~~ Facilities Study Agreement and return it to the utility ~~along with a completed Facilities Study Information Form (Schedule 5, 20VAC5-314-170) and deposit for the facilities study~~ [and, if applicable, pay the interconnection request study deposit set forth in Schedule 6 of 20VAC5-314-170] within 30 business days after receipt of the agreement, unless an extension has been agreed to in writing with the utility. Otherwise, the interconnection request shall be deemed withdrawn, and the interconnection request shall lose its place in the utility's interconnection queue.

~~3. A deposit equal to the estimated cost of a facilities study may be required from the IC.~~

~~a. Study cost shall be the utility's actual incremental costs and will be invoiced to the IC after the study is completed and delivered and will include a summary of professional time.~~

~~b. The IC shall pay any study costs that exceed the deposit within 30 calendar days after receipt of the invoice or resolution of any dispute. If the deposit exceeds the invoiced fees, the utility shall refund the excess within 30 calendar days of the invoice without interest~~

3. Facilities study costs will be deducted from the interconnection request deposit pursuant to Schedule 9 of 20VAC5-314-170.

4. Design for any required customer's interconnection facilities, attachment facilities, ~~and/or~~ or upgrades shall be performed under the facilities study. The utility may contract with consultants to perform activities required under the facilities study. The IC and the utility may agree in writing to allow the IC to separately arrange for the design of some of the customer's interconnection facilities. In such cases, facilities design will be reviewed ~~and/or~~ or modified prior to acceptance by the utility, under the provisions of the facilities study. If the parties agree to separately arrange for design and construction, and provided security and confidentiality requirements can be met, the utility shall make sufficient information available to the IC in accordance with confidentiality and critical infrastructure requirements, to permit the IC to obtain an independent design and cost estimate for any necessary facilities.

5. The facilities study shall identify (i) the electrical switching configuration of the equipment, including~~, without limitation,~~ transformer, switchgear, meters, and other station equipment~~,~~; (ii) the nature and estimated cost of the attachment facilities and distribution upgrades necessary to accomplish the interconnection~~,~~; and (iii) an estimate of the time required to complete the construction and installation of such facilities.

6. The utility may propose to group facilities required for more than one IC in order to minimize facilities costs through economies of scale, but any IC may ~~require~~ direct the ~~installation of~~ utility to install those facilities required for ~~its~~ only the IC's own ~~small generating facility~~ SGF if it pays the costs of those facilities.

7. In cases where system upgrades are required, the utility shall transmit the facilities study report within 45 business days after receipt of the ~~complete facilities study agreement, Facilities Study Information Form, and the deposit~~ completed Facilities Study Agreement. In cases where no system upgrades are necessary~~,~~ and the required facilities are limited to ~~customer's~~ the IC's interconnection facilities and attachment facilities only, the utility shall transmit the facilities study report within 30 business days after receipt of the ~~complete facilities study agreement, Facilities Study Information Form and the deposit~~ completed Facilities Study Agreement.

F. Construction planning meeting.

1. Within 15 business days of receipt of the report for the final study (i.e., the facilities study or, if applicable, a combined study that satisfies all study requirements), the IC shall request a construction planning meeting where failure to comply shall result in the interconnection request being deemed withdrawn. The construction planning meeting request shall be in writing and shall include the IC's reasonably requested date for completion of the construction of the customer's interconnection facilities and upgrades.

2. The construction planning meeting shall be scheduled within 15 business days of the request from the IC as stated in subdivision F 1 of this section, or as otherwise mutually agreed to in writing by the parties.

3. The purpose of the construction planning meeting is to identify the tasks for each party and discuss and determine the milestones for the construction of the system upgrades and attachment facilities. Agreed upon milestones shall be specific as to scope of action, responsible party, and dates of deliverables and shall be recorded in the SGIA (see Schedule 10 of 20VAC5-314-170) to be provided to the IC.

~~F.~~ G. Small Generator Interconnection Agreement. ~~1. Within five~~ No later than 10 business days after ~~transmittal of the final study (i.e. the facilities study, or if applicable, a combined study that satisfies all study requirements)~~ the construction planning meeting, the utility shall provide the ~~interconnection customer~~ IC an executable SGIA as set forth in 20VAC5-314-50 [~~D~~ F] (Schedule ~~6,~~ 10 of 20VAC5-314-170).

~~2. After receiving the SGIA from the utility, the IC shall have 30 business days or another mutually agreeable deadline, to sign and return the SGIA. If the IC does not return the SGIA within the deadline, the interconnection~~

~~request shall be deemed withdrawn and the IC shall lose its place in the utility's queue. After the SGIA is signed by the parties, the interconnection of the SGF shall proceed under the provisions of the SGIA.~~

20VAC5-314-80. Interconnection metering.

Any metering, including telemetering, necessitated by the use of the ~~small generating facility~~ SGF and any additional utility metering requested by the ~~interconnection customer~~ IC and agreed to in writing by the utility shall be provided by the utility at the IC's expense in accordance with commission requirements or the utility's specifications. The IC shall be responsible for the utility's reasonable and necessary cost for the purchase, installation, operation, maintenance, testing, repair, and replacement of metering and telemetering equipment.

20VAC5-314-90. Commissioning tests.

Commissioning tests of the ~~interconnection customer's~~ IC's installed equipment shall be performed pursuant to applicable codes and standards, including IEEE 1547.1 ~~2005 "IEEE,~~ Standard Conformance Test Procedures for Equipment Interconnecting Distributed Resources with Electric Power Systems, 2005.~~"~~ The utility shall be given at least five business days written notice, or notice as otherwise mutually agreed to in writing by the parties, of the tests to be performed, and the utility shall be allowed ~~to be present~~ to witness the commissioning tests. The utility shall not be compensated by the IC for witnessing commissioning tests.

20VAC5-314-100. Disputes.

A. The parties agree to attempt to resolve all disputes arising out of the interconnection process according to the provisions of this section.

B. In the event of a dispute, either party shall provide the other party with a written notice of dispute. The notice shall describe in detail the nature of the dispute. The parties shall make a good faith effort to resolve the dispute informally within 10 business days.

C. If the dispute has not been resolved within 10 business days after receipt of the notice, either party may seek resolution assistance from the ~~commission's~~ Division of ~~Energy~~ Public Utility Regulation where the matter will be handled as an informal complaint.

Alternatively, the parties may, upon mutual agreement, seek resolution through the assistance of a dispute resolution service. The dispute resolution service will assist the parties in either resolving the dispute or in selecting an appropriate dispute resolution venue (e.g., mediation, settlement judge, early neutral evaluation, or technical expert) to assist the parties in resolving their dispute. Each party shall conduct all negotiations in good faith and shall be responsible for one-half of any costs paid to neutral third parties.

D. If the dispute remains unresolved, either party may petition the commission to handle the dispute as a formal complaint or may exercise whatever rights and remedies it may have in equity or law.

20VAC5-314-110. Confidential information.

A. Confidential information shall mean any confidential ~~and/or~~ or proprietary information provided by one party to the other party that is clearly marked or otherwise designated "Confidential." All design, operating specifications, and metering data provided by the IC shall be deemed confidential information regardless of whether it is clearly marked or otherwise designated as such.

B. Confidential information does not include information previously in the public domain, required to be publicly submitted or divulged by governmental authorities (after notice to the other party and after exhausting any opportunity to oppose such publication or release), or necessary to be divulged in an action to enforce an agreement between the parties. Each party receiving confidential information shall hold such information in confidence and shall not disclose it to any third party nor to the public without the prior written authorization from the party providing that information, except to fulfill obligations under agreements between the parties, or to fulfill legal or regulatory requirements.

1. Each party shall employ at least the same standard of care to protect confidential information obtained from the other party as it employs to protect its own confidential information.

2. Each party is entitled to equitable relief, by injunction or otherwise, to enforce its rights under this section to prevent the release of confidential information without bond or proof of damages~~,~~ and may seek other remedies available at law or in equity for breach of this provision.

C. Notwithstanding anything in this chapter to the contrary, if the commission, during the course of an investigation or otherwise, requests information from one of the parties that is otherwise required to be maintained in confidence, the party shall provide the requested information to the commission~~,~~ within the time provided for in the request for information. In providing the information to the commission, the party may request that the information be treated as confidential and nonpublic by the commission and that the information be withheld from public disclosure. Parties are prohibited from notifying the other party prior to the release of the confidential information to the commission. A party shall notify the other party when it is notified by the commission that a request to release confidential information has been received by the commission, at which time either party may respond to the commission before such information would be made public.

D. Once a project has been assigned a queue number in accordance with 20VAC5-314-38, the following information regarding the project shall not be deemed confidential:

1. Project IC company name;

2. Queue number;

3. Maximum generating capacity;

4. Location of the SGF; and

5. Date of the submission of the completed Interconnection Request Form.

20VAC5-314-120. Equal treatment.

The utility shall receive, process, and analyze all interconnection requests in a timely manner as set forth in this chapter. The utility shall use the same reasonable efforts in processing and analyzing interconnection requests from all ~~Interconnection customers~~ ICs, whether the SGF is owned or operated by the utility, its subsidiaries or affiliates, or others.

20VAC5-314-130. Record retention and reporting requirements.

A. The utility shall maintain, subject to audit, records for three years of (i) all interconnection requests received pursuant to this chapter, (ii) the times required to complete interconnection request approvals and disapprovals, and (iii) justification for the actions taken on the interconnection requests.

B. Each utility shall annually, on or before January 31, [~~file~~ submit] a written report [~~with~~ to] the commission staff that includes the utility's small generating facilities queue and a listing of those facilities interconnected during the preceding calendar year. This report shall include the following data for each SGF:

1. Queue number.

2. The physical address or geographic coordinates (latitude and longitude) of the SGF.

3. Fuel type.

4. The capacity of the SGF, in terms of megawatts.

5. The substation and transformer to which the project will be interconnected.

6. The feeder or circuit to which the project will be interconnected.

7. The date of submission of final completed Interconnection Request Form.

8. Interdependency status (e.g., Project A or Project B).

9. Status of the request in the interconnection process (e.g., SGIA executed, connected, canceled).

10. The date of final completed signed SGIA.

20VAC5-314-140. Coordination with affected systems.

The utility shall coordinate the conduct of any studies required to determine the impact of the ~~small generating facility~~ SGF on affected systems with affected system operators and, if possible, include those results (if available) in its applicable interconnection studies within the ~~time frame~~ timeframe specified in this chapter. The utility will include such affected system operators in all meetings held with the IC as required by this chapter. The IC shall cooperate with the utility in all matters related to the conduct of studies and the determination of modifications to affected systems. A utility that may be an affected system shall cooperate with the utility with which interconnection has been requested in all matters related to the conduct of studies and the determination of modifications to affected systems. The utility owning or operating the system to which the IC desires to interconnect shall not be held responsible or liable for any delays in the interconnection process attributable to the lack of information or cooperation from the owners or operators of affected systems.

20VAC5-314-150. Capacity of the small generating facility.

A. If the interconnection request is for an increase in capacity for an existing ~~small generating facility~~ SGF, the interconnection request shall be evaluated on the basis of the new total capacity of the SGF.

B. If the interconnection request is for ~~a~~ [~~an SGF~~ a facility] that includes multiple energy production or storage devices at a site for which the ~~interconnection customer~~ IC seeks a single point of interconnection, the interconnection request shall be evaluated on the basis of the ~~aggregate capacity of the multiple devices~~ maximum generating capacity of the [~~SGF~~ facility].

C. The interconnection request shall be evaluated using the maximum ~~rated~~ capacity ~~of~~ that the SGF is capable of injecting into the utility's electric system. However, if the maximum generating capacity that the SGF is capable of injecting into the utility's electric system is limited (e.g., through use of a control system, power relays, or other similar device settings or adjustments), then the IC must obtain the utility's agreement, with such agreement not to be unreasonably withheld, that the manner in which the IC proposes to implement such a limit will not adversely affect the safety and reliability of the utility's system. If the utility does not so agree, then the interconnection request must be withdrawn or revised to specify the maximum capacity that the SGF is capable of injecting into the utility's electric system without such limitations. Nothing in this section shall prevent a utility from considering an output higher than the limited output, if appropriate, when evaluating system protection impacts.

20VAC5-314-160. Insurance, liability, and indemnification.

A. For ~~a small generating facility~~ an SGF with a rated capacity not exceeding 10 kW, the IC, at its own expense, shall secure and maintain in effect during the term of the agreement, liability insurance with a combined single limit for bodily injury and property damage of not less than $100,000 for each occurrence.

For an SGF with a rated capacity exceeding 10 kW but not exceeding 500 kW, the IC, at its own expense, shall secure and maintain in effect during the term of the agreement, liability insurance with a combined single limit for bodily injury and property damage of not less than $300,000 for each occurrence.

For an SGF with a rated capacity exceeding 500 kW ~~but not exceeding 2 MW~~, the IC, at its own expense, shall secure and maintain in effect during the term of the agreement, liability insurance with a combined single limit for bodily injury and property damage of not less than $2 million for each

occurrence. ~~Insurance coverage for an SGF with a rated capacity exceeding 2 MW shall be determined on a case-by-case basis and shall reflect the size of the installation and the potential for system damage.~~

An IC of sufficient creditworthiness, as determined by the utility, may propose to provide this insurance via a self-insurance program if it has a self-insurance program established in accordance with commercially acceptable risk management practices, and such a proposal shall not be reasonably rejected.

B. Certificates of insurance evidencing the requisite coverage and provision shall be furnished to the utility prior to the date of interconnection of the SGF, as required by the utility. The utility shall be permitted to periodically obtain proof of current insurance coverage from the IC in order to verify continuing proper liability insurance coverage. The ~~IC will not be allowed~~ utility reserves the right to refuse to commence or continue interconnected operations unless evidence is provided that required insurance coverage is in effect at all times.

C. Utility and IC liability to the other party for any loss, cost, claim, injury, liability, or expense, including reasonable attorney fees, relating to or arising from any act or omission pursuant to this chapter shall be limited to the amount of direct damage actually incurred. In no event shall either party be liable to the other party for any indirect, special, incidental, consequential, or punitive damages of any kind.

D. The utility and the IC shall at all times indemnify, defend, and save the other party harmless from any damages; losses; claims, including claims and actions relating to injury or death of any person or damage to property; demand; suits; recoveries; costs and expenses; court costs; attorney fees; and all other obligations by or to third parties arising out of or resulting from the other party's action or inaction of its obligations pursuant to this chapter on behalf of the indemnifying party, except in cases of gross negligence or intentional wrongdoing by the indemnified party.

[20VAC5-314-165. Assignment; sale of an existing or proposed SGF.

A. At any time after an interconnection request has been submitted by the IC, the IC shall notify the utility of the pending sale of an existing or proposed SGF in writing. The IC shall provide the utility with information regarding whether the sale is a change of ownership of the SGF to a new legal entity or a change of control of the existing legal entity.

B. The IC shall promptly notify the utility of the final date of sale and transfer date of ownership in writing. The purchaser of the SGF shall confirm to the utility the final date of sale and transfer date of ownership in writing.

C. The interconnection agreement shall not survive the transfer of ownership of the SGF to a new legal entity owner. The new owner shall submit a new interconnection request along with a processing fee of $500 to the utility within 20 business days of the transfer of ownership. Where the IC has not executed an interconnection agreement, the utility may continue to study the IC under a pre-existing study agreement or may require the new owner to execute a new study agreement, though under either scenario the new owner would retain the existing queue position. Where an interconnection agreement has been executed and the SGF has been constructed, the utility shall not study or inspect the SGF unless the new owner's interconnection request indicates that a material modification has occurred or is proposed.

D. The interconnection agreement shall survive a change of control of the SGF's legal entity owner, where only the contact information in a study agreement or in the interconnection agreement must be modified. The new owner shall submit a new interconnection request along with a processing fee of $500 to the utility within 20 business days of the change of control and provide the new contact information. Where the IC has not executed an interconnection agreement, the utility may continue to study the IC under a pre-existing study agreement or may require the new owner to execute a new study agreement, though under either scenario the new owner would retain the existing queue position. Where an interconnection agreement has been executed and the SGF has been constructed, the utility shall not study or inspect the SGF unless the new owner's interconnection request indicates that a material modification has occurred or is proposed.

E. The IC shall have the right to assign the interconnection agreement, without the consent of the utility, for collateral security purposes to aid in providing financing for the SGF, provided that the IC will promptly notify the utility of any such assignment. Assignment shall not relieve a party of its obligations, nor shall a party's obligations be enlarged, in whole or in part, by reason thereof.

F. Any attempted assignment that violates this section is void and ineffective.]

20VAC5-314-170. Schedules for Chapter 314.

The following schedules shall be used in the administration of this chapter.

Schedule 1

~~LEVEL 1 INTERCONNECTION REQUEST FORM FOR SMALL GENERATING FACILITY NOT EXCEEDING 500 kW~~

~~PURSUANT TO 20VAC5-314-40 OF THE COMMISSION'S REGULATIONS GOVERNING INTERCONNECTION OF SMALL ELECTRICAL GENERATORS, APPLICANT HEREBY GIVES NOTICE OF INTENT TO OPERATE A GENERATING FACILITY.~~

Section 1. Interconnection Customer Information

Name:_____

Mailing Address:_____

City, State, Zip:_____

Street Address:_____

City, State, Zip:_____

Phone Number(s):_____

Fax Number:_____ Email:_____

Utility:_____

Utility Account Number:_____

Competitive Service Provider:_____

CSP Account Number:_____

Proposed Interconnection Date:_____

Section 2. Processing Fee

The nonrefundable processing fee payable to the utility is $100.

Section 3. Small Generating Facility Information

SGF owner:_____

SGF operator:_____

Business relationship to applicant:_____

Mailing address:_____

City, State, Zip:_____

SGF Address:_____

City, State, Zip:_____

Phone Number(s):_____

Fax Number:_____ Email:_____

Fuel Type:_____

Generator Manufacturer and Model:_____

Rated Capacity in kilowatts: AC:_____ DC:_____

Inverter Manufacturer and Model:_____

Battery Backup: Yes_____ No_____

Facility schematic and equipment layout must be attached to this form.

Section 4. Information for Generators with an AC capacity in excess of 25 kW

Is the proposed generator inverter based? Yes_____ No_____

Generator Type: Inverter Induction Synchronous

Frequency:_____ Hz; Number of phases: One___ Three___

Rated Capacity: DC _____ kW; AC apparent _____ kVA; AC real _____ kW;

~~Power factor _____%; AC voltage _____; AC amperage_____~~

~~Facility schematic and equipment layout must be attached to this form.~~

~~Section 5. Vendor Certification~~

~~The SGF equipment is listed by Underwriters Laboratories to be in compliance with UL1741.~~

~~Signed (Vendor):_____ Date:_____~~

~~Name (printed):_____~~

~~Company:_____~~

~~Phone Number:_____~~

~~Mailing Address:_____~~

~~City, State, Zip:_____~~

~~Section 6. Electrician Certification~~

~~The generator equipment has been installed in accordance with the manufacturer's specifications as well as all applicable provisions of the National Electrical Code.~~

~~Signed (Licensed Electrician):_____ Date:_____~~

~~Name (printed):_____~~

~~License Number:_____ Phone Number:_____~~

~~Mailing Address:_____~~

~~City, State, Zip:_____~~

~~Section 7. Applicant Signature~~

~~I hereby certify that, to the best of my knowledge, all of the information provided in this Request Form is true and correct.~~

~~Signature of Applicant:_____~~

~~Date:_____~~

~~Section 8. Utility Acknowledgement of Receipt~~

~~Signed:_____~~

~~Title:_____~~

~~Utility:_____~~

~~Date:_____~~

~~Utility signature signifies only receipt of this form, in compliance with 20VAC5-314-40, the State Corporation Commission's Regulations Governing Interconnection of Small Electrical Generators.~~

Glossary of Terms

The following terms shall have the following meanings and apply to Schedules 2 through 9 of 20VAC5-314-170:

"Affected system" means an electric utility system other than that of the utility that may be affected by the proposed interconnection.

"Applicable laws and regulations" means all duly promulgated applicable federal, state, and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders; permits; and other duly authorized actions of any governmental authority.

"Attachment facilities" means the facilities and equipment owned, operated, and maintained by the utility that are built new in order to physically connect the customer's interconnection facilities to the utility system. Attachment facilities shall not include distribution upgrades or previously existing distribution and transmission facilities.

"Business day" means Monday through Friday, excluding state holidays.

"Calendar day" means Sunday through Saturday, including all holidays.

"Commission" means the Virginia State Corporation Commission.

"Customer's interconnection facilities" means all of the facilities and equipment owned, operated, and maintained by the interconnection customer, between the small generating facility and the point of interconnection necessary to physically and electrically interconnect the small generating facility to the utility system.

"Distribution system" means the utility's facilities and equipment generally delivering electricity to ultimate customers from substations supplied by higher voltages (usually at transmission level). For purposes of Schedules 2 through 9 of 20VAC5-314-170, all portions of the utility's transmission system regulated by the commission for which interconnections are not within Federal Energy Regulatory Commission jurisdiction are considered also to be subject to the Regulations Governing Interconnection of Small Electrical Generators (20VAC5-314).

"Distribution upgrades" means the additions, modifications, and enhancements made to the utility's distribution system on the utility's side of the point of interconnection necessary to ensure continued system reliability and power quality on the utility's distribution system caused by the interconnection of the small generating facility. Distribution upgrades do not include the network upgrades or the customer's interconnection facilities or the utility's attachment facilities.

"Facilities study" has the meaning ascribed to it in 20VAC5-314-70 E.

"Feasibility study" has the meaning ascribed to it in 20VAC5-314-70 C.

"Good Utility Practice" means any of the practices, methods, and acts engaged in or approved by a significant portion of the electric industry during the relevant time period, or any of the practices, methods, and acts that, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost, consistent with good business practices, reliability, safety, and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to include practices, methods, or acts generally accepted in the region.

"Governmental authority" means any federal, state, local, or other governmental regulatory or administrative agency, court, commission, department, board, or other governmental subdivision or legislature, rulemaking board, tribunal, or other governmental authority having jurisdiction over the parties, their respective facilities, or the respective services they provide and exercising or entitled to exercise any administrative, executive, police, or taxing authority or power; "governmental authority" does not include the interconnection customer, the utility, or any affiliate thereof.

"Interconnection customer" or "IC" means any entity proposing to interconnect a new small generating facility with the utility system.

"Interconnection request" means the interconnection customer's request, in accordance with the Regulations Governing Interconnection of Small Electric Generators (20VAC5-314), to interconnect a new small generating facility or to increase the capacity of or make a material modification to the operating characteristics of an existing small generating facility that is interconnected with the utility system.

"Interdependent customer" or "interdependent project" means an interconnection customer or interconnection project whose upgrades to the utility system or attachment facilities are impacted by another earlier-queued generating facility as determined by the utility.

"Material modification" has the meaning ascribed to it in 20VAC5-314-39.

"Maximum generating capacity" means the maximum continuous electrical output of the small generating facility at any time as measured at the point of interconnection or the maximum kilowatts delivered to the utility during any metering period, whichever is greater. Requested maximum generating capacity will be specified by the IC in the interconnection request, and an approved maximum generating capacity will subsequently be included as a limitation in the interconnection agreement.

"Network upgrades" means additions, modifications, and upgrades to the utility's transmission system required to accommodate the interconnection with the small generating facility to the utility's system. Network upgrades do not include distribution upgrades.

"Party" means the utility or the interconnection customer.

"Point of interconnection" means the point where the customer's interconnection facilities connect physically and electrically with the utility's system.

["Processing fee" means a nonrefundable cost to administer or file an application.]

"Queue number" refers to the number assigned by the utility that establishes a customer's interconnection request position in the study queue relative to all other valid interconnection requests. A lower queue number will be studied prior to a higher queue number, except in the case of interdependent projects. The queue number of each interconnection request shall be used to determine the cost responsibility for the upgrades necessary to accommodate the proposed interconnection.

"Small generating facility" or "SGF" means the interconnection customer's equipment used for the production [~~or storage for later injection~~] of electricity, as identified in the interconnection request.

"System" or "utility system" means the distribution and transmission facilities owned, controlled, or operated by the utility that are used to deliver electricity.

"System impact study" has the meaning ascribed to it in 20VAC5-314-70 D.

"Transmission system" means the utility's facilities and equipment delivering electric energy to the distribution system, such facilities being operated at voltage levels above the utility's typical distribution system voltage levels.

"Utility" means the public utility company subject to regulation by the commission pursuant to Chapter 10 (§ 56-232 et seq.) of Title 56 of the Code of Virginia with regard to rates or service quality, to whose system the interconnection customer proposes to interconnect a small generating facility.

Schedule 2

Certification of Small Generator Equipment Packages

Small generating facility equipment proposed for use separately or packaged with other equipment in an interconnection system shall be considered certified for interconnected operation if (i) it has been tested in accordance with industry standards for continuous utility interactive operation in compliance with the appropriate codes and standards referenced ~~below~~ in this Schedule 2 by any Nationally Recognized Testing Laboratory (NRTL) recognized by the United States Occupational Safety and Health Administration to test and certify interconnection equipment pursuant to the relevant codes and standards listed in SGIP Schedule 3~~,~~ of 20VAC5-314-170; (ii) it has been labeled and is publicly listed by such NRTL at the time of the interconnection application~~,~~; and (iii) such NRTL makes readily available for verification all test standards and procedures it utilized in performing such equipment certification, and, with consumer approval, the test data itself. The NRTL may make such information available on its website and by encouraging such information to be included in the manufacturer's literature accompanying the equipment.

The interconnection customer must verify that the intended use of the equipment falls within the ~~use or~~ uses for which the equipment was tested, labeled, and listed by the NRTL.

Certified equipment shall not require further type-test review, testing, or additional equipment to meet the requirements of this interconnection procedure; however, nothing ~~herein~~ in this Schedule 2 shall preclude the need for an on-site commissioning test by the parties to the interconnection nor follow up production testing by the NRTL.

If the certified equipment package includes only interface components (switchgear, inverters, or other interface devices), then an IC must show that the generator or other electric source being utilized with the equipment package is compatible with the equipment package and is consistent with the testing and listing specified for this type of interconnection equipment.

Provided the generator or electric source, when combined with the equipment package~~,~~ is within the range of capabilities for which it was tested by the NRTL~~,~~ and does not violate the interface components' labeling and listing performed by the NRTL, no further design review, testing, or additional equipment on the customer side of the point of interconnection shall be required to meet the requirements of this interconnection procedure.

An equipment package does not include equipment provided by the utility.

Schedule 3

Certification Codes and Standards

Attachment 3 of the FERC Small Generator Interconnection Procedures (SGIP) in 70 FR 34189 (June 13, 2005):

IEEE Std 1547 Standard for Interconnecting Distributed Resources with Electric Power Systems (including use of IEEE Std 1547.1 testing protocols to establish conformity)

UL 1741 Inverters, Converters, and Controllers for Use in Independent Power Systems

IEEE Std 929-2000 IEEE Recommended Practice for Utility Interface of Photovoltaic (PV) Systems

NFPA 70 (2005), National Electrical Code

IEEE Std C37.90.1-1989 (R1994), IEEE Standard Surge Withstand Capability (SWC) Tests for Protective Relays and Relay Systems

IEEE Std C37.90.2 (1995), IEEE Standard Withstand Capability of Relay Systems to Radiated Electromagnetic Interference from Transceivers

IEEE Std C37.108-1989 (R2002), IEEE Guide for the Protection of Network Transformers

IEEE Std C57.12.44-2000, IEEE Standard Requirements for Secondary Network Protectors

IEEE Std C62.41.2-2002, IEEE Recommended Practice on Characterization of Surges in Low Voltage (1000V and Less) AC Power Circuits

IEEE Std C62.45-1992 (R2002), IEEE Recommended Practice on Surge Testing for Equipment Connected to Low-Voltage (1000V and Less) AC Power Circuits

ANSI C84.1-1995 Electric Power Systems and Equipment – Voltage Ratings (60 Hertz)

IEEE Std 100-2000, IEEE Standard Dictionary of Electrical and Electronic Terms

NEMA MG 1-1998, Motors and Small Resources, Revision 3

IEEE Std 519-1992, IEEE Recommended Practices and Requirements for Harmonic Control in Electrical Power Systems

NEMA MG 1-2003 (Rev 2004), Motors and Generators, Revision 1

Schedule 4

~~LEVELS 2 AND 3 INTERCONNECTION REQUEST FORM SMALL GENERATING FACILITY LESS THAN 20 MW~~

~~Section 1. Interconnection Customer Information~~

~~Name:_____~~

~~Contact person:_____~~

~~Mailing address:_____~~

~~City, State, Zip:_____~~

~~Utility and account number:_____~~

~~Energy Service Provider and account number:_____~~

~~Facility address:_____~~

~~Telephone (Day):_____ (Evening):_____~~

~~Fax:_____ E-Mail:_____~~

~~Alternative contact information~~

~~Contact Name:_____~~

~~Title:_____~~

~~Mailing Address:_____~~

~~City, State, Zip:_____~~

~~Telephone (Day):_____ (Evening):_____~~

~~Fax:_____ E-Mail:_____~~

~~Application is for: New Small Generating Facility_____ Capacity addition____~~

~~If capacity addition to existing facility, please describe:~~
~~_____~~

~~The Small Generating Facility will supply: Interconnection Customer __ others __~~

~~Point of Interconnection:_____~~

~~Interconnection Customer's requested in-service date:_____~~

Section 2. Processing Fee or Deposit

If the Interconnection Request is submitted as Level 2, the nonrefundable processing fee payable to the utility is $500.

If the Interconnection Request is submitted as Level 3, the Interconnection Customer shall submit to the Utility the deposit is $1,000, or 50% of the estimated cost of the Feasibility Study, whichever is less.

Section 3. Small Generating Facility Information

Data apply only to the small generating facility, not the interconnection facilities.

Energy Source:___ Solar___ Wind___ Hydro___ Hydro Type:_____

Diesel___ Natural Gas___ Fuel Oil___ Other (describe)_____

Prime Mover: Fuel Cell____ Recip Engine____ Gas Turb____ Steam Turb____ Microturbine____ PV____ Other (describe)_____

Type of Generator: Synchronous_____ Induction_____ Inverter_____

Generator Nameplate Rating:_____ kW ___ Generator Nameplate kVAR:_____

Interconnection customer or customer site load:_____kW

Typical reactive load:_____

Maximum physical export capability requested:_____ kW

List components of the small generating facility equipment package that are currently certified:

Equipment	Certifying Entity
1._____	1._____
2._____	2._____
3._____	3._____
4._____	4._____
5._____	5._____

Is the prime mover compatible with the certified protective relay package?
Yes____No____

Generator (or solar collector)

Manufacturer, model name & number:_____

Version Number:_____

Nameplate Output Power Rating in kW: (Summer)_____ (Winter)_____

Nameplate Output Power Rating in kVA: (Summer)_____ (Winter)_____

Individual Generator Power Factor

Rated Power Factor: Leading:_____ Lagging:_____

Total number of generators in wind farm to be interconnected pursuant to this Interconnection Request:
Elevation:_____ Single phase___ Three phase___

Inverter manufacturer, model name & number:_____

List of adjustable set points for the protective equipment or software:_____

Note: A completed power systems load flow data sheet must be supplied with the Interconnection Request.

Small Generating Facility Characteristic Data (for inverter-based machines)

Max design fault contribution current:_____ Instantaneous___ or RMS_____

~~Harmonics characteristics:_____~~

~~Start-up requirements:_____~~

~~Small Generating Facility Characteristic Data (for rotating machines)~~

~~RPM Frequency:_____~~

~~Neutral Grounding Resistor (If Applicable):_____~~

~~Synchronous Generators:~~

~~Direct Axis Synchronous Reactance, X_d:_____ P.U.~~

~~Direct Axis Transient Reactance, X'_d:_____ P.U.~~

~~Direct Axis Subtransient Reactance, X''_d:_____ P.U.~~

~~Negative Sequence Reactance, X_2:_____ P.U.~~

~~Zero Sequence Reactance, X_0:_____ P.U.~~

~~KVA Base:_____~~

~~Field Volts:_____~~

~~Field Amperes:_____~~

~~Induction Generators:~~

~~Motoring Power (kW):_____~~

~~I^2t or K (Heating Time Constant):_____~~

~~Rotor Resistance, R_r:_____~~

~~Stator Resistance, R_s:_____~~

~~Stator Reactance, X_s:_____~~

~~Rotor Reactance, X_r:_____~~

~~Magnetizing Reactance, X_m:_____~~

~~Short Circuit Reactance, X_d''':_____~~

~~Exciting Current:_____~~

~~Temperature Rise:_____~~

~~Frame Size:_____~~

~~Design Letter:_____~~

~~Reactive Power Required In Vars (No Load):_____~~

~~Reactive Power Required In Vars (Full Load):_____~~

~~Total Rotating Inertia, H:_____ Per Unit on kVA base~~

~~Excitation and Governor System Data for Synchronous Generators Only:~~

~~Provide appropriate IEEE model block diagram of excitation system, governor system and power system stabilizer (PSS) in accordance with the regional reliability council criteria. A PSS may be determined to be required by applicable studies. A copy of the manufacturer's block diagram may not be substituted.~~

~~Section 4. Customer's Interconnection Facilities Information~~

~~Will a transformer be used between the generator and the point of interconnection ? Yes ____No ____~~

~~Will the transformer be provided by the interconnection customer? Yes ____No ____~~

~~Transformer Data (If applicable, for interconnection customer-owned transformer):~~

~~Is the transformer: single phase_____ three phase____ Size: kVA_____~~

~~Transformer Impedance:_____% on _____kVA base~~

~~If Three Phase:~~

~~Transformer Primary:_____ Volts _____ Delta _____ Wye _____ Wye Grounded~~

~~Transformer Secondary:___ Volts _____ Delta _____ Wye _____ Wye Grounded~~

~~Transformer Tertiary:_____ Volts _____ Delta _____ Wye _____ Wye Grounded~~

~~Transformer Fuse Data (If applicable, for interconnection customer-owned fuse):~~

~~(Attach copy of fuse manufacturer's minimum melt and total clearing time-current curves)~~

~~Manufacturer:_____ Type:_____ Size:_____ Speed:_____~~

~~Interconnecting Circuit Breaker (if applicable):~~

~~Manufacturer:_____ Type:_____~~

~~Load Rating (Amps):___ Interrupting Rating (Amps):___ Trip Speed (Cycles):___~~

~~Interconnection Protective Relays (If Applicable):~~

~~If microprocessor-controlled:~~

~~Manufacturer:_____ Type:_____~~

~~Model No. _____ Firmware ID:_____ Instruction Book No. _____~~

~~List of functions and adjustable setpoints for the protective equipment or software:~~

~~Setpoint Function~~	~~Minimum~~	~~Maximum~~
~~1._____~~	~~_____~~	~~_____~~
~~2._____~~	~~_____~~	~~_____~~
~~3._____~~	~~_____~~	~~_____~~
~~4._____~~	~~_____~~	~~_____~~
~~5._____~~	~~_____~~	~~_____~~
~~6._____~~	~~_____~~	~~_____~~

~~If Discrete Components:~~

~~(Enclose copy of any proposed time-overcurrent coordination curves)~~

~~Manufacturer:_____ Type:_____ Style/Catalog No.:_____ Proposed Setting:_____~~

~~Manufacturer:_____ Type:_____ Style/Catalog No.:_____ Proposed Setting:_____~~

~~Manufacturer:_____ Type:_____ Style/Catalog No.:_____ Proposed Setting:_____~~

~~Manufacturer:_____ Type:_____ Style/Catalog No.:_____ Proposed Setting:_____~~

~~Manufacturer:_____ Type:_____ Style/Catalog No.:_____ Proposed Setting:_____~~

~~Current Transformer Data (If applicable):~~

~~(Enclose copy of manufacturer's excitation and ratio correction curves)~~

~~Manufacturer:_____~~

~~Type:_____ Accuracy Class:_____ Proposed Ratio Connection:_____~~

~~Manufacturer:_____~~

~~Type:_____ Accuracy Class:_____ Proposed Ratio Connection:_____~~

~~Potential Transformer Data (If applicable):~~

~~Manufacturer:_____~~

~~Type:_____ Accuracy Class:_____ Proposed Ratio Connection:_____~~

~~Manufacturer:_____~~

~~Type:_____ Accuracy Class:_____ Proposed Ratio Connection:_____~~

~~Section 5. General Information~~

~~Enclose a copy of the site electrical one-line diagram showing the configuration of the small generating facility equipment, current and potential circuits, and protection and control schemes.~~

~~Enclose a copy of any site documentation that indicates the precise physical location of the proposed SGF (e.g., United States Geological Survey () topographic map or other diagram or documentation).~~

~~Describe the proposed location of the protective interface equipment on the property:_____~~

~~Enclose a copy of any site documentation that describes and details the operation of the protection and control schemes. Is available documentation enclosed? Yes____ No____~~

~~Enclose copies of schematic drawings for all protection and control circuits, relay current circuits, relay potential circuits, and alarm/monitoring circuits (if applicable).~~

~~Are schematic drawings enclosed? Yes____ No____~~

~~Section 6. Interconnection Customer Signature~~

~~I hereby certify that, to the best of my knowledge, all the information provided in this Interconnection Request is true and correct.~~

~~Signature:_____ Date:_____~~

~~Section 7. Utility Acknowledgement of Receipt~~

~~Signed:_____~~

~~Title:_____~~

~~Utility:_____~~

~~Date:_____~~

~~Utility signature signifies only receipt of this form, in compliance with 20VAC5-314-50 of the State Corporation Commission's Regulations Governing Interconnection of Small Electrical Generators.~~

GENERATING FACILITY PREAPPLICATION REPORT REQUEST FORM

Preamble and Instructions

An interconnection customer who requests a preapplication report must submit this preapplication report request by hand delivery, mail, email, or fax to the utility along with the nonrefundable fee of $500.

DISCLAIMER: Be aware that this preapplication report is simply a snapshot in time and is nonbinding. System conditions can and do change frequently.

☐ Check here if payment is enclosed. Fee is required for application to be considered complete.

Date:_____

Interconnection Customer Name (print):_____

_____

Contact Person:_____

_____

Mailing Address:_____

_____

City:_____State:_____Zip Code:_____

Telephone (Daytime):_____

Email Address:_____

Alternative Contact Information (e.g., system installation contractor or coordinating company)

Name (print):_____

Role:_____

Contact Person:_____

_____

Mailing Address:_____

City:_____State:_____Zip Code:_____

Telephone (Daytime):_____

Email Address:_____

Facility Information:

1. Proposed facility location

Address (or cross-roads):_____

City:_____State:_____Zip Code:_____

☐ Site map provided (Google, MapQuest, etc.)

☐ Grid coordinates - Latitude: _____ Longitude: _____

☐ Pole or tower number if available:_____

2. Primary energy source

Choose one:

Renewable	**Nonrenewable**
☐ Solar – Photovoltaic	☐ Fossil Fuel – Diesel
☐ Solar – Thermal	☐ Fossil Fuel – Natural Gas (not waste)
☐ Biomass – Landfill Gas	☐ Fossil Fuel – Oil
☐ Biomass – Manure Digester Gas	☐ Fossil Fuel – Coal
☐ Biomass – Directed Biogas	☐ Fossil Fuel – Other (please specify)
☐ Biomass – Solid Waste	☐ Other (please specify)
☐ Biomass – Sewage Digester Gas	
☐ Biomass – Wood	
☐ Biomass – Other (please specify)	
☐ Hydro Power – Run of River	
☐ Hydro Power – Storage	
☐ Hydro Power – Tidal	
☐ Hydro Power – Wave	
☐ Wind	
☐ Geothermal	
☐ Battery	
☐ Other (please specify)	

3. Prime mover

Choose one:

☐ Photovoltaic (PV)	☐ Steam Turbine
☐ Fuel Cell	☐ Micro-Turbine
☐ Reciprocating Engine	☐ Other, Including Combined Heat and Power (please specify)
☐ Gas Turbine	

4. Type of generator

Choose one:

☐ Inverter-Based Machine	
☐ Induction	
☐ Synchronous	
☐ Other (please specify)	

5. Generator/Storage Nameplate Capacity: kW

Maximum Generating Capacity requested: _____ kW_{AC}

(The maximum continuous electrical output of the generating facility at any time at a power factor of approximately unity as measured at the point of interconnection and the maximum kW delivered to the utility during any metering period.)

Storage Nameplate Energy: _____kWh

6. Generator configuration: ☐ Single-phase ☐ Three-phase

7. Interconnection configuration

☐ New generation

☐ Stand-alone

☐ Addition to existing commercial or industrial customer's delivery

Customer's electric utility account number: _____

Customer's electric meter number: _____

Is Customer's kW load going to increase or decrease?

☐ No

☐ Yes, Details,

_____

Proposed point of interconnection on customer-side of utility meter

_____

****OR****

☐ Addition to existing generation

☐ Stand-alone

☐ Addition to existing commercial or industrial customer's delivery

Customer's electric utility account number:

_____

Customer's electric meter number:

_____

Is Customer's kW load going to increase or decrease?

☐ No

☐ Yes, Details, _____

Type of existing generation: _____

_____

_____

Size of existing generation: _____ kW_{AC}

Proposed point of interconnection on customer-side of utility meter

Additional comments

_____

Schedule 5

~~**LEVELS 2 AND 3 FACILITIES STUDY INFORMATION FORM FOR SMALL GENERATING FACILITIES LESS THAN 20 MW**~~

~~1. Provide a location plan and simplified one-line diagram of the plant and station facilities.~~

~~For staged projects, indicate future generation, future transmission circuits, and other major future facilities. On the one-line diagram, show (i) each generator, its electric connection configuration, and its generation capacity, (ii) the location and capacity of auxiliary power, and (iii) minimum load on CT/PT.~~

~~2. One set of metering is required for each generation connection to the new ring bus or existing utility station. Indicate the number of generation connections requiring a metering set:_____~~

~~3. Indicate whether an alternate source of auxiliary power will be available during CT/PT maintenance. Yes_____ No_____~~

~~4. Indicate whether a transfer bus on the generation side of the metering will require that each meter set be designed for the total plant generation. Indicate such on the one-line diagram.~~

~~5. State the type of control system or Programmable Logic Controller (PLC) that will be located at the small generating facility.~~

~~_____~~

~~6. State the protocol used by the control system or PLC.~~

~~_____~~

~~7.Describe the operation sequence and timing of the protection scheme during disconnection and reconnection to the utility by the SGF.~~

~~8. Provide a 7.5-minute quadrangle map of the site. Indicate the plant, station, transmission line, and property lines.~~

~~9. State the physical dimensions of the proposed interconnection station.~~

~~_____~~

~~10. State the bus length from generation to interconnection station.~~

~~_____~~

~~11. Provide a diagram or description of the point of interconnection desired by the IC that is to be the point of interconnection in the system impact study report.~~

~~12. State the line length from interconnection station to utility system.~~

~~_____~~

~~13. State the pole or tower number observed in the field affixed to the pole or tower leg.~~

~~_____~~

~~14. State the number of third party easements required for distribution or transmission lines.~~

~~_____~~

~~15. Provide the following proposed schedule dates:~~

~~a. Date IC to begin construction:_____~~

~~b. Date generator step-up transformers to receive back feed power:_____~~

~~c. Date IC will test SGF:_____~~

~~d. Date IC will place SGF into commercial operation:_____~~

LEVEL 1 INTERCONNECTION REQUEST FORM FOR SMALL GENERATING FACILITY NOT EXCEEDING 500 kW

PURSUANT TO 20VAC5-314-40, APPLICANT HEREBY GIVES NOTICE OF INTENT TO OPERATE A GENERATING FACILITY.

Section 1. Interconnection Customer Information

Name:_____

Mailing Address:_____

City, State, Zip:_____

Street Address:

City, State, Zip:

Phone Number(s):

Fax Number: Email:

Utility:

Utility Account Number:

Competitive Service Provider:

CSP Account Number:

Proposed Interconnection Date:

This Interconnection Request Form is considered complete when the IC provides all applicable and correct information required in this Schedule 5 and complies with the processing fee in Section 2 of this Schedule.

An IC who requests a commission jurisdictional interconnection must submit this Interconnection Request Form by hand delivery, mail, email, or fax to the utility.

Section 2. Processing Fee

The nonrefundable processing fee payable to the utility is $100.

Section 3. Small Generating Facility Information

SGF Owner:

SGF Operator:

Business Relationship to Applicant:

Mailing Address:

City, State, Zip:

SGF Address:

City, State, Zip:

Phone Number(s):

Fax Number: Email:

Fuel Type:

Generator Manufacturer and Model:

Rated Capacity in Kilowatts: AC: DC:

Inverter Manufacturer and Model:

Battery Backup: Yes No

Facility schematic and equipment layout must be attached to this form.

If not available prior to the completion of the Interconnection Request Form, the IC must provide an address for SGF that has been issued conforming to the 911 emergency response group for the area to the utility within 15 business days of issuance.

Section 4. Information for Generators with an AC Capacity in Excess of 25 kW

Is the proposed generator inverter based? Yes No

Generator Type: Inverter Induction Synchronous

Frequency: Hz; Number of Phases: One Three

Rated Capacity: DC kW; AC Apparent kVA; AC Real kW;

Power Factor %; AC Voltage ; AC Amperage

Facility schematic and equipment layout must be attached to this form.

Section 5. Site Control

Enclose a copy of the site control documentation. Any information appearing in public records may not be labeled confidential. (Confidential information is discussed in 20VAC5-314-110.) Site control may be demonstrated through:

1. Ownership of, a leasehold interest in, or a right to develop a site for the purpose of constructing the SGF;

2. An option to purchase or acquire a leasehold interest in a site for such purpose;

3. An exclusive or other business relationship between the IC and the entity having the right to sell, lease, or grant the IC the right to possess or occupy a site for such purpose; or

4. An existing permanent service metered account with the utility at the site and in the name of the IC.

Section 6. Vendor Certification

The SGF equipment is listed by Underwriters Laboratories to be in compliance with UL1741.

Signed (Vendor): Date:

Name (Printed):

Company:

Phone Number:

Mailing Address:

City, State, Zip:

Section 7. Electrician Certification

The generator equipment has been installed in accordance with the manufacturer's specifications as well as all applicable provisions of the National Electrical Code.

Signed (Licensed Electrician): Date:

Name (printed):

License Number: Phone Number:

Mailing Address:

City, State, Zip:

Section 8. Applicant Signature

I hereby certify that, to the best of my knowledge, all of the information provided in this Interconnection Request Form is true and correct.

Signature of Applicant:

Date:

Section 9. Utility Acknowledgment of Receipt

Signed: _____

Title: _____

Utility: _____

Date: _____

Utility signature signifies only receipt of this form, in compliance with 20VAC5-314-40.

Schedule 6

~~**SMALL GENERATOR INTERCONNECTION AGREEMENT (SGIA)**~~

~~This Small Generator Interconnection Agreement ("Agreement") is made and entered into this _____ day of _____, 20__, by _____ (" Utility"), and _____ ("Interconnection Customer") each hereinafter sometimes referred to individually as "Party" or both referred to collectively as the "Parties."~~

~~Utility Information~~

~~Utility:_____~~

~~Attention:_____~~

~~Address:_____~~

~~City, State, Zip:_____~~

~~Phone:_____ Fax:_____~~

~~Interconnection Customer Information~~

~~Interconnection Customer:_____~~

~~Attention:_____~~

~~Address:_____~~

~~City, State, Zip:_____~~

~~Phone:_____ Fax:_____~~

~~Interconnection Customer Application No:_____~~

~~In consideration of the mutual covenants set forth herein, the Parties agree as follows:~~

~~**Article 1. Scope and Limitations of Agreement**~~

~~1.1 This Agreement shall be used for all Interconnection Requests for generators in excess of 500 kW submitted pursuant to the Commission's Regulations Governing Interconnection of Small Electrical Generators, Chapter 314 of the Virginia Administrative Code.~~

~~1.2 This Agreement governs the terms and conditions under which the Interconnection Customer's ("IC") Small Generating Facility ("SGF") will interconnect with, and operate in parallel with, the utility system.~~

~~1.3 This Agreement does not constitute an agreement to purchase or deliver the Interconnection Customer's power. The purchase or delivery of power and other services, including station service or backup power, that the IC may require will be covered under separate agreements, possibly with other parties. The IC will be responsible for separately making all necessary arrangements (including scheduling) for delivery of electricity with the applicable utility and provider of transmission service.~~

~~1.4 Nothing in this Agreement is intended to affect any other agreement between the utility and the IC.~~

~~1.5 Responsibilities of the Parties~~

~~1.5.1 The Parties shall perform all obligations of this Agreement in accordance with all applicable laws and regulations, operating requirements, and Good Utility Practice.~~

1.5.2 The IC shall construct, interconnect, operate and maintain its SGF and construct, operate, and maintain its Customer's Interconnection Facilities in accordance with the applicable manufacturer's recommended maintenance schedule, in accordance with this Agreement, and with Good Utility Practice.

1.5.3 The utility shall construct, operate, and maintain its distribution and transmission system and attachment facilities in accordance with this Agreement, and with Good Utility Practice.

1.5.4 The IC agrees to construct its facilities in accordance with applicable specifications that meet or exceed those provided by the National Electrical Safety Code, the American National Standards Institute, IEEE, Underwriter's Laboratory, and operating requirements in effect at the time of construction and other applicable national and state codes and standards. The IC agrees to design, install, maintain, and operate its SGF so as to reasonably minimize the likelihood of a disturbance adversely affecting or impairing the system or equipment of the utility or affected systems and to otherwise maintain and operate its SGF in accordance with the specifications and certifications under which the SGF was initially installed and interconnected.

1.5.5 Each Party shall operate, maintain, repair, and inspect, and shall be fully responsible for the facilities that it now or subsequently may own unless otherwise specified in the Attachments to this Agreement. Each Party shall be responsible for the safe installation, maintenance, repair and condition of their respective lines and appurtenances on their respective sides of the point of change of ownership. The utility and the IC, as appropriate, shall provide Attachment Facilities and Customer's Interconnection Facilities that adequately protect the utility's personnel, and other persons from damage and injury. The allocation of responsibility for the design, installation, operation, maintenance and ownership of Attachment Facilities and Customer's Interconnection Facilities shall be delineated in the Attachments to this Agreement. The design, installation, operation, and maintenance of such facilities shall be the responsibility of the owner except as otherwise provided for in this Agreement.

1.5.6 The utility shall coordinate with all affected systems to support the interconnection.

1.6 Parallel operation obligations

Once the SGF has been authorized to commence parallel operation, the IC shall abide by all rules and procedures pertaining to the parallel operation of the SGF including, but not limited to the rules and procedures concerning the operation of generation set forth in the tariff.

1.7 Metering

The IC shall be responsible for the utility's reasonable and necessary cost for the purchase, installation, operation, maintenance, testing, repair, and replacement of metering and data acquisition equipment specified in Attachments 2 and 3 of this Agreement. The IC's metering (and data acquisition, as required) equipment shall conform to applicable industry rules and operating requirements.

1.8 Reactive power

1.8.1 The IC shall design its SGF to maintain a composite power delivery at continuous rated power output at the point of interconnection at a power factor within the range of 0.95 leading to 0.95 lagging, unless the utility has established different requirements that apply to all similarly situated generators in the control area on a comparable basis. The requirements of this paragraph shall not apply to wind generators.

1.8.2 The utility is required to pay the Interconnection Customer for reactive power that the IC provides or absorbs from the SGF when the utility requests the IC to operate its SGF outside the range specified in article 1.8.1. In addition, if the utility pays its own or affiliated generators for reactive power service within the specified range, it must similarly pay the IC.

1.8.3 Payments shall be in accordance with the IC's applicable rate schedule as may be in effect and accepted by the appropriate government authority. To the extent that no rate schedule is in effect at the time the Interconnection Customer is required to provide or absorb reactive power under this Agreement, the IC may expeditiously file such rate schedule with the appropriate government authority, and the utility agrees to support any request for waiver of any prior notice requirement of such authority in order to permit compensation to the IC from the time service commenced.

1.9 Capitalized terms used herein shall have the meanings specified in the definitions in Attachment 1 to Schedule 6 or in the body of this Agreement.

Article 2. Inspection, Testing, Authorization, and Right of Access

2.1 Equipment testing and inspection

2.1.1 The Interconnection Customer shall test and inspect its small generating facility and interconnection facilities prior to interconnection. The IC shall notify the utility of such activities no fewer than five business days (or as may be agreed to by the Parties) prior to such testing and inspection. Testing and inspection shall occur on a business day. The utility may, at its

own expense, send qualified personnel to the SGF site to inspect the interconnection and observe the testing. The IC shall provide the utility a written test report when such testing and inspection is completed.

2.1.2 The utility shall provide the IC written acknowledgment that it has received the IC's written test report. Such written acknowledgment shall not be deemed to be or construed as any representation, assurance, guarantee, or warranty by the utility of the safety, durability, suitability, or reliability of the SGF or any associated control, protective, and safety devices owned or controlled by the IC or the quality of power produced by the SGF.

2.2 Authorization required prior to parallel operation

2.2.1 The utility shall use reasonable efforts to list applicable parallel operation requirements in Attachment 5 of this Agreement. Additionally, the utility shall notify the Interconnection Customer of any changes to these requirements as soon as they are known. The utility shall make reasonable efforts to cooperate with the IC in meeting requirements necessary for the IC to commence parallel operations by the in-service date.

2.2.2 The IC shall not operate its SGF in parallel with the utility's system without prior written authorization of the utility. The utility will provide such authorization once the utility receives notification that the IC has complied with all applicable parallel operation requirements. Such authorization shall not be unreasonably withheld, conditioned, or delayed.

2.3 Right of access

2.3.1 Upon reasonable notice, the utility may send a qualified person to the premises of the Interconnection Customer at or immediately before the time the SGF first produces energy to inspect the interconnection, and observe the commissioning of the SGF (including any required testing), startup, and operation for a period of up to three business days after initial start up of the unit. In addition, the IC shall notify the utility at least five business days prior to conducting any on-site verification testing of the SGF.

2.3.2 Following the initial inspection process described above, at reasonable hours, and upon reasonable notice, or at any time without notice in the event of an emergency or hazardous condition, the utility shall have access to the Interconnection Customer's premises for any reasonable purpose in connection with the performance of the obligations imposed on it by this Agreement or if necessary to meet its legal obligation to provide service to its customers.

2.3.3 Each Party shall be responsible for its own costs associated with this article.

Article 3. Effective Date, Term, Termination, and Disconnection

3.1 Effective date

This Agreement shall become effective upon execution by the Parties. The utility shall promptly file this Agreement with the Commission's Division of Energy Regulation upon execution.

3.2 Term of Agreement

This Agreement shall remain in effect for a period of 10 years from the effective date or such other longer period as the Interconnection Customer may request and shall be automatically renewed for each successive one-year period thereafter, unless terminated earlier in accordance with article 3.3 of this Agreement.

3.3 Termination

No termination shall become effective until the Parties have complied with all applicable laws and regulations applicable to such termination, including the filing with the Commission's Division of Energy Regulation of a notice of termination of this Agreement.

3.3.1 The Interconnection Customer may terminate this Agreement at any time by giving the utility 20 business days written notice.

3.3.2 Either Party may terminate this Agreement after default pursuant to article 7.6.

3.3.3 Upon termination of this Agreement, the Small Generating Facility will be disconnected from the utility system. The termination of this Agreement shall not relieve either Party of its liabilities and obligations, owed or continuing at the time of the termination.

3.4 Temporary disconnection

Temporary disconnection shall continue only for so long as reasonably necessary under Good Utility Practice.

3.4.1 Emergency Conditions -- "Emergency Condition" shall mean a condition or situation: (i) that in the judgment of the Party making the claim is imminently likely to endanger life or property; or (ii) that, in the case of the utility, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to the utility system, the Attachment Facilities or the electrical facilities of others to which the utility system is directly connected; or (iii) that, in the case of the Interconnection Customer, is imminently likely (as determined in a non-discriminatory manner) to cause

a material adverse effect on the security of, or damage to, the Small Generating Facility or the Customer's Interconnection Facilities. Under emergency conditions, the utility may immediately suspend interconnection service and temporarily disconnect the SGF. The utility shall notify the IC promptly when it becomes aware of an emergency condition that may reasonably be expected to affect the IC's operation of the SGF. The IC shall notify the utility promptly when it becomes aware of an emergency condition that may reasonably be expected to affect the utility system or other affected systems. To the extent information is known, the notification shall describe the emergency condition, the extent of the damage or deficiency, the expected effect on the operation of both Parties' facilities and operations, its anticipated duration, and the necessary corrective action.

3.4.2 Routine maintenance, construction, and repair

The utility may interrupt interconnection service or curtail the output of the SGF and temporarily disconnect the SGF from the utility's system when necessary for routine maintenance, construction, and repairs on the utility system. The utility shall provide the IC with at least five business days notice prior to such interruption unless circumstances require shorter notice. The utility shall use reasonable efforts to coordinate such reduction or temporary disconnection with the IC.

3.4.3 Forced outages

During any forced outage, the utility may suspend interconnection service to effect immediate repairs on the utility system. The utility shall use reasonable efforts to provide the IC with prior notice. If prior notice is not given, the utility shall, upon request, provide the IC written documentation after the fact explaining the circumstances of the disconnection.

3.4.4 Adverse operating effects

The utility shall notify the IC as soon as practicable if, based on Good Utility Practice, operation of the SGF may cause disruption or deterioration of service to other customers served from the utility system or affected systems, or if operating the SGF could cause damage to the utility system or affected systems. Supporting documentation used to reach the decision to disconnect shall be provided to the IC upon request. If, after notice, the IC fails to remedy the adverse operating effect within a reasonable time, the utility may disconnect the SGF. The utility shall provide the IC with a five business day notice of such disconnection, unless the provisions of article 3.4.1 apply.

3.4.5 Modification of the Small Generating Facility

The Interconnection Customer must receive written authorization from the utility before making changes to the SGF or mode of operations that may have a material impact on the safety or reliability of the utility system or affected system. Such authorization shall not be unreasonably withheld. Modifications shall be done in accordance with Good Utility Practice. If the IC makes such modifications without the utility's prior written authorization, the latter shall have the right to temporarily disconnect the SGF.

3.4.6 Reconnection

The Parties shall cooperate with each other to restore the SGF, interconnection facilities, and the utility system to their normal operating state as soon as reasonably practicable following a temporary disconnection.

Article 4. Cost Responsibility for Customer's Interconnection Facilities, Attachment Facilities, and Distribution Upgrades

4.1 Customer's Interconnection Facilities

The IC shall be responsible for the costs associated with owning, operating, maintaining, repairing, and replacing the Customer's Interconnection Facilities.

4.2 Attachment Facilities

The IC shall pay for one-time and ongoing costs of installing, owning, operating, maintaining and replacing the attachment facilities itemized in Attachment 2 of this Agreement. The utility shall provide an estimated costfor the purchase and construction of the attachment facilities and provide a detailed itemization of such costs. Costs associated with attachment facilities may be shared with other entities that may benefit from such facilities by agreement of the IC, such other entities, and the utility.

4.3 Distribution upgrades

The utility shall design, procure, construct, install, and own the distribution upgrades described in Attachment 6 of this Agreement. The actual cost of the distribution upgrades shall be directly assigned to the IC. If the utility and the IC agree, the IC may construct distribution upgrades that are located on land owned by the IC.

Article 5. Transmission System

5.1 Transmission system upgrades

5.1.1 No portion of section 5.1 of this article 5 shall apply unless the interconnection of the Small Generating Facility requires transmission system upgrades.

5.1.2 The utility shall design, procure, construct, install, and own the transmission system upgrades described in Attachment 6 of this Agreement. If the utility and the Interconnection Customer agree, the IC may construct transmission system upgrades that are located on land owned by the IC. The costs of the transmission system upgrades shall be borne by the IC.

5.1.3 Notwithstanding any other provision of section 5.1 of article 5, in the event and to the extent an RTE has rules, tariffs, agreements, or procedures properly applying to transmission system upgrades, the provisions of section 5.2 of article 5 shall apply to such upgrades.

5.2 Regional Transmission Entities

Notwithstanding any other provision of this Agreement, if the utility's transmission system is under the control of an RTE and the RTE has rules, tariffs, agreements or procedures properly governing operation of the SGF, transmission of the output of the SGF, sale of the output of the SGF, system upgrades required for interconnection of the SGF, or other aspects of the interconnection and operation of the SGF, the IC and the utility shall comply with the applicable of such agreements, rules, tariffs, or procedures.

5.3 Rights under other agreements

Notwithstanding any other provision of this Agreement, nothing herein shall be construed as relinquishing or foreclosing any rights, including but not limited to firm transmission rights, capacity rights, transmission congestion rights, or transmission credits, that the IC shall be entitled to, now or in the future, under any other agreement or tariff as a result of, or otherwise associated with system upgrades, including the right to obtain cash reimbursements or transmission credits for transmission service that is not associated with the SGF.

Article 6. Billing, Payment, Milestones, and Financial Security

6.1 Billing and payment procedures and final accounting

6.1.1 The utility shall bill the IC for the design, engineering, construction, and procurement costs of attachment facilities and upgrades contemplated by this Agreement on a monthly basis, or as otherwise agreed by the Parties. The IC shall pay each bill within 30 calendar days of receipt, or as otherwise agreed to by the Parties.

6.1.2 Within 120 calendar days of completing the construction and installation of the attachment facilities and/or distribution upgrades described in the Attachments to this Agreement, the utility shall provide the IC with a final accounting report of any difference between (i) the IC's cost responsibility for the actual cost of such facilities or upgrades, and (ii) the IC's previous aggregate payments to the utility for such facilities or upgrades. If the IC's cost responsibility exceeds its previous aggregate payments, the utility shall invoice the IC for the amount due and the IC shall make payment to the utility within 30 calendar days. If the IC's previous aggregate payments exceed its cost responsibility under this Agreement, the utility shall refund to the IC an amount equal to the difference within 30 calendar days of the final accounting report.

6.2 Milestones

The Parties shall agree on milestones for which each Party is responsible and such milestone shall be listed in Attachment 4 of this Agreement. A Party's milestones obligations under this provision may be modified by agreement. If a Party anticipates that it will be unable to meet a milestone for any reason other than a Force Majeure event, it shall immediately (i) notify the other Party of the reason(s) for not meeting the milestone, and (ii) propose the earliest reasonable alternate date by which it can attain this and future milestones, and (iii) request appropriate amendments to Attachment 4. The Party affected by the failure to meet a milestone shall not withhold agreement to such an amendment unless it will suffer uncompensated economic or operational harm from the delay, attainment of the same milestone has previously been delayed, or it has reason to believe that the delay in meeting the milestone is intentional or unwarranted notwithstanding the circumstances explained by the Party proposing the amendment.

6.3 Financial security arrangements

At least 20 business days prior to the commencement of the design, procurement, installation, or construction of a discrete portion of the attachment facilities and distribution upgrades, the Interconnection Customer shall provide the utility, at the IC's option, a guarantee, a surety bond, letter of credit or other form of security that is reasonably acceptable to the utility and is consistent with the Uniform Commercial Code of the jurisdiction where the point of interconnection is located. Such security for payment shall be in an amount sufficient to cover the costs for designing, procuring, installing, and constructing the applicable portion of the attachment facilities and distribution upgrades and shall be reduced on a dollar-for-dollar basis for payments made to the utility under this Agreement during its term. In addition:

6.3.1 The guarantee must be made by an entity that meets the creditworthiness requirements of the utility, and contain terms and conditions that guarantee payment of any amount that may be due from the IC, up to an agreed-to maximum amount.

6.3.2 The letter of credit or surety bond must be issued by a financial institution or insured reasonably acceptable to the utility and must specify a reasonable expiration date.

Article 7. Assignment, Liability, Indemnity, Force Majeure, Consequential Damages, and Default

7.1 Assignment

This Agreement may be assigned by either Party upon 15 business days prior written notice and opportunity to object by the other Party; provided that:

7.1.1 Either Party may assign this Agreement without the consent of the other Party to any affiliate of the assigning Party with an equal or greater credit rating and with the legal authority and operational ability to satisfy the obligations of the assigning Party under this Agreement;

7.1.2 The Interconnection Customer shall have the right to assign this Agreement, without the consent of the utility, for collateral security purposes to aid in providing financing for the SGF, provided that the IC will promptly notify the utility of any such assignment.

7.1.3 Any attempted assignment that violates this article is void and ineffective.

Assignment shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reason thereof. An assignee is responsible for meeting the same financial, credit, and insurance obligations as the IC. Where required, consent to assignment will not be unreasonably withheld, conditioned or delayed.

7.2 Limitation of liability

Each Party's liability to the other Party for any loss, cost, claim, injury, liability, or expense, including reasonable attorney's fees, relating to or arising from any act or omission in its performance of this Agreement, shall be limited to the amount of direct damage actually incurred. In no event shall either Party be liable to the other Party for any indirect, special, consequential, or punitive damages, except as authorized by this Agreement.

7.3 Indemnity

7.3.1 This provision protects each Party from liability incurred to third parties as a result of carrying out the provisions of this Agreement. Liability under this provision is exempt from the general limitations on liability found in article 7.2.

7.3.2 The Parties shall at all times indemnify, defend, and hold the other Party harmless from, any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the other Party's action or failure to meet its obligations under this Agreement on behalf of the indemnifying Party, except in cases of gross negligence or intentional wrongdoing by the indemnified Party.

7.3.3 If an indemnified Party is entitled to indemnification under this article as a result of a claim by a third party, and the indemnifying Party fails, after notice and reasonable opportunity to proceed under this article, to assume the defense of such claim, such indemnified person may at the expense of the indemnifying Party contest, settle or consent to the entry of any judgment with respect to, or pay in full, such claim.

7.3.4 If an indemnifying Party is obligated to indemnify and hold any indemnified person harmless under this article, the amount owing to the indemnified person shall be the amount of such indemnified person's actual loss, net of any insurance or other recovery.

7.3.5 Promptly after receipt by an indemnified person of any claim or notice of the commencement of any action or administrative or legal proceeding or small generator investigation as to which the indemnity provided for in this article may apply, the indemnified person shall notify the indemnifying Party of such fact. Any failure of or delay in such notification shall not affect a Party's indemnification obligation unless such failure or delay is materially prejudicial to the indemnifying party.

7.4 Consequential damages

Other than as expressly provided for in this Agreement, neither Party shall be liable under any provision of this Agreement for any losses, damages, costs or expenses for any special, indirect, incidental, consequential, or punitive damages, including but not limited to loss of profit or revenue, loss of the use of equipment, cost of capital, cost of temporary equipment or services, whether based in whole or in part in contract, in tort, including negligence, strict liability, or any other theory of liability; provided that damages for which a Party may be liable to the other Party under another agreement will not be considered to be special, indirect, incidental, or consequential damages hereunder.

7.5 Force Majeure

7.5.1 As used in this article, a Force Majeure event means "any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, any order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, or any other cause beyond a Party's control. A Force Majeure event does not include an act of negligence or intentional wrongdoing."

7.5.2 If a Force Majeure event prevents a Party from fulfilling any obligations under this Agreement, the Party affected by the Force Majeure event ("Affected Party") shall promptly notify the other Party, either in writing or via the telephone, of the existence of the Force Majeure event. The notification must specify in reasonable detail the circumstances of the Force Majeure event, its expected duration, and the steps that the Affected Party is taking to mitigate the effects of the event on its performance. The Affected Party shall keep the other Party informed on a continuing basis of developments relating to the Force Majeure event until the event ends. The Affected Party will be entitled to suspend or modify its performance of obligations under this Agreement (other than the obligation to make payments) only to the extent that the effect of the Force Majeure event cannot be mitigated by the use of reasonable efforts. The Affected Party will use reasonable efforts to resume its performance as soon as possible.

7.6 Default

7.6.1 No default shall exist where such failure to discharge an obligation (other than the payment of money) is the result of a Force Majeure event as defined in this Small Generator Interconnection Agreement or the result of an act or omission of the other Party. Upon a default, the Nondefaulting Party shall give written notice of such default to the Defaulting Party. Except as provided in article 7.6.2, the Defaulting Party shall have 60 calendar days from receipt of the default notice within which to cure the default; however, if the default is not capable of cure within 60 calendar days, the Defaulting Party shall commence the cure within 20 calendar days after notice and continuously and diligently complete the cure within six months from receipt of the default notice; and, if cured within such time, the default specified in such notice shall cease to exist.

7.6.2 If a default is not cured as provided in this article, or if a default is not capable of being cured within the period provided for herein, the Nondefaulting Party shall have the right to terminate this Agreement by written notice at any time until cure occurs, and be relieved of any further obligation hereunder and, whether or not that Party terminates this Agreement, to recover from the Defaulting Party all amounts due hereunder, plus all other damages and remedies to which it is entitled at law or in equity. The provisions of this article will survive termination of this Agreement.

Article 8. Insurance

8.1 The Interconnection Customer shall, at its own expense, maintain in force general liability insurance without any exclusion for liabilities related to the interconnection undertaken pursuant to this Agreement. The amount of such insurance shall be in accordance with 20VAC5-314-160 of the Commission's Regulations Governing the Interconnection of Small Electrical Generators. The IC shall obtain additional insurance only if necessary as a function of owning and operating a generating facility. Insurance shall be obtained from an insurance provider authorized to do business in the State of Virginia. Certification that such insurance is in effect shall be provided upon request of the utility, except that the IC shall show proof of insurance to the utility no later than 10 business days prior to the anticipated commercial operation date of the SGF. An IC of sufficient creditworthiness may propose to self-insure for such liabilities, and such a proposal shall not be unreasonably rejected.

8.2 The utility agrees to maintain general liability insurance or self-insurance consistent with the utility's commercial practice. Such insurance or self-insurance shall not exclude coverage for the utility's liabilities undertaken pursuant to this Agreement.

8.3 The Parties further agree to notify each other whenever an accident or incident occurs resulting in any injuries or damages that are included within the scope of coverage of such insurance, whether or not such coverage is sought.

Article 9. Confidentiality

9.1 Confidential information shall mean any confidential and/or proprietary information provided by one Party to the other Party that is clearly marked or otherwise designated "Confidential." For purposes of this Agreement all design, operating specifications, and metering data provided by the Interconnection Customer shall be deemed confidential information regardless of whether it is clearly marked or otherwise designated as such.

9.2 Confidential information does not include information previously in the public domain, required to be publicly submitted or divulged by governmental authorities (after notice to the other Party and after exhausting any opportunity to oppose such publication or release), or necessary to be divulged in an action to enforce this Agreement. Each Party receiving confidential information shall hold such information in confidence and shall not disclose it to any third party nor to the public without the prior written authorization from the Party providing that information, except to fulfill obligations under this Agreement, or to fulfill legal or regulatory requirements.

9.2.1 Each Party shall employ at least the same standard of care to protect confidential information obtained from the other Party as it employs to protect its own confidential information.

9.2.2 Each Party is entitled to equitable relief, by injunction or otherwise, to enforce its rights under this provision to prevent the release of confidential information without bond or proof of damages, and may seek other remedies available at law or in equity for breach of this provision.

9.3 Notwithstanding anything in this Agreement to the contrary, if the Virginia State Corporation Commission ("Commission"), during the course of an investigation or otherwise, requests information from one of the Parties that is otherwise required to be maintained in confidence, the Party shall provide the requested information to the Commission, within the time provided for in the request for information. In providing the information to the Commission, the Party may request that the information be treated as confidential and nonpublic by the Commission and that the information be withheld from public disclosure. Parties are prohibited from notifying the other Party prior to the release of the confidential information to the Commission. A Party shall notify the other Party when it is notified by the Commission that a request to release confidential information has been received by the Commission, at which time either Party may respond to the Commission before such information would be made public.

Article 10. Disputes

10.1 The Parties agree to attempt to resolve all disputes arising out of the interconnection process according to the provisions of this article.

10.2 In the event of a dispute, either Party shall provide the other Party with a written Notice of Dispute. Such Notice shall describe in detail the nature of the dispute. The Parties shall make a good faith effort to resolve the dispute informally within 10 business days.

10.3 If the dispute has not been resolved within 10 business days after receipt of the Notice, either Party may seek resolution assistance from the Commission's Division of Energy Regulation where the matter will be handled as an informal complaint.

Alternatively, either Party may, upon mutual agreement, seek resolution through the assistance of a dispute resolution service. The dispute resolution service will assist the Parties in either resolving the dispute or in selecting an appropriate dispute resolution venue (e.g., mediation, settlement judge, early neutral evaluation, or technical expert) to assist the Parties in resolving their dispute. Each Party shall conduct all negotiations in good faith and shall be responsible for one half of any costs paid to neutral third parties.

10.4 If the dispute remains unresolved either Party maypetition the Commission to handle the dispute as a formal complaint or may exercise whatever rights and remedies it may have in equity or law consistent with the terms of this Agreement.

Article 11. Taxes

11.1 The Parties agree to follow all applicable tax laws and regulations

11.2 Each Party shall cooperate with the other to maintain the other Party's tax status. Nothing in this Agreement is intended to adversely affect the utility's tax exempt status with respect to the issuance of bonds including, but not limited to, local furnishing bonds.

Article 12. Miscellaneous

12.1 Governing law, regulatory authority, and rules

The validity, interpretation and enforcement of this Agreement and each of its provisions shall be governed by the laws of the State of Virginia without regard to its conflicts of law principles. This Agreement is subject to all applicable laws and regulations. Each Party expressly reserves the right to seek changes in, appeal, or otherwise contest any laws, orders, or regulations of a governmental authority.

12.2 Amendment

The Parties may amend this Agreement by a written instrument duly executed by both Parties.

12.3 No third-party beneficiaries

This Agreement is not intended to and does not create rights, remedies, or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, and the obligations herein assumed are solely for the use and benefit of the Parties, their successors in interest and where permitted, their assigns.

12.4 Waiver

12.4.1 The failure of a Party to this Agreement to insist, on any occasion, upon strict performance of any provision of this Agreement will not be considered a waiver of any obligation, right, or duty of, or imposed upon, such Party.

12.4.2 Any waiver at any time by either Party of its rights with respect to this Agreement shall not be deemed to be a continuing waiver or a waiver with respect to any other failure to comply with any other obligation, right, or duty of this Agreement. Termination or default of this Agreement for any reason by the Interconnection Customer shall not constitute a waiver of the IC's legal rights to obtain an interconnection from the utility. Any waiver of this Agreement shall, if requested, be provided in writing.

12.5 Entire Agreement

This Agreement, including all Attachments, constitutes the entire agreement between the Parties with reference to the subject matter hereof, and supersedes all prior and contemporaneous understandings or agreements, oral or written, between the Parties with respect to the subject matter of this Agreement. There are no other agreements, representations, warranties, or covenants which constitute any part of the consideration for, or any condition to, either Party's compliance with its obligations under this Agreement.

12.6 Multiple counterparts

This Agreement may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

12.7 No partnership

This Agreement shall not be interpreted or construed to create an association, joint venture, agency relationship, or partnership between the Parties or to impose any partnership obligation or partnership liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

12.8 Severability

If any provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction or other governmental authority, (i) such portion or provision shall be deemed separate and independent, (ii) the Parties shall negotiate in good faith to restore insofar as practicable the benefits to each Party that were affected by such ruling, and (iii) the remainder of this Agreement shall remain in full force and effect.

12.9 Environmental releases

Each Party shall notify the other Party, first orally and then in writing, of the release of any hazardous substances, any asbestos or lead abatement activities, or any type of remediation activities related to the Small Generating Facility, the customer's interconnection facilities, or attachment facilities, each of which may reasonably be expected to affect the other Party. The notifying Party shall (i) provide the notice as soon as practicable, provided such Party makes a good faith effort to provide the notice no later than 24 hours after such Party becomes aware of the occurrence, and (ii) promptly furnish to the other Party copies of any publicly available reports filed with any governmental authorities addressing such events.

12.10 Subcontractors

Nothing in this Agreement shall prevent a Party from utilizing the services of any subcontractor as it deems appropriate to perform its obligations under this Agreement; however, each Party shall require its subcontractors to comply with all applicable terms and conditions of this Agreement in providing such services and each Party shall remain primarily liable to the other Party for the performance of such subcontractor.

12.10.1 The creation of any subcontract relationship shall not relieve the hiring Party of any of its obligations under this Agreement. The hiring Party shall be fully responsible to the other Party for the acts or omissions of any subcontractor the hiring Party hires as if no subcontract had been made; however, in no event shall the utility be liable for the actions or inactions of the IC or its subcontractors with respect to obligations of the IC under this Agreement. Any applicable obligation imposed by this Agreement upon the hiring Party shall be equally binding upon, and shall be construed as having application to, any subcontractor of such Party.

12.10.2 The obligations under this article will not be limited in any way by any limitation of subcontractor's insurance.

12.11 Reservation of rights

The utility shall have the right to make a unilateral filing with the Commission to modify this Agreement with respect to any rates, terms and conditions, charges, classifications of service, rule or regulation.

Article 13. Notices

13.1 General

Unless otherwise provided in this Agreement, any written notice, demand, or request required or authorized in connection with this Agreement ("Notice") shall be deemed properly given if delivered in person, delivered by recognized national courier service, or sent by first class mail, postage prepaid, to the person specified below:

If to the Interconnection Customer:

Interconnection Customer:_____

Attention:_____

Address:_____

City, State, Zip:_____

Phone:_____ Fax:_____

If to the Utility:

Utility:_____

Attention:_____

Address:_____

City, State, Zip:_____

Phone:_____ Fax:_____

13.2 Billing and payment

Billings and payments shall be sent to the addresses set out below:

If to the Interconnection Customer:

Interconnection Customer:_____

Attention:_____

Address:_____

City, State, Zip:_____

If to the Utility:

Utility:_____

Attention:_____

Address:_____

City, State, Zip:_____

13.3 Alternative forms of notice

Any notice or request required or permitted to be given by either Party to the other and not required by this Agreement to be given in writing may be so given by telephone, facsimile or e-mail to the telephone numbers and email addresses set out below:

If to the Interconnection Customer:

Interconnection Customer:_____

Attention:_____

Address:_____

City, State, Zip:_____

Phone:_____ Fax:_____

If to the Utility:

Utility:_____

Attention:_____

Address:_____

City, State, Zip:_____

Phone:_____ Fax:_____

13.4 Designated operating representative

The Parties may also designate operating representatives to conduct the communications which may be necessary or convenient for the administration of this Agreement. This person will also serve as the point of contact with respect to operations and maintenance of the Party's facilities.

Interconnection Customer's Operating Representative:

Interconnection Customer:_____

Attention:_____

Address:_____

City, State, Zip:_____

Phone:_____ Fax:_____

Utility's Operating Representative:

Utility:_____

Attention:_____

Address:_____

City, State, Zip:_____

Phone:_____ Fax:_____

13.5 Changes to the notice information

Either Party may change this information by giving five business days written notice prior to the effective date of the change.

Article 14. Signatures

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized representatives.

For the Utility

Name:_____

Title:_____

Date:_____

For the Interconnection Customer

Name:_____

Title:_____

Date:_____

Attachment 1 to Schedule 6

Glossary of Terms

"Affected system" means an electric utility system other than that of the utility that may be affected by the proposed interconnection.

"Affected system operator" means an entity that operates an affected system or, if the affected system is under the operational control of an independent system operator or a Regional Transmission Entity, such independent entity.

"Applicable laws and regulations" means all duly promulgated applicable federal, state and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders, permits and other duly authorized actions of any governmental authority.

~~"Attachment facilities" means the facilities and equipment owned, operated, and maintained by the utility that are built new in order to physically connect the customer's interconnection facilities to the utility system. Attachment facilities shall not include distribution upgrades or previously existing distribution and transmission facilities.~~

~~"Business day" means Monday through Friday, excluding federal holidays.~~

~~"Certified" has the meaning ascribed to it in Schedule 2 of Chapter 314 (20VAC5-314) of the Virginia Administrative Code.~~

~~"Commission" means the Virginia State Corporation Commission.~~

~~"Competitive service provider" means any entity, other than the utility, supplying electric energy service to the Interconnection Customer.~~

~~"Customer's interconnection facilities" means all the facilities and equipment owned, operated and maintained by the Interconnection Customer, between the Small Generating Facility and the point of interconnection necessary to physically and electrically interconnect the Small Generating Facility to the utility system.~~

~~"Default" means the failure of a breaching Party to cure its breach under the Small Generator Interconnection Agreement.~~

~~"Distribution system" means the utility's facilities and equipment generally delivering electricity to ultimate customers from substations supplied by higher voltages (usually at transmission level). For purposes of this Agreement, all portions of the utility's transmission system regulated by the Commission for which interconnections are not within Federal Energy Regulatory Commission jurisdiction are considered also to be subject to Commission regulations.~~

~~"Distribution upgrades" means the additions, modifications, and upgrades to the utility's distribution system at or beyond the point of interconnection necessary to abate problems on the utility's distribution system caused by the interconnection of the Small Generating Facility. Distribution upgrades do not include customer's interconnection facilities or attachment facilities.~~

~~"Facilities study" has the meaning ascribed to it in the commission's regulations governing the interconnection of small generating facilities at 20VAC5-314-70 E.~~

~~"Feasibility study" has the meaning ascribed to it in the commission's regulations governing the interconnection of small generating facilities at 20VAC5-314-70 C.~~

~~"FERC" means the Federal Energy Regulatory Commission.~~

~~"Good Utility Practice" means any of the practices, methods and acts engaged in or approved by a significant portion of the electric industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.~~

~~"Governmental authority" means any federal, state, local or other governmental regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority having jurisdiction over the Parties, their respective facilities, or the respective services they provide, and exercising or entitled to exercise any administrative, executive, police, or taxing authority or power; provided that such term does not include the Interconnection Customer, the utility, or a utility affiliate.~~

~~"Interconnection Customer" or "IC" means any entity proposing to interconnect a new Small Generating Facility with the utility system.~~

~~"Interconnection request" means the IC's request, in accordance with Chapter 314 (20VAC5-314) of the Virginia Administrative Code, to interconnect a new Small Generating Facility, or to increase the capacity of, or make a material modification to the operating characteristics of, an existing Small Generating Facility that is interconnected with the utility system.~~

~~"Interconnection studies" means the studies conducted by the utility, or a third party agreed to by the utility and the Interconnection Customer, in order to determine the interaction of the Small Generating Facility with the utility system and the affected systems in order to specify any modifications to the Small Generating Facility or the electric systems studied to ensure safe and reliable operation of the Small Generating Facility in parallel with the utility system.~~

~~"Material modification" means a modification that has a material impact on the cost or timing of any Interconnection Request with a later queue priority date.~~

~~"Operating requirements" means any operating and technical requirements that may be applicable due to regional transmission entity, independent system operator, control area, or the utility's requirements, including those set forth in the Small Generator Interconnection Agreement.~~

~~"Party" or "Parties" means the utility, the Interconnection Customer or both.~~

"Point of interconnection" means the point where the customer's interconnection facilities connect to the utility system.

"Regional Transmission Entity" or "RTE" shall refer to an entity having the management and control of a utility's transmission system as further set forth in § 56-579 of the Code of Virginia.

"Small Generating Facility" or "generator" or "SGF" means the Interconnection Customer's equipment for the production of electricity identified in the Interconnection Request.

"Small Generator Interconnection Agreement" or "SGIA" means the agreement between the utility and the Interconnection Customer as set forth in Schedule 6 of Chapter 314 (20VAC5-314) of the Virginia Administrative Code.

"Supplemental review" has the meaning ascribed to it in the Commission's regulations governing the interconnection of small generating facilities at 20VAC5-314-70 I.

"System" or "utility system" means the distribution and transmission facilities owned, controlled, or operated by the utility that are used to deliver electricity.

"System impact study" has the meaning ascribed to it in the Commission's regulations governing the interconnection of small generating facilities at 20VAC5-314-70 D.

"Tariff" means the rates, terms and conditions filed by the utility with the Commission for the purpose of providing Commission-regulated electric service to retail customers.

"Transmission system" means the utility's facilities and equipment delivering electric energy to the distribution system, such facilities usually being operated at voltages above the utility's typical distribution system voltages.

"Utility" means the public utility company subject to regulation by the Commission pursuant to Chapter 10 (§ 56-232 et seq.) of Title 56 of the Code of Virginia with regard to rates and/or service quality to which the Interconnection Customer proposes to interconnect a Small Generating Facility.

Attachment 2 to

Schedule 6

Description and Costs of the Small Generating Facility, Customer's Interconnection Facilities, Attachment Facilities and Metering Equipment

The following shall be provided in this exhibit:

1. An itemization of the major equipment components owned by the Interconnection Customer and the utility, including components of the Small Generating Facility, the customer's interconnection facilities, attachment facilities, and metering equipment. Such itemization shall identify the owner of each item listed.

2. The utility's estimated itemized cost of its attachment facilities and its metering equipment.

3. The utility's estimated cost of its annual operation and maintenance expenses associated with attachment facilities and metering equipment to be charged to the Interconnection Customer.

Attachment 3 to

Schedule 6

One-line Diagram Depicting the Small Generating Facility, Customer's Interconnection Facilities, Attachment Facilities, Metering Equipment, and Distribution Upgrades

(Diagram and description to be provided by Interconnection Customer unless the utility elects to prepare this schedule. If this schedule is prepared by the utility, the IC shall provide a one-line diagram of the SGF and IC's interconnection facilities for the utility to use as a data source for preparing this schedule.)

Attachment 4 to

Schedule 6

Milestones

In-Service Date:_____

Critical milestones and responsibility as agreed to by the Parties:

Milestone/Date	**Responsible Party**
(1)_____	_____
(2)_____	_____
(3)_____	_____

~~(4)_____ _____~~

~~(5)_____ _____~~

~~(6)_____ _____~~

~~(7)_____ _____~~

~~(8)_____ _____~~

~~(9)_____ _____~~

~~(10)_____ _____~~

~~Agreed to by:~~

~~For the Utility_____ Date_____~~

~~For the Transmission Owner (If Applicable)_____ Date_____~~

~~For the Interconnection Customer_____ Date_____~~

~~**Attachment 5 to Schedule 6**~~

~~**Additional Operating Requirements for the Utility System and Affected Systems Needed to Support the Interconnection Customer's Needs**~~

~~The utility shall provide requirements that must be met by the Interconnection Customer prior to initiating parallel operation with the utility system.~~

~~**Attachment 6 to Schedule 6**~~

~~**Utility's Description of its Distribution and Transmission Upgrades and Estimate of Upgrade Costs**~~

~~The utility shall provide the following in this attachment:~~

~~1. An itemized list of the upgrades required to be constructed by the utility prior to interconnection of the Small Generating Facility, with transmission and distribution related upgrades shown separately.~~

~~2. An estimate of the cost of each item listed pursuant to item 1.~~

~~3. An estimate of annual operation and maintenance expenses associated with such upgrades that are to be charged to the Interconnection Customer, shown separately for transmission and distribution related items.~~

LEVELS 2 AND 3 INTERCONNECTION REQUEST FORM FOR SMALL GENERATING FACILITY

Section 1. Interconnection Customer Information

Name:_____

Contact person:_____

Mailing address:_____

City, State, Zip:_____

Telephone (Day):_____ (Evening):_____

Fax:_____ Email:_____

Alternative contact information

Contact Name:_____

Title:_____

Mailing Address:_____

City, State, Zip:_____

Telephone (Day):_____ (Evening):_____

Fax:_____ Email:_____

Application is for: New Small Generating Facility Capacity addition

If capacity addition to existing facility, please describe:

The Small Generating Facility will supply: Interconnection Customer Others

Point of Interconnection:

Interconnection Customer's requested in-service date:

This Interconnection Request Form is considered complete when the Interconnection Customer provides all applicable and correct information required in this Schedule 6 and complies with the processing fee in Section 2 of this Schedule.

An Interconnection Customer who requests a commission jurisdictional interconnection must submit this Interconnection Request Form by hand delivery, mail, email, or fax to the utility.

Request for:

Level 2 Process

Level 3 Process

Standby Generator / Closed Transition

Section 2. Processing Fee and Deposit

If the interconnection request is submitted as Level 2, the nonrefundable processing fee payable to the utility is $1,000.

If the interconnection request is submitted as Level 3, the IC shall submit to the utility [~~: a. The nonrefundable processing fee of $1,000. b. An interconnection request study deposit of $10,000 plus $1.00 per kW$_{AC}$, pursuant to 20VAC5-314-38.~~ a nonrefundable processing fee of $1,000. Upon being designated by the Utility as a Project A or if the IC elects to proceed with the Project B, Level 3 Interconnection Customers shall also be obligated to submit an interconnection request study deposit of $10,000 plus $1.00 per kW$_{AC}$.

An IC transferring from the Level 1 process shall pay the nonrefundable processing fee of $1,000 minus any previously paid Level 1 processing fee.

An IC transferring from the Level 2 to the Level 3 process shall not be required to pay an additional $1,000 processing fee.]

If the SGF is a standby generating facility, the interconnection request [shall be designated a Project A and the IC shall be obligated to submit an interconnection request] study deposit [~~is~~ of] $5,000 [in conjunction with the initial study agreement as provided for in 20VAC5-314-38 and 20VAC5-314-70].

If the interconnection request is submitted solely due to a transfer of ownership or change of control of the SGF, the nonrefundable processing fee is $500.

Section 3. Small Generating Facility Information

Data apply only to the small generating facility, not the interconnection facilities.

SGF Location (if different from information listed in Section 1 of this Schedule):

Site Address:

City, State, Zip: _____

Utility and Account Number: _____

Energy Service Provider and Account Number: _____

If not available prior to the completion of the Interconnection Request Form, the Interconnection Customer must provide an address for SGF that has been issued conforming to the 911 emergency response group for the area to the utility within 15 business days of issuance.

Primary energy source

Choose one:

Renewable	Nonrenewable
☐ Solar – Photovoltaic	☐ Fossil Fuel – Diesel
☐ Solar – Thermal	☐ Fossil Fuel – Natural Gas (not waste)
☐ Biomass – Landfill Gas	☐ Fossil Fuel – Oil
☐ Biomass – Manure DigesterGas	☐ Fossil Fuel – Coal
☐ Biomass – Directed Biogas	☐ Fossil Fuel – Other (please specify)
☐ Biomass – Solid Waste	☐ Other (please specify)
☐ Biomass – Sewage Digester Gas	
☐ Biomass – Wood	
☐ Biomass – Other (please specify)	
☐ Hydro Power – Run of River	
☐ Hydro Power – Storage	
☐ HydroPower – Tidal	
☐ Hydro Power – Wave	
☐ Wind	
☐ Geothermal	
☐ Battery	
☐ Other (please specify)	

Prime mover

Choose one:

☐ Photovoltaic (PV)	☐ Steam Turbine
☐ Fuel Cell	☐ Micro-Turbine
☐ Reciprocating Engine	☐ Other, including Combined Heat and Power (please specify)
☐ Gas Turbine	

Type of generator

Choose one:

☐ Inverter-Based Machine ☐ Induction ☐ Synchronous ☐ Other (please specify)	

Additional comments

Is the SGF located in utility's service area?

Yes _____ No _____ If No, please provide name of local provider:_____

Generator nameplate rating: _____ kW Generator nameplate kVAR: _____

Interconnection customer or customer-site load: _____ kW

Typical reactive load:_____

Maximum generating capacity requested: _____ kW_{AC}

List components of the small generating facility equipment package that are currently certified:

Equipment	Certifying Entity
1.	1.
2.	2.
3.	3.
4.	4.
5.	5.

Is the prime mover compatible with the certified protective relay package?

Yes ___ No ___

Generator (or solar collector)

Manufacturer, Model Name, and Number: _____

Version Number:_____

Nameplate Output Power Rating in kW: (Summer)_____ (Winter)_____

Nameplate Output Power Rating in kVA: (Summer)_____ (Winter)_____

Individual Generator Power Factor

Rated Power Factor: Leading: Lagging:

Total number of generators in wind farm to be interconnected pursuant to this interconnection request: Elevation:

Single Phase Three Phase

Inverter Manufacturer, Model Name, and Number:

List of adjustable set points for the protective equipment or software:

Note: A completed power systems load flow data sheet must be supplied with the interconnection request.

Small Generating Facility Characteristic Data (for inverter-based machines)

Max design fault contribution current: Instantaneous or RMS

Harmonics characteristics:

Start-up requirements:

Small Generating Facility Characteristic Data (for rotating machines)

RPM Frequency:

Neutral Grounding Resistor (if applicable):

Synchronous Generators:

Direct Axis Synchronous Reactance, X_d: P.U.

Direct Axis Transient Reactance, X_d: P.U.

Direct Axis Subtransient Reactance, X_d: P.U.

Negative Sequence Reactance, X_2: P.U.

Zero Sequence Reactance, X_0: P.U.

KVA Base:

Field Volts:

Field Amperes:

Induction Generators:

Motoring Power (kW):

I^2t or K (Heating Time Constant):

Rotor Resistance, R_r:

Stator Resistance, R_s:

Stator Reactance, X_s:

Rotor Reactance, X_r:

Magnetizing Reactance, X_m:

Short Circuit Reactance, X_d:

Exciting Current:

Temperature Rise:

Frame Size:

Design Letter:

Reactive Power Required In Vars (No Load):_____

Reactive Power Required In Vars (Full Load):_____

Total Rotating Inertia, H:_____ Per Unit on kVA base

Excitation and Governor System Data for Synchronous Generators Only:

Provide appropriate IEEE model block diagram of excitation system, governor system, and power system stabilizer (PSS) in accordance with the regional reliability council criteria. A PSS may be determined to be required by applicable studies. A copy of the manufacturer's block diagram may not be substituted.

Section 4. Customer's Interconnection Facilities Information

Will a transformer be used between the generator and the point of interconnection?

Yes ____ No ____

Will the transformer be provided by the IC? Yes ____ No ____

Transformer Data (If applicable, for IC-owned transformer):

Is the transformer: Single Phase _____ Three Phase _____ Size: kVA _____

Transformer Impedance: _____ % on _____ kVA base

If Three Phase:

Transformer Primary:_____ Volts _____ Delta _____ Wye _____ Wye Grounded

Transformer Secondary:___ Volts _____ Delta _____ Wye _____ Wye Grounded

Transformer Tertiary: _____ Volts _____ Delta _____ Wye _____ Wye Grounded

Transformer Fuse Data (if applicable, for IC-owned fuse):

(Attach copy of fuse manufacturer's minimum melt and total clearing time-current curves.)

Manufacturer:_____ Type:_____ Size:_____ Speed:_____

Interconnecting Circuit Breaker (if applicable):

Manufacturer:_____ Type:_____

Load Rating (amps): ___ Interrupting Rating (amps): ___ Trip Speed (cycles): ___

Interconnection Protective Relays (if applicable):

If Microprocessor-Controlled:

Manufacturer:_____ Type:_____

Model No. _____ Firmware ID:_____ Instruction Book No. _____

List of functions and adjustable setpoints for the protective equipment or software:

Setpoint Function	Minimum	Maximum
1.		
2.		
3.		
4.		
5.		
6.		

If Discrete Components:

(Enclose copy of any proposed time-overcurrent coordination curves.)

Manufacturer: Type: Style/Catalog No.: Proposed Setting:
Manufacturer: Type: Style/Catalog No.: Proposed Setting:
Manufacturer: Type: Style/Catalog No.: Proposed Setting:
Manufacturer: Type: Style/Catalog No.: Proposed Setting:
Manufacturer: Type: Style/Catalog No.: Proposed Setting:

Current Transformer Data (if applicable):

(Enclose copy of manufacturer's excitation and ratio correction curves.)

Manufacturer:
Type: Accuracy Class: Proposed Ratio Connection:
Manufacturer:
Type: Accuracy Class: Proposed Ratio Connection:

Potential Transformer Data (if applicable):

Manufacturer:
Type: Accuracy Class: Proposed Ratio Connection:
Manufacturer:
Type: Accuracy Class: Proposed Ratio Connection:

Section 5. General Information

Enclose a copy of the site electrical one-line diagram showing the configuration of the small generating facility equipment, current and potential circuits, and protection and control schemes.

Enclose a copy of any site documentation that indicates the precise physical location of the proposed SGF (e.g., United States Geological Survey topographic map or other diagram or documentation).

Describe the proposed location of the protective interface equipment on the property:

Enclose a copy of any site documentation that describes and details the operation of the protection and control schemes. Is available documentation enclosed? Yes No

Enclose copies of schematic drawings for all protection and control circuits, relay current circuits, relay potential circuits, and alarm or monitoring circuits (if applicable).

Are schematic drawings enclosed? Yes No

Section 6. Site Control

Enclose a copy of the site control documentation. Any information appearing in public records may not be labeled confidential. (Confidential information is discussed in 20VAC5-314-110.) Site control may be demonstrated through:

1. Ownership of, a leasehold interest in, or a right to develop a site for the purpose of constructing the SGF;

2. An option to purchase or acquire a leasehold interest in a site for such purpose;

3. An exclusive or other business relationship between the IC and the entity having the right to sell, lease, or grant the IC the right to possess or occupy a site for such purpose; or

4. An existing permanent service metered account with the utility at the site and in the name of the IC.

Section 7. Interconnection Customer Signature

I hereby certify that, to the best of my knowledge, all the information provided in this interconnection request is true and correct.

Signature:_____ Date:_____

Section 8. Utility Acknowledgment of Receipt

Signed:_____

Title:_____

Utility:_____

Date:_____

Utility signature signifies only receipt of this form, in compliance with 20VAC5-314-50.

Schedule 7

LEVEL 3 FEASIBILITY STUDY AGREEMENT FOR SMALL GENERATING FACILITIES

This Agreement is made and entered into this _____day of _____20___ by and between _____, a _____ organized and existing under the laws of the state of _____, ("Interconnection Customer,") and _____, a _____ existing under the laws of the state of _____, ("Utility"). Interconnection Customer and Utility each may be referred to as a "Party" or collectively as the "Parties."

RECITALS

WHEREAS, Interconnection Customer is proposing to develop an SGF or generating capacity addition to an existing SGF consistent with the interconnection request completed by Interconnection Customer on_____; and

WHEREAS, Interconnection Customer desires to interconnect the SGF with the Utility's system; and

WHEREAS, Interconnection Customer has requested the Utility to perform a feasibility study to assess the feasibility of interconnecting the proposed SGF with the Utility's system, and of any affected systems;

NOW, THEREFORE, in consideration of and subject to the mutual covenants contained in this Agreement the Parties agreed as follows:

1.0 The terms defined in Schedule 1 of 20VAC5-314-170 shall apply to this Schedule 7 of 20VAC 5-314-170.

2.0 The Interconnection Customer elects and the Utility shall cause to be performed an interconnection feasibility study consistent with the standard small generator interconnection procedures.

3.0 The scope of the feasibility study shall be subject to the assumptions set forth in Attachment A to this Agreement.

4.0 Feasibility study costs will be deducted from the interconnection request study deposit, as set forth in Schedule 6 of 20VAC5-314-170.

4.1 Study cost shall be the Utility's actual incremental costs and will be invoiced to the Interconnection Customer no later than 60 business days after the study is completed and delivered and will include a summary of professional time. [Actual study costs may be reconciled during the final accounting process described in Article 6 of the Interconnection Agreement, as applicable.]

4.2 The Interconnection Customer shall pay any study costs that exceed the deposit within 20 business days after receipt of the invoice or resolution of any dispute. If the deposit exceeds the invoiced fees, the Utility shall refund the excess within 20 business days of the invoice without interest unless additional studies are required.

5.0 The feasibility study shall be based on the technical information provided by the Interconnection Customer in the interconnection request, as may be modified as the result of the scoping meeting. The Utility reserves the right to request additional technical information from the Interconnection Customer as may reasonably become necessary consistent with Good Utility Practice during the course of the feasibility study and as designated in accordance with the standard small generator interconnection procedures. If the information requested by the Utility is not provided by the Interconnection Customer within

a reasonable timeframe to be identified by the Utility in writing, the Utility shall provide the Interconnection Customer written notice providing an opportunity to cure such failure by the close of business on the 10th business day following the posted date of such notice, where failure to provide the information requested within this period shall result in the study being terminated and the interconnection request being deemed withdrawn. The period of time for the Utility to complete the feasibility study shall be tolled during any period that the Utility has requested information in writing from the Interconnection Customer necessary to complete the study and such request is outstanding.

6.0 In performing the study, the Utility shall rely, to the extent reasonably practicable, on recent studies. The Interconnection Customer shall not be charged for such existing studies; however, the Interconnection Customer shall be responsible for charges associated with any new study or modifications to existing studies that are reasonably necessary to perform the feasibility study.

7.0 The feasibility study report shall provide the following analyses for the purpose of identifying any potential adverse system impacts that would result from the interconnection of the SGF as proposed:

7.1 Initial identification of any circuit breaker short circuit capability limits exceeded as a result of the interconnection;

7.2 Initial identification of any thermal overload or voltage limit violations resulting from the interconnection;

7.3 Initial review of grounding requirements and electric system protection; and

7.4 Description and nonbinding estimated cost of facilities required to interconnect the proposed SGF and to address the identified short circuit and power flow issues.

8.0 The feasibility study shall model the impact of the SGF for all purposes identified in the Interconnection Request Form in order to avoid the further expense and interruption of operation for reexamination of feasibility and impacts if the Interconnection Customer later changes the purpose for which the SGF is being installed.

9.0 The study shall include the feasibility of all potential points of interconnection as requested by the Interconnection Customer and at the Interconnection Customer's cost.

10.0 A feasibility study report shall be prepared and transmitted to the Interconnection Customer within 30 business days of the Utility's receipt of the complete executed feasibility study agreement and required deposit.

11.0 If the feasibility study shows no potential for adverse system impacts, then within 10 business days, the Utility shall send the Interconnection Customer either an executable Small Generator Interconnection Agreement (Schedule 10 of 20VAC5-314-170) or a Facilities Study Agreement, including an outline of the scope of the study.

12.0 If the feasibility study shows potential for adverse system impacts, the review process shall proceed to the system impact study.

13.0 Governing law, regulatory authority, and rules. The validity, interpretation, and enforcement of this Agreement and each of its provisions shall be governed by the laws of the Commonwealth of Virginia, without regard to its conflicts of law principles. This Agreement is subject to all applicable laws and regulations. Each Party expressly reserves the right to seek changes in, appeal, or otherwise contest any laws, orders, or regulations of a governmental authority.

14.0 Amendment. The Parties may amend this Agreement by a written instrument duly executed by both Parties.

15.0 No third-party beneficiaries. This Agreement is not intended to and does not create rights, remedies, or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, and the obligations in this Agreement assumed are solely for the use and benefit of the Parties, their successors in interest and where permitted, their assigns.

16.0 Waiver.

16.1 The failure of a Party to this Agreement to insist, on any occasion, upon strict performance of any provision of this Agreement will not be considered a waiver of any obligation, right, or duty of or duty imposed upon such Party.

16.2 Any waiver at any time by either Party of its rights with respect to this Agreement shall not be deemed a continuing waiver or a waiver with respect to any other failure to comply with any other obligation, right, or duty of this Agreement. Termination or default of this Agreement for any reason by an Interconnection Customer shall not constitute a waiver of the Interconnection Customer's legal rights to obtain an interconnection from the Utility. Any waiver of this Agreement shall, if requested, be provided in writing.

17.0 Entire agreement. This Agreement, including all attachments, constitutes the entire agreement between the Parties with reference to the subject matter hereof and supersedes all prior and contemporaneous understandings or agreements, oral or written, between the Parties with respect to the subject matter of this Agreement. There are no other agreements, representations, warranties, or covenants that constitute any part of the consideration for, or any condition to, either Party's compliance with its obligations under this Agreement.

18.0 Multiple counterparts. This Agreement may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

19.0 No partnership. This Agreement shall not be interpreted or construed to create an association, joint venture, agency relationship, or partnership between the Parties or to impose any partnership obligation or partnership liability upon either Party. Neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

20.0 Severability. If any provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction or other governmental authority, (i) such portion or provision shall be deemed separate and independent, (ii) the Parties shall negotiate in good faith to restore insofar as practicable the benefits to each Party that were affected by such ruling, and (iii) the remainder of this Agreement shall remain in full force and effect.

21.0 Subcontractors. Nothing in this Agreement shall prevent a Party from utilizing the services of any subcontractor as it deems appropriate to perform its obligations under this Agreement; however, each Party shall require its subcontractors to comply with all applicable terms and conditions of this Agreement in providing such services and each Party shall remain primarily liable to the other Party for the performance of such subcontractor.

21.1 The creation of any subcontract relationship shall not relieve the hiring Party of any of its obligations under this Agreement. The hiring Party shall be fully responsible to the other Party for the acts or omissions of any subcontractor the hiring Party hires as if no subcontract had been made; provided that in no event shall the Utility be liable for the actions or inactions of the Interconnection Customer or its subcontractors with respect to obligations of the Interconnection Customer under this Agreement. Any applicable obligation imposed by this Agreement upon the hiring Party shall be equally binding upon and shall be construed as having application to any subcontractor of such Party.

21.2 The obligations under this Section 21.0 of this Agreement will not be limited in any way by any limitation of subcontractor's insurance.

22.0 Reservation of rights. The Utility shall have the right to make a unilateral filing with the State Corporation Commission to modify this Agreement with respect to any rates, terms, and conditions, charges, or classifications of service, and the Interconnection Customer shall have the right to make a unilateral filing with the State Corporation Commission to modify this Agreement; provided that each Party shall have the right to protest any such filing by the other Party and to participate fully in any proceeding before the State Corporation Commission in which such modifications may be considered. Nothing in this Agreement shall limit the rights of the Parties except to the extent that the Parties otherwise agree as provided in this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by their duly authorized officers or agents on the day and year of this Agreement.

(Insert name of Utility) (Insert name of Interconnection Customer)

Signed: _____ Signed: _____

Name (Printed): _____ Name (Printed): _____

Title: _____ Title: _____

Attachment A to Schedule 7

Feasibility Study Agreement

Assumptions Used in Conducting the Feasibility Study

The feasibility study will be based upon the information set forth in the interconnection request and agreed upon in the scoping meeting held on _____:

1. Designation of point of interconnection and configuration to be studied.

2. Designation of alternative points of interconnection and configuration.

Questions 1 and 2 are to be completed by the Interconnection Customer. Any other assumptions are to be provided by the Interconnection Customer and the Utility.

_____

_____

Schedule 8

LEVEL 3 SYSTEM IMPACT STUDY AGREEMENT FOR SMALL GENERATING FACILITIES

This Agreement is made and entered into this _____ day of _____ 20_____ by and between _____, a _____ organized and existing under the laws of the state of _____, ("Interconnection Customer,") and _____, a _____ existing under the laws of the state of _____, ("Utility"). Interconnection Customer and Utility each may be referred to as a "Party," or collectively as the "Parties."

RECITALS

WHEREAS, the Interconnection Customer is proposing to develop an SGF or generating capacity addition to an existing SGF consistent with the interconnection request completed by the Interconnection Customer on _____; and

WHEREAS, the Interconnection Customer desires to interconnect the SGF with the Utility's system; and

WHEREAS, the Utility has completed a feasibility study and provided the results of said study to the Interconnection Customer (This recital to be omitted if the Parties have agreed to forgo the feasibility study.); and

WHEREAS, the Interconnection Customer has requested the Utility to perform a system impact study to assess the impact of interconnecting the SGF with the Utility's system, and of any affected systems;

NOW, THEREFORE, in consideration of and subject to the mutual covenants contained in this Agreement the Parties agreed as follows:

1.0 The terms defined in Schedule 1 of 20VAC5-314-170 shall apply to this Schedule 8 of 20VAC 5-314-170.

2.0 The Interconnection Customer elects and the Utility shall cause to be performed a system impact study consistent with the standard small generator interconnection procedures.

3.0 System impact study costs will be deducted from the interconnection request study deposit as set forth in Schedule 6 of 20VAC5-314-170.

3.1 Study cost shall be the Utility's actual incremental costs and will be invoiced to the Interconnection Customer no later than 60 business days after the study is completed and delivered and will include a summary of professional time. [Actual study costs may be reconciled during the final accounting process described in Article 6 of the Interconnection Agreement, as applicable.]

3.2 The Interconnection Customer shall pay any study costs that exceed the deposit within 20 business days after receipt of the invoice or resolution of any dispute. If the deposit exceeds the invoiced fees, the Utility shall refund the excess within 20 business days of the invoice without interest unless additional studies are required.

4.0 A system impact study shall identify and detail the electric system impacts that would result if the SGF were interconnected without project modifications or electric system modifications, focusing on the adverse electric system impacts identified in the feasibility study or in the scoping meeting. A system impact study shall evaluate the impact of the proposed interconnection on the reliability of the electric system.

5.0 A system impact study will be based upon the results of the feasibility study and the technical information provided by Interconnection Customer in the interconnection request. The Utility reserves the right to request additional technical information from the Interconnection Customer as may reasonably become necessary consistent with Good Utility Practice during the course of the system impact study. If the information requested by the Utility is not provided by the Interconnection Customer within a reasonable timeframe to be identified by the Utility in writing, the Utility shall provide the Interconnection Customer written notice providing an opportunity to cure such failure by the close of business on the 10th business day following the posted date of such notice, where failure to provide the information requested within this period shall result in

the study being terminated, and the interconnection request being deemed withdrawn. The period of time for the Utility to complete the system impact study shall be tolled during any period that the Utility has requested information in writing from the Interconnection Customer necessary to complete the study and such request is outstanding.

6.0 A system impact study shall consist of a study of the potentially impacted transmission and distribution systems, a short circuit analysis, a stability analysis, a power flow analysis, voltage drop and flicker studies, grounding reviews, distribution load flow study, analysis of equipment interrupting ratings, protection coordination study, and impacts on electric system operation, as necessary. A system impact study shall state the assumptions upon which it is based, state the results of the analyses, and provide the requirement or potential impediments to providing the requested interconnection service, including a preliminary indication of the cost and length of time that would be necessary to correct any problems identified in those analyses and implement the interconnection. A system impact study shall provide a list of facilities and modifications that would be required as a result of the interconnection along with estimates of cost responsibility and time to construct. If arranged with the Utility prior to the Utility preparing the system impact study agreement, the system impact study may, at the Interconnection Customer's cost, include one or more alternatives to the point of interconnection; however, such alternative points must be on the same distribution circuit as the point of interconnection the Interconnection Customer specified as the proposed point of interconnection.

7.0 Affected systems may participate in the preparation of a system impact study, with a division of costs among such entities as they may agree. All affected systems shall be afforded an opportunity to review and comment upon a system impact study that covers potential adverse system impacts on their electric systems, and the Utility has 20 additional business days to complete a system impact study requiring review by affected systems.

8.0 If the Utility uses a queuing procedure for sorting or prioritizing projects and associated cost responsibilities for any required network upgrades, the system impact study shall consider all generating facilities (and with respect to Section 8.3 of this Agreement, any identified upgrades associated with such higher queued interconnection) that, on the date the system impact study is commenced:

8.1 Are directly interconnected with the Utility's system; or

8.2 Are interconnected with affected systems and may have an impact on the proposed interconnection; and

8.3 Have a pending higher queued interconnection request to interconnect with the Utility's system.

9.0 A system impact study, if required, shall be completed and the results transmitted to the Interconnection Customer within 45 business days after this Agreement is signed by the Parties or in accordance with the Utility's queuing procedures.

10.0 If the system impact study shows that facility modifications are needed to accommodate the SGF, then within 10 business days following transmittal of the system impact study report, the Utility shall send the Interconnection Customer a Facilities Study Agreement, including an outline of the scope of the study.

11.0 Governing law, regulatory authority, and rules. The validity, interpretation, and enforcement of this Agreement and each of its provisions shall be governed by the laws of the Commonwealth of Virginia, without regard to its conflicts of law principles. This Agreement is subject to all applicable laws and regulations. Each Party expressly reserves the right to seek changes in, appeal, or otherwise contest any laws, orders, or regulations of a governmental authority.

12.0 Amendment. The Parties may amend this Agreement by a written instrument duly executed by both Parties.

13.0 No third-party beneficiaries. This Agreement is not intended to and does not create rights, remedies, or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, and the obligations pursuant to this Agreement assumed are solely for the use and benefit of the Parties, their successors in interest, and where permitted, their assigns.

14.0 Waiver.

14.1 The failure of a Party to this Agreement to insist, on any occasion, upon strict performance of any provision of this Agreement will not be considered a waiver of any obligation, right, or duty of or duty imposed upon such Party.

14.2 Any waiver at any time by either Party of its rights with respect to this Agreement shall not be deemed a continuing waiver or a waiver with respect to any other failure to comply with any other obligation, right, or duty of this Agreement. Termination or default of this Agreement for any reason by Interconnection Customer shall not constitute a waiver of the Interconnection Customer's legal rights to obtain an interconnection from the Utility. Any waiver of this Agreement shall if requested, be provided in writing.

15.0 Entire agreement. This Agreement, including all attachments, constitutes the entire agreement between the Parties with reference to the subject matter hereof and supersedes all prior and contemporaneous understandings or agreements, oral or written, between the Parties with respect to the subject matter of this Agreement. There are no other agreements,

representations, warranties, or covenants that constitute any part of the consideration for, or any condition to, either Party's compliance with its obligations under this Agreement.

16.0 Multiple counterparts. This Agreement may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

17.0 No partnership. This Agreement shall not be interpreted or construed to create an association, joint venture, agency relationship, or partnership between the Parties or to impose any partnership obligation or partnership liability upon either Party. Neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

18.0 Severability. If any provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction or other governmental authority, (i) such portion or provision shall be deemed separate and independent, (ii) the Parties shall negotiate in good faith to restore insofar as practicable the benefits to each Party that were affected by such ruling, and (iii) the remainder of this Agreement shall remain in full force and effect.

19.0 Subcontractors. Nothing in this Agreement shall prevent a Party from utilizing the services of any subcontractor as it deems appropriate to perform its obligations under this Agreement; however, each Party shall require its subcontractors to comply with all applicable terms and conditions of this Agreement in providing such services, and each Party shall remain primarily liable to the other Party for the performance of such subcontractor.

19.1 The creation of any subcontract relationship shall not relieve the hiring Party of any of its obligations under this Agreement. The hiring Party shall be fully responsible to the other Party for the acts or omissions of any subcontractor the hiring Party hires as if no subcontract had been made; provided that in no event shall the Utility be liable for the actions or inactions of the Interconnection Customer or its subcontractors with respect to obligations of the Interconnection Customer under this Agreement. Any applicable obligation imposed by this Agreement upon the hiring Party shall be equally binding upon and shall be construed as having application to any subcontractor of such Party.

19.2 The obligations under this Section 19.0 of this Agreement will not be limited in any way by any limitation of subcontractor's insurance.

20.0 Reservation of rights. The Utility shall have the right to make a unilateral filing with the State Corporation Commission to modify this Agreement with respect to any rates, terms and conditions, charges, or classifications of service, and the Interconnection Customer shall have the right to make a unilateral filing with the State Corporation Commission to modify this Agreement; provided that each Party shall have the right to protest any such filing by the other Party and to participate fully in any proceeding before the State Corporation Commission in which such modifications may be considered. Nothing in this Agreement shall limit the rights of the Parties except to the extent that the Parties otherwise agree as provided in this Agreement.

IN WITNESS THEREOF, the Parties have caused this Agreement to be duly executed by their duly authorized officers or agents on the day and year of this Agreement.

(Insert name of Utility) (Insert name of Interconnection Customer)

Signed: Signed:

Name (Printed): Name (Printed):

Title: Title:

Schedule 9

LEVEL 3 FACILITIES STUDY AGREEMENT FOR SMALL GENERATING FACILITIES

This Agreement is made and entered into this ____ day of ____ 20__ by and between ____, a ____ organized

and existing under the laws of the state of _____, ("Interconnection Customer,") and _____, a _____ existing under the laws of the state of _____, ("Utility"). Interconnection Customer and Utility each may be referred to as a "Party," or collectively as the "Parties."

RECITALS

WHEREAS, the Interconnection Customer is proposing to develop an SGF or generating capacity addition to an existing SGF consistent with the interconnection request completed by the Interconnection Customer on _____; and

WHEREAS, the Interconnection Customer desires to interconnect the SGF with the Utility's system; and

WHEREAS, the Utility has completed a system impact study and provided the results of the study to the Interconnection Customer; and

WHEREAS, the Interconnection Customer has requested the Utility to perform a facilities study to specify and estimate the cost of the equipment, engineering, procurement, and construction work needed to implement the conclusions of the system impact study in accordance with Good Utility Practice to physically and electrically connect the SGF with the Utility's system.

NOW, THEREFORE, in consideration of and subject to the mutual covenants contained in this Agreement the Parties agreed as follows:

1.0 The terms defined in Schedule 1 of 20VAC5-314-170 shall apply to this Schedule 9 of 20VAC 5-314-170.

2.0 The Interconnection Customer elects and the Utility shall cause a facilities study consistent with the standard small generator interconnection procedures.

3.0 The scope of the facilities study shall be subject to data provided in Attachment A to this Agreement.

4.0 The facilities study shall specify and estimate the cost of the equipment, engineering, procurement, and construction work needed to implement the conclusions of the feasibility study or system impact study and to allow the SGF to be interconnected and operate safely and reliably.

5.0 Facilities study costs will be deducted from the interconnection request study deposit, as set forth in Schedule 6 of 20VAC5-314-170.

5.1 Study cost shall be the Utility's actual incremental costs and will be invoiced to the Interconnection Customer no later than 60 business days after the study is completed and delivered and will include a summary of professional time. [Actual study costs may be reconciled during the final accounting process described in Article 6 of the Interconnection Agreement, as applicable.]

5.2 The Interconnection Customer shall pay any study costs that exceed the deposit within 20 business days on receipt of the invoice or resolution of any dispute. If the deposit exceeds the invoiced fees, the Utility shall refund the excess within 20 business days of the invoice without interest.

6.0 Design for any required customer's interconnection facilities, attachment facilities, or distribution upgrades shall be performed under the facilities study. The Utility may contract with consultants to perform activities required under the facilities study. The Interconnection Customer and the Utility may agree to allow the Interconnection Customer to separately arrange for the design of some of the customer's interconnection facilities. In such cases, facilities design will be reviewed or modified prior to acceptance by the Utility, under the provisions of the facilities study. If the Parties agree to separately arrange for design and construction, and provided security and confidentiality requirements can be met, the Utility shall make sufficient information available to the Interconnection Customer in accordance with confidentiality and critical infrastructure requirements, to permit the Interconnection Customer to obtain an independent design and cost estimate for any necessary facilities.

7.0 The facilities study shall also identify (i) the electrical switching configuration of the equipment, including transformer, switchgear, meters, and other station equipment; (ii) the nature and estimated cost of the attachment facilities and distribution upgrades necessary to accomplish the interconnection; and (iii) an estimate of the time required to complete the construction and installation of such facilities.

8.0 The Utility may propose to group facilities required for more than one Interconnection Customer in order to minimize facilities costs through economies of scale, but any Interconnection Customer may require the installation of facilities required for its own SGF if it is willing to pay the costs of those facilities.

9.0 In cases where system upgrades are required, the Utility shall transmit the facilities study report within 45 business days after receipt of the complete Facilities Study Agreement and the deposit. In cases where no system upgrades are necessary, and the required facilities are limited to customer's interconnection facilities and attachment facilities only, the Utility shall

transmit the facilities study report within 30 business days after receipt of this Agreement and the deposit. The Utility reserves the right to request additional technical information from the Interconnection Customer as may reasonably become necessary consistent with Good Utility Practice during the course of the facilities study. If the information requested by the Utility is not provided by the Interconnection Customer within a reasonable timeframe to be identified by the Utility in writing, the Utility shall provide the Interconnection Customer written notice providing an opportunity to cure such failure by the close of business on the 10th business day following the posted date of such notice, where failure to provide the information requested within this period shall result in the study being terminated, and the interconnection request being deemed withdrawn. The period of time for the Utility to complete the facilities study shall be tolled during any period that the Utility has requested information in writing from the Interconnection Customer necessary to complete the study and such request is outstanding.

10.0 Governing law, regulatory authority, and rules. The validity, interpretation, and enforcement of this Agreement and each of its provisions shall be governed by the laws of the Commonwealth of Virginia, without regard to its conflicts of law principles. This Agreement is subject to all applicable laws and regulations. Each Party expressly reserves the right to seek changes in, appeal, or otherwise contest any laws, orders, or regulations of a governmental authority.

11.0 Amendment. The Parties may amend this Agreement by a written instrument duly executed by both Parties.

12.0 No third-party beneficiaries. This Agreement is not intended to and does not create rights, remedies, or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, and the obligations assumed in this Agreement are solely for the use and benefit of the Parties, their successors in interest and where permitted, their assigns.

13.0 Waiver.

13.1 The failure of a Party to this Agreement to insist, on any occasion, upon strict performance of any provision of this Agreement will not be considered a waiver of any obligation, right, or duty of or duty imposed upon such Party.

13.2 Any waiver at any time by either Party of its rights with respect to this Agreement shall not be deemed a continuing waiver or a waiver with respect to any other failure to comply with any other obligation, right, or duty of this Agreement. Termination or default of this Agreement for any reason by the Interconnection Customer shall not constitute a waiver of the Interconnection Customer's legal rights to obtain an interconnection from the Utility. Any waiver of this Agreement shall, if requested, be provided in writing.

14.0 Entire agreement. This Agreement, including all attachments, constitutes the entire agreement between the Parties with reference to the subject matter hereof and supersedes all prior and contemporaneous understandings or agreements, oral or written, between the Parties with respect to the subject matter of this Agreement. There are no other agreements, representations, warranties, or covenants that constitute any part of the consideration for, or any condition to, either Party's compliance with its obligations under this Agreement.

15.0 Multiple counterparts. This Agreement may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

16.0 No partnership. This Agreement shall not be interpreted or construed to create an association, joint venture, agency relationship, or partnership between the Parties or to impose any partnership obligation or partnership liability upon either Party. Neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

17.0 Severability. If any provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction or other governmental authority, (i) such portion or provision shall be deemed separate and independent, (ii) the Parties shall negotiate in good faith to restore insofar as practicable the benefits to each Party that were affected by such ruling, and (iii) the remainder of this Agreement shall remain in full force and effect.

18.0 Subcontractors. Nothing in this Agreement shall prevent a Party from utilizing the services of any subcontractor as it deems appropriate to perform its obligations under this Agreement; however, each Party shall require its subcontractors to comply with all applicable terms and conditions of this Agreement in providing such services, and each Party shall remain primarily liable to the other Party for the performance of such subcontractor.

18.1 The creation of any subcontract relationship shall not relieve the hiring Party of any of its obligations under this Agreement. The hiring Party shall be fully responsible to the other Party for the acts or omissions of any subcontractor the hiring Party hires as if no subcontract had been made; provided that in no event shall the Utility be liable for the actions or inactions of the Interconnection Customer or its subcontractors with respect to obligations of the Interconnection Customer under this Agreement. Any applicable obligation imposed by this Agreement upon the hiring Party shall be equally binding upon and shall be construed as having application to any subcontractor of such Party.

18.2 The obligations under this Section 18.0 of this Agreement will not be limited in any way by any limitation of subcontractor's insurance.

19.0 Reservation of rights. The Utility shall have the right to make a unilateral filing with the State Corporation Commission to modify this Agreement with respect to any rates, terms and conditions, charges, or classifications of service, and the Interconnection Customer shall have the right to make a unilateral filing with the State Corporation Commission to modify this Agreement; provided that each Party shall have the right to protest any such filing by the other Party and to participate fully in any proceeding before the State Corporation Commission in which such modifications may be considered. Nothing in this Agreement shall limit the rights of the Parties except to the extent that the Parties otherwise agree as provided in this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by their duly authorized officers or agents on the day and year of this Agreement.

(Insert name of Utility) (Insert name of Interconnection Customer)

Signed Signed

Name (Printed): Name (Printed):

Title Title

Attachment A to Schedule 9

Facilities Study Agreement

Data to Be Provided by the Interconnection Customer

with the Facilities Study Agreement

1. Provide a location plan and simplified one-line diagram of the plant and station facilities. For staged projects, indicate future generation, future transmission circuits, and other major future facilities. On the one-line diagram, show (i) each generator, its electric connection configuration, and its generation capacity; (ii) the location and capacity of auxiliary power; and (iii) minimum load on CT/PT.

2. One set of metering is required for each generation connection to the new ring bus or existing Utility station. Indicate the number of generation connections requiring a metering set:

3. Indicate whether an alternate source of auxiliary power will be available during CT/PT maintenance.
Yes No

4. Indicate whether a transfer bus on the generation side of the metering will require that each meter set be designed for the total plant generation. Indicate such on the one-line diagram.

5. State the type of control system or programmable logic controller (PLC) that will be located at the SGF.

6. State the protocol used by the control system or PLC.

7. Describe the operation sequence and timing of the protection scheme during disconnection and reconnection to the Utility by the SGF.

8. Provide a 7.5-minute quadrangle map of the site. Indicate the plant, station, transmission line, and property lines.

9. State the physical dimensions of the proposed interconnection station.

10. State the bus length from generation to interconnection station.

11. Provide a diagram or description of the point of interconnection desired by the Interconnection Customer that is to be the point of interconnection in the system impact study report.

12. State the line length from interconnection station to Utility system.

13. State the pole or tower number observed in the field affixed to the pole or tower leg.

14. State the number of third-party easements required for distribution or transmission lines.

15. Provide the following proposed schedule dates:

a. Date Interconnection Customer to begin construction: _____

b. Date generator step-up transformers to receive back feed power: _____

c. Date Interconnection Customer will test SGF: _____

d. Date Interconnection Customer will place SGF into commercial operation: _____

Schedule 10

SMALL GENERATOR INTERCONNECTION AGREEMENT (SGIA)

This Small Generator Interconnection Agreement ("Agreement") is made and entered into this _____ day of _____, 20 __, by _____ ("Utility"), and _____ ("Interconnection Customer" or "IC"), each sometimes referred to individually as "Party" or both referred to collectively as the "Parties."

Utility Information

Utility: _____

Attention: _____

Address:

City, State, Zip:

Phone: Fax:

Interconnection Customer Information

Interconnection Customer:

Attention:

Site Address:

City, State, Zip:

Phone: Fax:

Interconnection Customer Application No:

If not available prior to the completion of the Agreement, the Interconnection Customer must provide an address for the small generating facility ("small generating facility" or "SGF") that has been issued conforming to the 911 emergency response group for the area to the Utility within 15 business days of issuance.

In consideration of the mutual covenants set forth in this Agreement, the Parties agree as follows:

Article 1. Scope and Limitations of Agreement

1.1 This Agreement shall be used for all interconnection requests for generators in excess of 500 kW submitted pursuant to the Regulations Governing Interconnection of Small Electrical Generators (20VAC5-314).

1.2 This Agreement governs the terms and conditions under which the Interconnection Customer's small generating facility will interconnect with and operate in parallel with the Utility system.

1.3 This Agreement does not constitute an agreement to purchase or deliver the IC's power. The purchase or delivery of power and other services, including station service or backup power, that the IC may require will be covered under separate agreements, possibly with other parties. The IC will be responsible for separately making all necessary arrangements (including scheduling) for delivery of electricity with the applicable Utility and provider of transmission service.

1.4 Nothing in this Agreement is intended to affect any other agreement between the Utility and the IC.

1.5 Responsibilities of the Parties.

1.5.1 The Parties shall perform all obligations of this Agreement in accordance with all applicable laws and regulations, operating requirements, and Good Utility Practice.

1.5.2 The IC shall construct, interconnect, operate, and maintain its SGF and construct, operate, and maintain its customer's interconnection facilities in accordance with the applicable manufacturer's recommended maintenance schedule, all applicable operating requirements, and in accordance with this Agreement and with Good Utility Practice.

1.5.3 The Utility shall construct, operate, and maintain its distribution and transmission system and attachment facilities in accordance with this Agreement and with Good Utility Practice.

1.5.4 The IC agrees to construct its facilities in accordance with applicable specifications that meet or exceed those provided by the National Electrical Safety Code, American National Standards Institute, Institute of Electrical and Electronics Engineers (IEEE), Underwriter's Laboratory, and operating requirements in effect at the time of construction and other applicable national and state codes and standards. The IC agrees to design, install, maintain, and operate its SGF so as to reasonably minimize the likelihood of a disturbance adversely affecting or impairing the system or equipment of the Utility or affected systems and to otherwise maintain and operate its SGF in accordance with the specifications and certifications under which the SGF was initially installed and interconnected.

1.5.5 Each Party shall operate, maintain, repair, and inspect and shall be fully responsible for the facilities that it now or subsequently may own unless otherwise specified in the Attachments to this Agreement. Each Party shall be responsible for the safe installation, maintenance, repair, and condition of their respective lines and appurtenances on their respective sides of the point of change of ownership. The Utility and the IC, as appropriate, shall provide attachment facilities and customer's interconnection facilities that adequately protect the Utility's personnel and other persons from damage and injury. The

allocation of responsibility for the design, installation, operation, maintenance, and ownership of attachment facilities and Interconnection Customer's interconnection facilities shall be delineated in the Attachments to this Agreement. The design, installation, operation, and maintenance of such facilities shall be the responsibility of the owner except as otherwise provided for in this Agreement.

1.5.6 The Utility shall coordinate with all affected systems to support the interconnection.

1.5.7 The IC shall ensure "frequency ride through" capability and "voltage ride through" capability of its SGF. At the discretion of the Utility, the IC shall enable these capabilities such that its SGF shall not disconnect automatically or instantaneously from the system or equipment of the Utility and any affected systems for a defined under-frequency or over-frequency condition or for an under-voltage or over-voltage condition. The defined conditions shall be in accordance with Good Utility Practice and consistent with any standards and guidelines that are applied to other generating facilities in the balancing authority area on a comparable basis. The SGF's protective equipment settings shall comply with the Utility's automatic load-shed program. The Utility shall review the protective equipment settings to confirm compliance with the automatic load-shed program. The term "ride through" as used in this Agreement shall mean the ability of an SGF to stay connected to and synchronized with the system or equipment of the Utility and any affected systems during system disturbances within a range of conditions, in accordance with Good Utility Practice and consistent with any standards and guidelines that are applied to other generating facilities in the balancing authority on a comparable basis. The term "frequency ride through" as used in this Agreement shall mean the ability of an SGF to stay connected to and synchronized with the system or equipment of the Utility and any affected systems during system disturbances within a range of under-frequency and over-frequency conditions, in accordance with Good Utility Practice and consistent with any standards and guidelines that are applied to other generating facilities in the balancing authority area on a comparable basis. The term "voltage ride through" as used in this Agreement shall mean the ability of an SGF to stay connected to and synchronized with the system or equipment of the Utility and any affected systems during system disturbances within a range of under-voltage and over-voltage conditions, in accordance with Good Utility Practice and consistent with any standards and guidelines that are applied to other generating facilities in the balancing authority area on a comparable basis.

1.5.8 The IC shall not operate the SGF in such a way that the SGF would exceed the maximum generating capacity.

1.6 Parallel operation obligations. Once the SGF has been authorized to commence parallel operation, the IC shall abide by all rules and procedures pertaining to the parallel operation of the SGF in the applicable control area, including (i) any rules and procedures concerning the operation of generation set forth in commission-approved tariffs or by the applicable system operator for the Utility's system and (ii) the operating requirements set forth in Attachment 5 of this Agreement.

1.7 Metering. The IC shall be responsible for the Utility's reasonable and necessary cost for the purchase, installation, operation, maintenance, testing, repair, and replacement of metering and data acquisition equipment specified in Attachments 2 and 3 of this Agreement. The IC's metering (and data acquisition, as required) equipment and reporting shall conform to applicable industry rules and operating requirements.

1.8 Reactive power.

1.8.1 The IC shall design its SGF to maintain a composite power delivery at continuous rated power output at the point of interconnection at a power factor within the range of 0.95 leading to 0.95 lagging, unless mutually agreed upon or the Utility has established different requirements that apply to all similarly situated generators in the control area on a comparable basis. The requirements of this article shall not apply to wind generators.

1.8.2 The Utility is required to pay the IC for reactive power that the IC provides or absorbs from the SGF when the Utility requests the IC to operate its SGF outside the range specified in Section 1.8.1 of this Agreement, unless mutually agreed upon by the Parties. In addition, if the Utility pays its own or affiliated generators for reactive power service within the specified range, it must similarly pay the IC.

1.8.3 Payments shall be in accordance with the IC's applicable rate schedule as may be in effect and accepted by the appropriate government authority. To the extent that no rate schedule is in effect at the time the IC is required to provide or absorb reactive power under this Agreement, the IC may expeditiously file such rate schedule with the appropriate government authority, and the Utility agrees to support any request for waiver of any prior notice requirement of such authority in order to permit compensation to the IC from the time service commenced.

1.9 Terms used in this Agreement shall have the meanings specified in the definitions in Attachment 1 of this Agreement.

Article 2. Inspection, Testing, Authorization, and Right of Access

2.1 Equipment testing and inspection.

2.1.1 The IC shall test and inspect its SGF and interconnection facilities prior to interconnection. The IC shall notify the Utility of such activities no fewer than 10 business days (or as may be agreed to by the Parties) prior to such testing and

inspection. Testing and inspection shall occur on a business day, unless otherwise agreed to by the Parties. The Utility may, at its own expense, send qualified personnel to the SGF site to inspect the interconnection and observe the testing. The IC shall provide the Utility a written test report when such testing and inspection is completed.

2.1.2 The Utility shall provide the IC written acknowledgment that it has received the IC's written test report. Such written acknowledgment shall not be deemed to be or construed as any representation, assurance, guarantee, or warranty by the Utility of the safety, durability, suitability, or reliability of the SGF or any associated control, protective, and safety devices owned or controlled by the IC or the quality of power produced by the SGF.

2.1.3 In addition to the Utility's observation of this IC's testing and inspection of its SGF and interconnection facilities pursuant to this Agreement, the Utility may also require inspection and testing of interconnection facilities that can impact the integrity or safety of the Utility's system or otherwise cause adverse operating effects, as described in Section 3.4.4 of this Agreement and in accordance to Good Utility Practice. Such inspection and testing activities will be performed by the Utility or a third-party independent contractor approved by the Utility and at a time mutually agreed to with the IC and will be performed at the IC's expense. The scope of required inspection and testing will be consistent across similar types of generating facilities.

2.2 Authorization required prior to parallel operation.

2.2.1 The Utility shall make reasonable efforts to list applicable parallel operation requirements in Attachment 5 of this Agreement. Additionally, the Utility shall notify the IC of any changes to these requirements as soon as they are known. The Utility shall make reasonable efforts to cooperate with the IC in meeting requirements necessary for the IC to commence parallel operations by the in-service date.

2.2.2 The IC shall not operate its SGF in parallel with the Utility's system without prior written authorization of the Utility. The Utility will provide such authorization once the Utility receives notification that the IC has complied with all applicable parallel operation requirements. Such authorization shall not be unreasonably withheld, conditioned, or delayed.

2.3 Right of access.

2.3.1 Upon reasonable notice, the Utility may send a qualified person to the premises of the IC at or before the time the SGF first produces energy to inspect the interconnection, and observe the commissioning of the SGF (including any required testing), startup, and operation for a period of up to three business days after initial start-up of the unit. In addition, the IC shall notify the Utility at least five business days prior to conducting any on-site verification testing of the SGF.

2.3.2 Following the initial inspection process described in Section 2.3 of this Agreement at reasonable hours and upon reasonable notice or at any time without notice in the event of an emergency or hazardous condition, the Utility shall have access to the IC's premises for any reasonable purpose in connection with the performance of the obligations imposed on it by this Agreement or if necessary to meet its legal obligation to provide service to its customers.

2.3.3 Each Party shall be responsible for its own costs associated with this article.

Article 3. Effective Date, Term, Termination, and Disconnection

3.1 Effective date. This Agreement shall become effective upon execution by the Parties. [~~The Utility shall promptly file this Agreement with the Division of Public Utility Regulation upon execution.~~]

3.2 Term of agreement. This Agreement shall remain in effect for a period of 10 years from the effective date or such other longer period as the IC may request and shall be automatically renewed for each successive one-year period thereafter, unless terminated earlier in accordance with Section 3.3 of this Agreement.

3.3 Termination. No termination shall become effective until the Parties have complied with all laws and regulations applicable to such termination, [~~including the filing with the Division of Public Utility Regulation of a notice of termination of this Agreement~~ such as any local or Virginia Department of Environmental Quality decommissioning requirements].

3.3.1 The IC may terminate this Agreement at any time by giving the Utility 20 business days written notice and physically and permanently disconnecting the SGF from the Utility's system.

3.3.2 The Utility may terminate this Agreement upon the IC's failure to timely make the payment required by Section 6.1 of this Agreement pursuant to the milestones specified in Attachment 4 to this Agreement, or to comply with the requirements of Section 7.1.2 or 7.1.3 of this Agreement.

3.3.3 Either Party may terminate this Agreement after default pursuant to Section 7.6 of this Agreement.

3.3.4 Upon termination of this Agreement, the small generating facility will be disconnected from the Utility system. The termination of this Agreement shall not relieve either Party of its liabilities and obligations, owed or continuing, at the time of the termination.

3.4 Temporary disconnection. Temporary disconnection shall continue only for so long as reasonably necessary under Good Utility Practice.

3.4.1 "Emergency conditions" means a condition or situation that (i) in the judgment of the Party making the claim is imminently likely to endanger life or property; (ii) in the case of the Utility, is imminently likely (as determined in a nondiscriminatory manner) to cause a material adverse effect on the security of or damage to the utility system, the attachment facilities, or the electrical facilities of others to which the utility system is directly connected; or (iii) in the case of the IC, is imminently likely (as determined in a nondiscriminatory manner) to cause a material adverse effect on the security of or damage to the SGF or the customer's interconnection facilities. Under emergency conditions, the Utility may immediately suspend interconnection service and temporarily disconnect the SGF. The Utility shall notify the IC promptly when it becomes aware of an emergency condition that may reasonably be expected to affect the IC's operation of the SGF. The IC shall notify the Utility promptly when it becomes aware of an emergency condition that may reasonably be expected to affect the utility system or other affected systems. To the extent information is known, the notification shall describe the emergency condition, the extent of the damage or deficiency, the expected effect on the operation of both Parties' facilities and operations, its anticipated duration, and the necessary corrective action.

3.4.2 Routine maintenance, construction, and repair. The Utility may interrupt interconnection service or curtail the output of the SGF and temporarily disconnect the SGF from the Utility's system when necessary for routine maintenance, construction, and repairs on the Utility system. The Utility shall provide the IC with at least five business days' notice prior to such interruption unless circumstances require shorter notice. The Utility shall use reasonable efforts to coordinate such reduction or temporary disconnection with the IC.

3.4.3 Forced outages. During any forced outage, the Utility may suspend interconnection service to effect immediate repairs on the Utility system. The Utility shall use reasonable efforts to provide the IC with prior notice. If prior notice is not given, the Utility shall, upon request, provide the IC written documentation after the fact explaining the circumstances of the disconnection.

3.4.4 Adverse operating effects. The Utility shall notify the IC as soon as practicable if based on Good Utility Practice, operation of the SGF may cause disruption or deterioration of service to other customers served from the Utility system or affected systems or if operating the SGF could cause damage to the Utility system or affected systems. Supporting documentation used to reach the decision to disconnect shall be provided to the IC upon request. If, after notice, the IC fails to remedy the adverse operating effect within a reasonable time, the Utility may disconnect the SGF. The Utility shall provide the IC with a five-business-day notice of such disconnection, unless the provisions of Section 3.4.1 of this Agreement apply.

3.4.5 Modification of the small generating facility. The IC must receive written authorization from the Utility before making changes to the SGF or mode of operations that may have a material impact on the safety or reliability of the utility system or affected system. Such authorization shall not be unreasonably withheld. Modifications shall be done in accordance with Good Utility Practice. If the IC makes such modifications without the Utility's prior written authorization, the latter shall have the right to temporarily disconnect the SGF.

3.4.6 Reconnection. The Parties shall cooperate with each other to restore the SGF, interconnection facilities, and the utility system to their normal operating state as soon as reasonably practicable following a temporary disconnection.

Article 4. Cost Responsibility for Interconnection Customer's Interconnection Facilities, Attachment Facilities, and Distribution Upgrades

4.1 Customer's interconnection facilities. The IC shall be responsible for the costs associated with owning, operating, maintaining, repairing, and replacing the customer's interconnection facilities.

4.2 Attachment facilities. The IC shall pay for one-time and ongoing costs of installing, owning, operating, maintaining, and replacing the attachment facilities itemized in Attachment 2 of this Agreement. The Utility shall provide an estimated cost for the purchase and construction of the attachment facilities and provide a detailed itemization of such costs. Costs associated with attachment facilities may be shared with other entities that may benefit from such facilities by agreement of the IC, such other entities, and the Utility.

4.3 Distribution upgrades. The Utility shall design, procure, construct, install, and own the distribution upgrades described in Attachment 6 of this Agreement. The actual cost of the distribution upgrades shall be directly assigned to the IC. If the Utility and the IC agree, the IC may construct distribution upgrades that are located on land owned by the IC.

Article 5. Transmission System

5.1 Transmission system upgrades.

5.1.1 No portion of Section 5.1 of this Agreement shall apply unless the interconnection of the SGF requires transmission system upgrades.

5.1.2 The Utility shall design, procure, construct, install, and own the transmission system upgrades described in Attachment 6 of this Agreement. If the Utility and the IC agree, the IC may construct transmission system upgrades that are located on land owned by the IC. The costs of the transmission system upgrades shall be borne by the IC.

5.1.3 Notwithstanding any other provision of Section 5.1 of Agreement, in the event and to the extent an RTE has rules, tariffs, agreements, or procedures properly applying to transmission system upgrades, the provisions of Section 5.2 of this Agreement shall apply to such upgrades.

5.2 Regional transmission entities. Notwithstanding any other provision of this Agreement, if the Utility's transmission system is under the control of an RTE and the RTE has rules, tariffs, agreements, or procedures properly governing operation of the SGF, transmission of the output of the SGF, sale of the output of the SGF, system upgrades required for interconnection of the SGF, or other aspects of the interconnection and operation of the SGF, the IC and the Utility shall comply with the applicable agreements, rules, tariffs, or procedures.

5.3 Rights under other agreements. Notwithstanding any other provision of this Agreement, nothing in this Agreement shall be construed as relinquishing or foreclosing any rights, including firm transmission rights, capacity rights, transmission congestion rights, or transmission credits, that the IC shall be entitled to now or in the future under any other agreement or tariff as a result of or otherwise associated with system upgrades, including the right to obtain cash reimbursements or transmission credits for transmission service that is not associated with the SGF.

Article 6. Billing, Payment, Milestones, and Financial Security

6.1 Billing and payment procedures and final accounting. [The IC shall be responsible for pre-payment of all estimated Interconnection Facilities, Attachment Facilities, and Upgrade costs identified in Attachment 2 and Attachment 6 to this Agreement, or the provision of financial security, if acceptable to the Utility as provided for in Section 6.3. Payment or financial security must be received by close of business 30 business days after the date the SGIA is delivered to the IC for signature. Failure to comply with the requirements of this section after an opportunity to cure shall result in the interconnection request being deemed withdrawn.] Within [~~80~~ 120] business days of [the Utility] completing the construction and installation of the attachment facilities or distribution upgrades described in the Attachments to this Agreement, the Utility shall provide the IC with a final accounting report of any difference between (i) the IC's cost responsibility for the actual cost of such facilities or upgrades and (ii) the IC's previous aggregate payments to the Utility for such facilities or upgrades. [The Utility shall make reasonable efforts to meet the timeframe for issuance of the Final Accounting Report. If the Utility is unable to timely issue the Final Accounting Report, the Utility shall provide written notice to the IC explaining the reason or reasons for the delay and provide an estimated time by which it can issue the Final Accounting Report.] If the IC's cost responsibility exceeds its previous aggregate payments, the Utility shall invoice the IC for the amount due, and the IC shall make payment to the Utility within 20 business days. If the IC's previous aggregate payments exceed its cost responsibility under this Agreement, the Utility shall refund to the IC an amount equal to the difference within 20 business days of the final accounting report.

6.2 Milestones. The Parties shall agree on milestones for which each Party is responsible, and such milestone shall be listed in Attachment 4 of this Agreement. A Party's milestones obligations may be modified by agreement. If a Party anticipates that it will be unable to meet a milestone for any reason other than a force majeure event, it shall immediately (i) notify the other Party of the reason for not meeting the milestone, (ii) propose the earliest reasonable alternate date by which it can attain this and future milestones, and (iii) request appropriate amendments to Attachment 4. The Party affected by the failure to meet a milestone shall not withhold agreement to such an amendment unless it will suffer uncompensated economic or operational harm from the delay, the delay will materially affect the schedule of another IC with subordinate queue position, attainment of the same milestone has previously been delayed, or it has reason to believe that the delay in meeting the milestone is intentional or unwarranted notwithstanding the circumstances explained by the Party proposing the amendment.

6.3 Financial security arrangements. [~~At least 30 business days prior to the commencement of the design, procurement, installation, or construction of a discrete portion of the attachment facilities and distribution upgrades~~ Within the timeframe provided for in Section 6.1], the IC [~~shall~~ may] provide the Utility, at the IC's option, [in lieu of prepayment,] a guarantee, a surety bond, letter of credit, or other form of security that is reasonably acceptable to the Utility and is consistent with the Uniform Commercial Code of [~~the jurisdiction where the point of interconnection is located~~ Virginia]. Such security for payment shall be [accepted prior to the Utility's commencement of the design, procurement, installation, or construction of a discrete portion of the attachment facilities and distribution upgrades and shall be] in an amount sufficient to cover the costs for designing, procuring, installing, and constructing the applicable portion of the attachment facilities and distribution upgrades [~~and~~. The IC's financial security under this provision] shall be reduced on a dollar-for-dollar basis for payments made to the Utility under this Agreement during its term [pursuant to the milestone schedule established in Appendix 4]. In addition:

6.3.1 The guarantee must be made by an entity that meets the creditworthiness requirements of the Utility and contain terms and conditions that guarantee payment of any amount that may be due from the IC, up to an agreed-to maximum amount.

6.3.2 The letter of credit or surety bond must be issued by a financial institution or insured reasonably acceptable to the Utility and must specify a reasonable expiration date.

Article 7. Assignment, Liability, Indemnity, Force Majeure, Consequential Damages, and Default

7.1 Assignment.

7.1.1 The IC shall notify the Utility of the pending sale of an existing SGF in writing. The IC shall provide the Utility with information regarding whether the sale is a change of ownership of the SGF to a new legal entity or a change of control of the existing legal entity.

7.1.2 The IC shall promptly notify the Utility of the final date of sale and transfer date of ownership in writing. The purchaser of the SGF shall confirm to the Utility the final date of sale and transfer date of ownership in writing.

7.1.3 This Agreement shall not survive the transfer of ownership of the SGF to a new legal entity owner. The new owner shall submit a new interconnection request along with a processing fee of $500 to the Utility within 20 business days of the transfer of ownership [;] or [, if the facility has been constructed,] the Utility's interconnection facilities shall be removed or disabled and the SGF disconnected from the Utility's system. The Utility shall not study or inspect the SGF unless the new owner's interconnection request indicates that a material modification has occurred or is proposed.

7.1.4 This Agreement shall survive a change of control of the SGF's legal entity owner, where only the contact information in the interconnection agreement must be modified. The new owner shall submit a new interconnection request along with a processing fee of $500 to the Utility within 20 business days of the change of control and provide the new contact information. The Utility shall not study or inspect the SGF unless the new owner's interconnection request indicates that a material modification has occurred or is proposed.

7.1.5 The IC shall have the right to assign this Agreement, without the consent of the Utility, for collateral security purposes to aid in providing financing for the SGF, provided that the IC will promptly notify the Utility of any such assignment. Assignment shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reason thereof.

7.1.6 Any attempted assignment that violates this article is void and ineffective.

7.2 Limitation of liability. Each Party's liability to the other Party for any loss, cost, claim, injury, liability, or expense, including reasonable attorney fees, relating to or arising from any act or omission in its performance of this Agreement shall be limited to the amount of direct damage actually incurred. In no event shall either Party be liable to the other Party for any indirect, special, incidental, consequential, or punitive damages of any kind, except as authorized by this Agreement.

7.3 Indemnity.

7.3.1 This provision protects each Party from liability incurred to third parties as a result of carrying out the provisions of this Agreement. Liability under this provision is exempt from the general limitations on liability found in Section 7.2 of this Agreement.

7.3.2 The Parties shall at all times indemnify, defend, and hold the other Party harmless from all damages; losses; claims, including claims and actions relating to injury to or death of any person or damage to property; demand; suits; recoveries; costs and expenses; court costs; attorney fees; and all other obligations by or to third parties arising out of or resulting from the other Party's action or failure to meet its obligations under this Agreement on behalf of the indemnifying Party, except in cases of gross negligence or intentional wrongdoing by the indemnified Party.

7.3.3 If an indemnified Party is entitled to indemnification under this Article 7 of this Agreement as a result of a claim by a third party, and the indemnifying Party fails, after notice and reasonable opportunity, to proceed under this Article 7 of this Agreement to assume the defense of such claim, such indemnified person may at the expense of the indemnifying Party contest, settle, or consent to the entry of any judgment with respect to, or pay in full, such claim.

7.3.4 If an indemnifying Party is obligated to indemnify and hold any indemnified person harmless under this Article 7 of this Agreement, the amount owing to the indemnified person shall be the amount of such indemnified person's actual loss, net of any insurance or other recovery.

7.3.5 Promptly after receipt by an indemnified person of any claim or notice of the commencement of any action or administrative or legal proceeding or small generator investigation as to which the indemnity provided for in this Article 7 of this Agreement may apply, the indemnified person shall notify the indemnifying Party of such fact. Any failure of or delay in such notification shall not affect a Party's indemnification obligation unless such failure or delay is materially prejudicial to the indemnifying Party.

7.4 Consequential damages. Other than as expressly provided for in this Agreement, neither Party shall be liable under any provision of this Agreement for any losses, damages, costs, or expenses for any special, indirect, incidental, consequential, or punitive damages, including loss of profit or revenue; loss of the use of equipment; cost of capital; cost of temporary equipment or services, whether based in whole or in part in contract; in tort, including negligence, strict liability; or any other theory of liability; provided that damages for which a Party may be liable to the other Party under another agreement will not be considered to be special, indirect, incidental, or consequential damages.

7.5 Force majeure.

7.5.1 As used in this article, "force majeure event" means any act of God; labor disturbance; act of the public enemy; war; insurrection; riot; fire; storm or flood; explosion; breakage or accident to machinery or equipment; any order, regulation, or restriction imposed by governmental, military, or lawfully established civilian authorities; or any other cause beyond a Party's control. A "force majeure event" does not include an act of negligence or intentional wrongdoing.

7.5.2 If a force majeure event prevents a Party from fulfilling any obligation under this Agreement, the Party affected by the force majeure event ("Affected Party") shall promptly notify the other Party, either in writing or via the telephone, of the existence of the force majeure event. The notification must specify in reasonable detail the circumstances of the force majeure event, its expected duration, and the steps that the Affected Party is taking to mitigate the effects of the event on its performance. The Affected Party shall keep the other Party informed on a continuing basis of developments relating to the force majeure event until the event ends. The Affected Party will be entitled to suspend or modify its performance of obligations under this Agreement (other than the obligation to make payments) only to the extent that the effect of the force majeure event cannot be mitigated by the use of reasonable efforts. The Affected Party will use reasonable efforts to resume its performance as soon as possible.

7.6 Default.

7.6.1 No default shall exist where such failure to discharge an obligation (other than the payment of money) is the result of a force majeure event as defined in this Agreement or the result of an act or omission of the other Party. Upon a default, the nondefaulting Party shall give written notice of such default to the defaulting Party. Except as provided in Section 7.6.2 of this Agreement, the defaulting Party shall have 40 business days from receipt of the default notice within which to cure the default; however, if the default is not capable of cure within 40 business days, the defaulting Party shall commence the cure within 10 business days after notice and continuously and diligently complete the cure within six months from receipt of the default notice, and if cured within such time, the default specified in such notice shall cease to exist.

7.6.2 If a default is not cured as provided in this Article 7 of this Agreement or if a default is not capable of being cured within the period provided for in this Article 7 of this Agreement, the nondefaulting Party shall have the right to terminate this Agreement by written notice at any time until cure occurs and be relieved of any further obligation in this Agreement, and whether or not that Party terminates this Agreement, to recover from the defaulting Party all amounts due pursuant to this Agreement, plus all other damages and remedies to which it is entitled at law or in equity. The provisions of this Article 7 of this Agreement will survive termination of this Agreement.

Article 8. Insurance

8.1 The IC shall, at its own expense, maintain in force general liability insurance without any exclusion for liabilities related to the interconnection undertaken pursuant to this Agreement. The amount of such insurance shall be in accordance with 20VAC5-314-160. The IC shall obtain additional insurance only if necessary as a function of owning and operating a generating facility. Insurance shall be obtained from an insurance provider authorized to conduct business in the Commonwealth of Virginia. Certification that such insurance is in effect shall be provided upon request of the Utility, except that the IC shall show proof of insurance to the Utility no later than 10 business days prior to the anticipated commercial operation date of the SGF. An IC of sufficient creditworthiness may propose to self-insure for such liabilities, and such a proposal shall not be unreasonably rejected.

8.2 The Utility agrees to maintain general liability insurance or self-insurance consistent with the Utility's commercial practice. Such insurance or self-insurance shall not exclude coverage for the Utility's liabilities undertaken pursuant to this Agreement.

8.3 The Parties further agree to notify each other whenever an accident or incident occurs resulting in any injuries or damages that are included within the scope of coverage of such insurance, whether or not such coverage is sought.

Article 9. Confidentiality

9.1 Confidential information shall mean any confidential or proprietary information provided by one Party to the other Party that is clearly marked or otherwise designated "Confidential." For purposes of this Agreement all design, operating specifications, and metering data provided by the IC shall be deemed confidential information regardless of whether it is clearly marked or otherwise designated as such.

9.2 Confidential information does not include information previously in the public domain, required to be publicly submitted or divulged by governmental authorities (after notice to the other Party and after exhausting any opportunity to oppose such publication or release), or necessary to be divulged in an action to enforce this Agreement. Each Party receiving confidential information shall hold such information in confidence and shall not disclose it to any third party or the public without the prior written authorization from the Party providing that information, except to fulfill obligations under this Agreement or to fulfill legal or regulatory requirements.

9.2.1 Each Party shall employ at least the same standard of care to protect confidential information obtained from the other Party as it employs to protect its own confidential information.

9.2.2 Each Party is entitled to equitable relief, by injunction or otherwise, to enforce its rights under this provision to prevent the release of confidential information without bond or proof of damages and may seek other remedies available at law or in equity for breach of this provision.

9.3 Notwithstanding anything in this Agreement to the contrary, if the Virginia State Corporation Commission ("Commission"), during the course of an investigation or otherwise, requests information from one of the Parties that is otherwise required to be maintained in confidence, the Party shall provide the requested information to the commission, within the time provided for in the request for information. In providing the information to the commission, the Party may request that the information be treated as confidential and nonpublic by the commission and that the information be withheld from public disclosure. Parties are prohibited from notifying the other Party prior to the release of the confidential information to the commission. A Party shall notify the other Party when it is notified by the commission that a request to release confidential information has been received by the commission, at which time either Party may respond to the commission before such information would be made public.

Article 10. Disputes

10.1 The Parties agree to attempt to resolve all disputes arising out of the interconnection process according to the provisions of this Article 10 of this Agreement.

10.2 In the event of a dispute, either Party shall provide the other Party with a written notice of dispute. Such notice shall describe in detail the nature of the dispute. The Parties shall make a good faith effort to resolve the dispute informally within 10 business days.

10.3 If the dispute has not been resolved within 10 business days after receipt of the notice, either Party may seek resolution assistance from the Division of Public Utility Regulation where the matter will be handled as an informal complaint.

Alternatively, either Party may, upon mutual agreement, seek resolution through the assistance of a dispute resolution service. The dispute resolution service will assist the Parties in either resolving the dispute or in selecting an appropriate dispute resolution venue (e.g., mediation, settlement judge, early neutral evaluation, or technical expert) to assist the Parties in resolving their dispute. Each Party shall conduct all negotiations in good faith and shall be responsible for one-half of any costs paid to neutral third parties.

10.4 If the dispute remains unresolved, either Party maypetition the commission to handle the dispute as a formal complaint or may exercise whatever rights and remedies it may have in equity or law consistent with the terms of this Agreement.

Article 11. Taxes

11.1 The Parties agree to follow all applicable tax laws and regulations.

11.2 Each Party shall cooperate with the other to maintain the other Party's tax status. Nothing in this Agreement is intended to adversely affect the Utility's tax exempt status with respect to the issuance of bonds including local furnishing bonds.

Article 12. Miscellaneous

12.1 Governing law, regulatory authority, and rules. The validity, interpretation, and enforcement of this Agreement and each of its provisions shall be governed by the laws of the Commonwealth of Virginia without regard to its conflicts of law principles. This Agreement is subject to all applicable laws and regulations. Each Party expressly reserves the right to seek changes in, appeal, or otherwise contest any laws, orders, or regulations of a governmental authority.

12.2 Amendment. The Parties may amend this Agreement by a written instrument duly executed by both Parties.

12.3 No third-party beneficiaries. This Agreement is not intended to and does not create rights, remedies, or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, and the obligations in this Agreement assumed are solely for the use and benefit of the Parties, their successors in interest, and where permitted, their assigns.

12.4 Waiver.

12.4.1 The failure of a Party to this Agreement to insist, on any occasion, upon strict performance of any provision of this Agreement will not be considered a waiver of any obligation, right, or duty of or duty imposed upon such Party.

12.4.2 Any waiver at any time by either Party of its rights with respect to this Agreement shall not be deemed to be a continuing waiver or a waiver with respect to any other failure to comply with any other obligation, right, or duty of this Agreement. Termination or default of this Agreement for any reason by the IC shall not constitute a waiver of the IC's legal rights to obtain an interconnection from the Utility. Any waiver of this Agreement shall, if requested, be provided in writing.

12.5 Entire agreement. This Agreement, including all Attachments to this Agreement, constitutes the entire agreement between the Parties with reference to the subject matter hereof and supersedes all prior and contemporaneous understandings or agreements, oral or written, between the Parties with respect to the subject matter of this Agreement. There are no other agreements, representations, warranties, or covenants that constitute any part of the consideration for, or any condition to, either Party's compliance with its obligations under this Agreement.

12.6 Multiple counterparts. This Agreement may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

12.7 No partnership. This Agreement shall not be interpreted or construed to create an association, joint venture, agency relationship, or partnership between the Parties or to impose any partnership obligation or partnership liability upon either Party. Neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

12.8 Severability. If any provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction or other governmental authority, (i) such portion or provision shall be deemed separate and independent, (ii) the Parties shall negotiate in good faith to restore insofar as practicable the benefits to each Party that were affected by such ruling, and (iii) the remainder of this Agreement shall remain in full force and effect.

12.9 Environmental releases. Each Party shall notify the other Party, first orally and then in writing, of the release of any hazardous substances, any asbestos or lead abatement activities, or any type of remediation activities related to the SGF, the customer's interconnection facilities, or attachment facilities, each of which may reasonably be expected to affect the other Party. The notifying Party shall (i) provide the notice as soon as practicable, provided such Party makes a good faith effort to provide the notice no later than 24 hours after such Party becomes aware of the occurrence, and (ii) promptly furnish to the other Party copies of any publicly available reports filed with any governmental authorities addressing such events.

12.10 Subcontractors. Nothing in this Agreement shall prevent a Party from utilizing the services of any subcontractor as it deems appropriate to perform its obligations under this Agreement; however, each Party shall require its subcontractors to comply with all applicable terms and conditions of this Agreement in providing such services, and each Party shall remain primarily liable to the other Party for the performance of such subcontractor.

12.10.1 The creation of any subcontract relationship shall not relieve the hiring Party of any of its obligations under this Agreement. The hiring Party shall be fully responsible to the other Party for the acts or omissions of any subcontractor the hiring Party hires as if no subcontract had been made; however, in no event shall the Utility be liable for the actions or inactions of the IC or its subcontractors with respect to obligations of the IC under this Agreement. Any applicable obligation imposed by this Agreement upon the hiring Party shall be equally binding upon and shall be construed as having application to any subcontractor of such Party.

12.10.2 The obligations under this article will not be limited in any way by any limitation of subcontractor's insurance.

12.11 Reservation of rights. The Utility shall have the right to make a unilateral filing with the commission to modify this Agreement with respect to any rates, terms and conditions, charges, classifications of service, rule, or regulation, and the IC shall have the right to make a unilateral filing with the commission to modify this Agreement; provided that each Party shall have the right to protest any such filing by the other Party and to participate fully in any proceeding before the commission in which such modifications may be considered. Nothing in this Agreement shall limit the rights of the Parties except to the extent that the Parties otherwise agree as provided in this Agreement.

Article 13. Notices

13.1 General. Unless otherwise provided in this Agreement, any written notice, demand, or request required or authorized in connection with this Agreement shall be deemed properly given if delivered in person, delivered by recognized national courier service, or sent by first class mail, postage prepaid, to the person listed:

If to the Interconnection Customer:

Interconnection Customer:_____

Attention: _____

Address: _____

City, State, Zip: _____

Phone: _____ Fax: _____

If to the Utility:

Utility: _____

Attention: _____

Address: _____

City, State, Zip: _____

Phone: _____ Fax: _____

13.2 Billing and payment.

Billings and payments shall be sent to the addresses listed:

If to the Interconnection Customer:

Interconnection Customer: _____

Attention: _____

Address: _____

City, State, Zip: _____

If to the Utility:

Utility: _____

Attention: _____

Address: _____

City, State, Zip: _____

13.3 Alternative forms of notice. Any notice or request required or permitted to be given by either Party to the other and not required by this Agreement to be given in writing may be so given by telephone, facsimile, or email to the telephone numbers and email addresses listed:

If to the Interconnection Customer:

Interconnection Customer: _____

Attention: _____

Address: _____

City, State, Zip: _____

Phone: _____ Fax: _____

If to the Utility:

Utility: _____

Attention: _____

Address: _____

City, State, Zip: _____

Phone: _____ Fax: _____

13.4 Designated operating representative. The Parties may also designate operating representatives to conduct the communications that may be necessary or convenient for the administration of this Agreement. This person will also serve as the point of contact with respect to operations and maintenance of the Party's facilities.

Interconnection Customer's Operating Representative:

Interconnection Customer: _____

Attention: _____

Address: _____

City, State, Zip: _____

Phone: _____ Fax: _____

Utility's Operating Representative:

Utility: _____

Attention: _____

Address: _____

City, State, Zip: _____

Phone: _____ Fax: _____

13.5 Changes to the notice information. Either Party may change this information by giving five business days' written notice prior to the effective date of the change.

Article 14. Signatures

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized representatives.

For the Utility

Name: _____

Title: _____

Date: _____

[For the Affected System Utility

Name: _____

Title: _____

Date: _____]

For the Interconnection Customer

Name: _____

Title: _____

Date: _____

Attachment 1 to Schedule 10

Glossary of Terms

The following terms when used in Schedule 10 of 20VAC5-314-170 will have the following meanings:

"Affected system" means an electric utility system other than that of the Utility that may be affected by the proposed interconnection.

"Affected system operator" means an entity that operates an affected system, or if the affected system is under the operational control of an independent system operator or a regional transmission entity, such independent entity.

"Applicable laws and regulations" means all duly promulgated applicable federal, state, and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders; permits; and other duly authorized actions of any governmental authority.

"Attachment facilities" means the facilities and equipment owned, operated, and maintained by the Utility that are built new in order to physically connect the customer's interconnection facilities to the Utility system. Attachment facilities shall not include distribution upgrades or previously existing distribution and transmission facilities.

"Balancing authority" means the responsible entity that integrates resource plans ahead of time, maintains load-interchange-generation balance within a balancing authority area, and supports interconnection frequency in real time.

"Balancing authority area" means the collection of generation, transmission, and loads within the metered boundaries of the balancing authority. The balancing authority maintains load-resource balance within this area.

"Business day" means Monday through Friday, excluding federal holidays.

"Calendar day" means Sunday through Saturday, including all holidays.

"Certified" has the meaning ascribed to it in Schedule 2 of 20VAC5-314-170.

"Commission" means the Virginia State Corporation Commission.

"Customer's interconnection facilities" means all the facilities and equipment owned, operated and maintained by the IC, between the SGF and the point of interconnection necessary to physically and electrically interconnect the SGF to the utility system.

"Default" means the failure of a breaching Party to cure its breach under the Small Generator Interconnection Agreement.

"Distribution system" means the Utility's facilities and equipment generally delivering electricity to ultimate customers from substations supplied by higher voltages (usually at transmission level). For purposes of this Agreement, all portions of the Utility's transmission system regulated by the commission for which interconnections are not within Federal Energy Regulatory Commission jurisdiction are considered also to be subject to commission regulations.

"Distribution upgrades" means the additions, modifications, and enhancements made to the Utility's distribution system on the Utility's side of the point of interconnection necessary to ensure continued system reliability and power quality on the Utility's distribution system caused by the interconnection of the small generating facility. Distribution upgrades do not include network upgrades or the customer's interconnection facilities or the Utility's attachment facilities.

"Facilities study" has the meaning ascribed to it in 20VAC5-314-70 E.

"Feasibility study" has the meaning ascribed to it in 20VAC5-314-70 C.

"FERC" means the Federal Energy Regulatory Commission.

"Good Utility Practice" means any of the practices, methods, and acts engaged in or approved by a significant portion of the electric industry during the relevant time period, or any of the practices, methods, and acts that, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost, consistent with good business practices, reliability, safety, and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others but rather to include practices, methods, or acts generally accepted in the region.

"Governmental authority" means any federal, state, local, or other governmental regulatory or administrative agency, court, commission, department, board, or other governmental subdivision or legislature or rulemaking board, tribunal, or other governmental authority having jurisdiction over the Parties, their respective facilities, or the respective services they provide and exercising or entitled to exercise any administrative, executive, police, or taxing authority or power; provided that such term does not include the IC, the Utility, or a Utility affiliate.

"Interconnection Customer" or "IC" means any entity proposing to interconnect a new SGF with the utility system.

"Interconnection request" means the IC's request, in accordance with the Regulations Governing Interconnection of Small Electrical Generators (20VAC5-314), to interconnect a new small generating facility or to increase the capacity of or make a material modification to the operating characteristics of an existing small generating facility that is interconnected with the Utility system.

"Interconnection studies" means the studies conducted by the Utility or a third party agreed to by the Utility and the IC in order to determine the interaction of the SGF with the Utility system and the affected systems in order to specify any modifications to the SGF or the electric systems studied to ensure safe and reliable operation of the SGF in parallel with the Utility system.

"Material modification" has the meaning ascribed to it in 20VAC5-314-39.

"Maximum generating capacity" means the maximum continuous electrical output of the SGF at any time as measured at the point of interconnection or the maximum kW delivered to the Utility during any metering period, whichever is greater. Requested maximum

generating capacity will be specified by the IC in the interconnection request and an approved maximum generating capacity will subsequently be included as a limitation in the interconnection agreement.

"Network upgrades" means additions, modifications, and enhancements to the Utility's transmission system that are required in order to accommodate the interconnection of the small generating facility with the Utility's system. Network upgrades do not include distribution system upgrades.

"Operating requirements" means any operating and technical requirements that may be applicable due to regional transmission entity, independent system operator, control area, or the Utility's requirements, including those set forth in this Small Generator Interconnection Agreement.

"Party" means the Utility or the IC.

"Point of interconnection" means the point where the customer's interconnection facilities connect physically and electrically to the Utility system.

["Processing fee" means a nonrefundable cost to administer or file an application.]

"Queue number" refers to the number assigned by the Utility that establishes a customer's interconnection request's position in the study queue relative to all other valid interconnection requests. A lower queue number will be studied prior to a higher queue number, except in the case of interdependent projects. The queue number of each interconnection request shall be used to determine the cost responsibility for the upgrades necessary to accommodate the interconnection.

"Queue position" means the order of a valid interconnection request relative to all other pending valid interconnection request based on queue number.

"Regional Transmission Entity" or "RTE" shall refer to an entity having the management and control of a Utility's transmission system as further set forth in § 56-579 of the Code of Virginia.

"Small generating facility" or "generating facility" or "generator" or "SGF" means the IC's equipment used for the production [~~or storage for later injection~~] of electricity, as identified in the interconnection request.

"Small Generator Interconnection Agreement" or "SGIA" means the agreement between the Utility and the IC as set forth in this Schedule 10 of 20VAC5-314-170.

"Supplemental review" has the meaning ascribed to it in 20VAC5-314-60 H.

"System" or "Utility system" means the distribution and transmission facilities owned, controlled, or operated by the Utility that are used to deliver electricity.

"System impact study" has the meaning ascribed to it in 20VAC5-314-70 D.

"Tariff" means the rates, terms, and conditions filed by the Utility with the commission for the purpose of providing commission-regulated electric service to retail customers.

"Transmission system" means the Utility's facilities and equipment delivering electric energy to the distribution system; such facilities usually being operated at voltage levels above the Utility's typical distribution system voltage levels.

"Utility" means the public utility company subject to regulation by the Commission pursuant to Chapter 10 (§ 56-232 et seq.) of Title 56 of the Code of Virginia with regard to rates or service quality to whose system the IC proposes to interconnect a small generating facility.

Attachment 2 to Schedule 10

Description and Costs of the Small Generating Facility, Customer's Interconnection Facilities, Attachment Facilities, and Metering Equipment

The following shall be provided in this exhibit:

1. An itemization of the major equipment components owned by the IC and the Utility, including components of the SGF, the customer's interconnection facilities, attachment facilities, and metering equipment. Such itemization shall identify the owner of each item listed.

2. The Utility's estimated itemized cost of its attachment facilities and its metering equipment.

3. The Utility's estimated cost of its annual operation and maintenance expenses associated with attachment facilities and metering equipment to be charged to the IC.

Attachment 3 to Schedule 10

One-line Diagram Depicting the Small Generating Facility, Customer's Interconnection Facilities, Attachment Facilities, Metering Equipment, and Distribution Upgrades

(Diagram and description to be provided by IC unless the Utility elects to prepare this schedule. If this schedule is prepared by the Utility, the IC shall provide a one-line diagram of the SGF and IC's interconnection facilities for the Utility to use as a data source for preparing this schedule.)

Attachment 4 to Schedule 10

Milestones

In-Service Date:_____

Critical milestones and responsibility as agreed to by the Parties:

Milestone/Date	**Responsible Party**
(1)_____	_____
(2)_____	_____
(3)_____	_____
(4)_____	_____
(5)_____	_____
(6)_____	_____
(7)_____	_____
(8)_____	_____
(9)_____	_____
(10)_____	_____

Agreed to by:

For the Utility_____ Date_____

For the Transmission Owner (if applicable)_____ Date_____

For the Interconnection Customer_____ Date_____

Attachment 5 to Schedule 10

Additional Operating Requirements for the Utility System and Affected Systems Needed to Support the Interconnection Customer's Needs

The Utility shall provide requirements that must be met by the IC prior to initiating parallel operation with the utility system.

Attachment 6 to Schedule 10

Utility's Description of its Distribution and Transmission Upgrades and Estimate of Upgrade Costs

The Utility shall provide the following in this attachment:

1. An itemized list of the upgrades required to be constructed by the Utility prior to interconnection of the SGF, with transmission and distribution related upgrades shown separately.

2. An estimate of the cost of each item listed pursuant to Item 1 of this Attachment.

3. An estimate of annual operation and maintenance expenses associated with such upgrades that are to be charged to the IC, shown separately for transmission and distribution related items.

DOCUMENTS INCORPORATED BY REFERENCE (20VAC5-314)

~~IEEE Standard for Interconnecting Distributed Resources with Electric Power Systems, The Institute of Electrical and Electronics Engineers, Inc., Standard 1547, July 28, 2003~~

IEEE Standard for Interconnection and Interoperability of Distributed Energy Resources with Associated Electric Power Systems Interfaces, The Institute of Electrical and Electronics Engineers, Inc., Standard 1547, 2018.

IEEE Standard Conformance Test Procedures for Equipment Interconnecting Distributed Resources with Electric Power Systems, The Institute of Electrical and Electronics Engineers, Inc., Standard 1547.1, July 1, 2005.

VA.R. Doc. No. R20-5389; Filed July 29, 2020, 3:34 p.m.

TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

COMMISSION ON THE VIRGINIA ALCOHOL SAFETY ACTION PROGRAM

Proposed Regulation

Title of Regulation: **24VAC35-60. Ignition Interlock Program Regulations (amending 24VAC35-60-40 through 24VAC35-60-90, 24VAC35-60-110, 24VAC35-60-130; adding 24VAC35-60-140).**

Statutory Authority: §§ 18.2-270.1 and 18.2-270.2 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: October 30, 2020.

Agency Contact: Richard L. Foy, Field Services Specialist, Commission on the Virginia Alcohol Safety Action Program, 1111 East Main Street, Suite 801, Richmond, VA 23219, telephone (804) 786-5895, or email rfoy@vasap.virginia.gov.

Basis: The Commission on Virginia Alcohol Safety Action Program (VASAP) is authorized by § 18.2-270.2 of the Code of Virginia to "certify ignition interlock systems for use in the Commonwealth and adopt regulations and forms for the installation, maintenance, and certification of such ignition interlock systems."

Purpose: Ignition interlock devices protect the public from offenders who may attempt to drink and drive subsequent to a DUI conviction while they are completing substance abuse education, treatment, and probation. An ignition interlock is required to be installed in many cases as a condition of receiving a restricted driver's license. The ignition interlock requires drivers, operating vehicles so equipped, to submit alcohol-free breath samples in order to start and operate the vehicle. The proposed regulatory changes implement enhanced technology and identified best practices in the industry.

Substance: The proposed changes are as follows:

In 24VAC35-60-40, changes (i) authorize ignition interlock state directors to also oversee remote alcohol monitoring systems for manufacturers of devices approved for use in Virginia; and (ii) require ignition interlock service providers to notify the Commission on VASAP whenever they receive a negative adjudication related to the ignition interlock device or provision of ignition interlock services. Previously, the commission had to be notified of any and all pending lawsuits.

In 24VAC35-60-50, changes (i) raise the amount of the administrative fee paid to the state office by the ignition interlock vendors from $10 to $20. Currently, $10 is being submitted to the Commission on VASAP state office and $10 is being submitted directly to the local Alcohol Safety Action Programs (ASAPs). The $10 being submitted directly to the local ASAPs would now be sent to the state office instead, and then routed to the local ASAPs; (ii) require ignition interlock service providers to pay a one-time $2,500 fee whenever a new ignition interlock model is introduced. This fee will cover the cost of performance testing by VASAP; (iii) removes the $10 administrative fee previously submitted directly to the local ASAPs by the ignition interlock vendors will now be sent to the Commission on VASAP instead, who will then distribute the funds to the local ASAPS. The amount of the total administrative fee paid by the ignition interlock companies is not changed, just the routing of the fees is changed; and (iv) strikes the language referring to administrative fees being paid directly to local ASAPs since the fees will now be routed via the Commission on VASAP state office.

In 24VAC35-60-60, changes adjust the procedures ignition interlock service providers follow in order to contest a suspension or revocation of an interlock device or service facility in order to be consistent with the procedures outlined in the Administrative Process Act.

In 24VAC35-60-70, changes (i) remove the reference to ignition interlocks being “alcohol specific” to prevent the public from assuming the device only detects ethanol to the exclusion of other types of alcohol; (ii) add language permitting the commission to approve light sources other than the vehicle headlights for required activation when a rolling retest is failed or skipped; (iii) allow the commission to approve temporary codes to persons that will allow them to unlock their locked ignition interlock devices for a longer period than the three-hour time limit currently allowed. This is for the purpose of emergency situations, such as during a hurricane evacuation; (iv) clarify that the required warning sticker, regarding tampering and circumvention of the interlock, be located on the ignition interlock handset; and (v) require that a rolling retest occurs within the first 10 minutes after the start of the motor vehicle. Previously the initial rolling retest had to occur within five minutes of the engine start.

In 24VAC35-60-80, changes (i) prohibit using a single vehicle that is equipped with an ignition interlock to simultaneously meet the probationary requirements of multiple offenders; and (ii) prevent offenders from transferring from one interlock vendor to another without permission of the commission, unless the request to transfer is based on equipment malfunction or a legitimate customer service issue.

In 24VAC35-60-90, changes (i) prohibit offenders from changing interlock service providers if an outstanding balance in excess of $250 is owed to another interlock service provider; and (ii) require that a photo of the driver be captured after every vehicle ignition start.

In 24VAC35-60-110, changes (i) require that a photo of the vehicle driver's seat be taken after every initial start-up at a time established by the commission; and (ii) require that each offender read and sign an ASAP Ignition Interlock Agreement and that a copy of the agreement be given to the offender.

In 24VAC35-60-130, changes (i) expand the reasons ignition interlock certification can be denied, revoked, suspended or terminated to include material misstatements and omissions in an application; (ii) expand the reasons ignition interlock

certification can be denied, revoked, suspended or terminated to include defrauding any customer or other person or entity during the conduct of the licensee's business; and (iii) clarifies that appeals will be handled in compliance with the Administrative Process Act and that any prohibition to provide ignition interlock services will remain in effect during the time the action is being contested.

In 24VAC35-60-140, changes give the Commission on VASAP flexibility to suspend service-related requirements during federal or state disasters and declarations of emergency.

Issues: The advantage to the public and the Commonwealth of the proposed changes to this regulation is improvement of transportation safety in the Commonwealth. There are no disadvantages to the public or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Commission on the Virginia Alcohol Safety Action Program (VASAP) proposes to: 1) amend the timing of initial ignition interlock rolling retests and subsequent random tests, 2) require an additional photograph of the vehicle's driver seat area, 3) add additional grounds for which ignition interlock service providers and technicians may be disciplined, 4) require ignition interlock service providers to notify VASAP only when they receive a negative adjudication instead of notification of any and all pending lawsuits, 5) prevent offenders from transferring from one interlock vendor to another, 6) prohibit device installation by a new vendor if the offender owes another vendor more than $250, 7) introduce a $2,500 fee to the vendors for application of a new device certification, 8) allow the VASAP to receive the monthly administrative fee for local offices and then distribute it to the local ASAP offices, 9) grant VASAP power to suspend service related requirements of this regulation in applicable geographical areas when there exists a federal or state disaster or declaration of emergency, 10) allow temporary codes to persons that would allow them to unlock their locked ignition interlock devices for a longer period, 11) prohibit use of a single vehicle that is equipped with an ignition interlock in order to meet the probationary requirements of multiple offenders, and 12) add language permitting VASAP to approve light sources other than the vehicle headlights for the required flashing lights when a rolling retest is failed or skipped.

Background. This regulation establishes rules for installation, maintenance, and certification of ignition interlock systems. According to VASAP, ignition interlock devices protect the public from convicted DUI offenders who may attempt to drink and drive again prior to completing substance abuse education, treatment, and probation. The ignition interlock requires that an alcohol-free breath sample be provided in order for a vehicle to start. After the initial startup test, rolling retests are required at prescribed intervals for as long as the motor vehicle is in operation. By monitoring photographs captured by the ignition interlock system, it has become apparent that a large number of offenders are circumventing the interlock either by tampering with the equipment or having other persons submit breath samples for them. Circumventing the ignition interlock is a Class 1 misdemeanor offense.

In response to these concerns, at its December 13, 2019, meeting VASAP members expressed a desire to improve their ability to effectively deter, detect, and prosecute probationers who attempt to circumvent the ignition interlock devices on their vehicles and approved the amendments being proposed to achieve the intended goal.

Estimated Benefits and Costs.

Changes to improve compliance: The proposal would require the ignition interlock's first rolling retest to occur randomly but not less than ten minutes after the start of the motor vehicle, instead of within five minutes. Subsequent rolling retests would then occur randomly thereafter at least once every 60 minutes, instead of every 45 to 60 minutes, for as long as the motor vehicle is in operation. According to VASAP, when offenders know that the first retest would be conducted in the first five minutes they can easily undermine that test by having a sober person on standby for five minutes to blow in to the ignition interlock in their stead. VASAP reports that there are approximately 60 outstanding cases involving such violations. Also, since under the current language the subsequent retests do not occur for at least the next 45 to 60 minutes, an offender may travel quite a few miles before the subsequent retests are initiated. The change to have the subsequent retests occur at least once every 60 minutes instead of during the first 45 to 60 minutes would add more uncertainty. For example, under the proposal a subsequent retest could start at any point during the first 60 minutes instead of definitely not occurring until 45 minutes have passed.

These changes would therefore improve compliance by making the retests more difficult to circumvent. More specifically, the proposed changes would make it more inconvenient for sober persons to conduct the first rolling retest for offenders and also enable VASAP to alter the interval times between the subsequent rolling retests to prevent offenders from determining when breath samples are required in an attempt to circumvent the device.

The proposal would also require an additional photograph of the vehicle's driver seat area at some point after the initial engine start-up. Currently, the system is more predictable because a photograph of the person submitting a breath sample is taken at the time of the breath test. This provision would enable VASAP to look at the additional photograph and thereby more easily detect when someone is circumventing the device by having a sober person provide a breath sample on their behalf.

The proposal adds additional grounds for which ignition interlock service providers and technicians may have their certification denied, suspended, or revoked to include material misstatements and omissions in an application and defrauding any customer or other person or entity during the conduct of

the licensee's business. This change should strengthen the VASAP's power to enforce the regulation.

The proposal would require ignition interlock service providers to notify VASAP only when they receive a negative adjudication related to the ignition interlock device or provision of ignition interlock services. Previously, VASAP had to be notified of any and all pending lawsuits. The change would narrow the types of cases where a notification is required and should reduce the vendor's administrative costs by a small amount.

Changes to address outstanding balances with vendors: The proposal would prevent offenders from transferring from one interlock vendor to another without VASAP's permission, unless the request to transfer is based on equipment malfunction or a legitimate customer service issue. According to VASAP, offenders with outstanding balances try to avoid paying the fees due to their vendor by switching vendors. The proposal would prohibit this practice unless the offender's reason to transfer to another interlock service provider is based upon a malfunctioning device or a legitimate customer service issue. This would help vendors collect the fees due to them by offenders.

The proposal adds that offenders may not have an ignition interlock device installed by a new vendor if they owe another vendor in excess of $250. Responses to a recent inquiry by VASAP from the four vendors operating in Virginia indicate that these vendors have five, 41, 83, and 331 delinquent accounts, respectively, that have balances in excess of $250. This change should also help to deter offenders from changing service providers in order to avoid paying owed fees and benefit the vendors in terms of their ability collect their fees from the offenders.

Changes to fees: The proposal adds to the fees that service providers must pay to VASAP. A $2,500 fee is proposed for when an ignition interlock service provider requests that VASAP certify a new device model that has not been previously certified for use in the Commonwealth. For certification, VASAP reviews independent lab reports of device models ensuring that the specifications meet Virginia standards and field tests new devices to ensure they are accurate and reliable. The proposed fee is intended to cover the costs associated with such reviews. VASAP notes that applications for device certifications occur very infrequently.

The proposal would combine two $10 administrative fees into a single $20 fee and change how fees are collected. These fees cover expenses associated with the local offices' monitoring of the ignition interlock calibration reports and photographs, writing related court and reports, and the state office's administrative costs. Presently, vendors have to send separate $10 monthly fees for each offender to both the responsible local ASAP office and to the state VASAP office. The proposal would require vendors to send both fees to VASAP, which will distribute the fees to the local ASAP offices. With this change it would be easier for the interlock vendors to send one check to VASAP per month rather than 25 separate checks, and also provide some administrative savings for the vendors as well as local VASAP offices.

Changes to address emergency situations: The proposal would add a new section that would give VASAP the power to suspend service-related requirements of this regulation in applicable geographical areas when there exists a federal or state disaster or declaration of emergency. The intent of this change is to maintain flexibility in administering the provisions of this regulation when unforeseen events occur. Relatedly, VASAP proposes to amend existing language that allows a permanently locked device to be temporarily unlocked for three hours, to allow a longer time limit than is currently allowed. A device may be permanently locked if an offender fails to appear for a scheduled monitoring appointment. The use of a temporary code only unlocks the interlock device but does not disable any of the other interlock features. This is for the purpose of emergency situations, such as during a hurricane evacuation and should be beneficial to the offenders during such emergencies.

Changes to address use of single vehicle by multiple offenders: The proposal would prohibit the use of a single vehicle with an ignition interlock to meet the probationary requirements of multiple offenders. In cases where there are multiple offenders that have a single vehicle available for their use, they are not currently able to use that vehicle concurrently to satisfy the probationary requirements. For example, a husband and a wife who are both offenders have to stagger the duration of their probation such that only one of them uses the vehicle equipped with the ignition interlock. That does not mean they cannot drive it at the same time. It means that they cannot use the same vehicle to satisfy the terms of their probation at the same time.

This prohibition results from several technical and compliance related reasons. First, vendors assign only one interlock serial number per offender. This assignment is needed to allow the nightly automatic download to the Department of Motor Vehicles to be associated with the correct offender, and to ensure accurate accounting of the monthly fees for use of the interlock. Second, devices must be assigned to a single offender to prevent an offender from requesting to be assigned to another person's interlock and thereby get credit for that person's completion. Third, single assignment prevents the incentives that would otherwise exist to share the same device among as many people as possible, thereby undermining the objective of ensuring compliance by each individual offender. VASAP reports that this change incorporates current practice, and thus it should not have a negative impact on such offenders.

Additional light sources: The proposal adds language permitting VASAP to approve light sources other than the vehicle headlights for the required activation of flashing lights when a rolling retest is failed or skipped. A vehicle with an ignition interlock is wired to flash its headlights and horn when a rolling test is failed or skipped in order to draw attention to

the vehicle. However, for some vehicle models the headlight wiring is either technically not possible or is prohibitively expensive. VASAP proposes to allow other light sources such as portable lights that can be fitted to the vehicle to achieve the same goal. VASAP has already approved some alternative warning light sources, other than the vehicle's headlights, provided they accomplish the same purpose. Thus this proposed change also incorporates existing practice and should not create any significant impact.

Businesses and Other Entities Affected. There are four ignition interlock vendors contracted by the Commission that operate in approximately 90 locations throughout Virginia, and there are approximately 6,200 offenders using vehicles equipped with interlock devices.[1] It must be noted that the recent counts are affected by COVID-19 and do not reflect more typical count of offenders which is normally about 7,800.

The proposed changes would introduce additional costs for both vendors and offenders. As noted, the proposals would introduce a $2,500 application fee to vendors seeking certification for a new device but would also help vendors collect the fees owed to them, reduce the notification burden when there is an adjudication involving them, and restrict options available to the offenders with delinquent vendor accounts. The proposals would also add additional grounds for which ignition interlock service providers and technicians may be disciplined. Thus, adverse economic impacts[2] both on vendors seeking certification for a new device and on offenders are indicated. All of the vendors and offenders are subject to the same rules. Thus, no vendors or offenders appear to be disproportionally affected.

Although the proposal introduces additional costs, the proposed changes would prevent economic externalities by ensuring the persons who generate the costs pay for them, thereby supporting the free market dynamics working toward an efficient allocation of economic resources.

Small Businesses[3] Affected. The proposed changes would mainly affect the four contracted ignition interlock providers. According to VASAP, all four providers are large corporations and have operations in other states or even in other countries. Thus, they may not be considered to be small businesses.

Localities[4] Affected.[5] The regulation applies throughout the Commonwealth. The proposed amendments do not introduce costs for local governments.

Projected Impact on Employment. The proposed amendments do not appear to affect total employment.

Effects on the Use and Value of Private Property. The main effect of the proposed changes on the vendors appear to be the additional incentives provided to the offenders to pay their delinquent accounts, which would help the vendors. This may have a positive impact on vendor revenues and have a positive impact on their asset values. The proposed amendments do not appear to affect real estate development costs.

[1]Data source: VASAP

[2]Adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined.

[3]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."

[4]"Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

[5]§ 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency's Response to Economic Impact Analysis: The Commission on the Virginia Alcohol Safety Action Program concurs with the content of the Department of Planning and Budget's economic impact analysis.

Summary:

The proposed amendments include: (i) adjusting the timing of initial ignition interlock rolling retests and subsequent random tests; (ii) requiring additional photographs of the vehicle's driver seat area; (iii) adding additional grounds for which ignition interlock service providers and technicians may be disciplined; (iv) requiring ignition interlock service providers to notify the Virginia Alcohol Safety Action Program (VASAP) only when they receive a negative adjudication instead of notifying VASAP of any and all pending lawsuits; (v) preventing offenders from transferring from one interlock vendor to another; (vi) prohibiting device installation by a new vendor if the offender owes another vendor more than $250; (vii) introducing a $2,500 fee to the vendors for application for a new device certification; (viii) allowing the Commission on VASAP to receive the monthly administrative fee for local offices and then distribute it to the local ASAP offices; (ix) granting the Commission on VASAP the authority to suspend service-related requirements of this regulation in applicable geographical areas when there exists a federal or state disaster or declaration of emergency; (x) allowing temporary codes to be provided to persons that would allow them to unlock their locked ignition interlock devices for a longer period than currently permitted; (xi) prohibiting use of a single vehicle that is equipped with an ignition interlock in order to meet the probationary requirements of multiple offenders; and (xii) permitting VASAP to approve light sources other than the vehicle headlights for the required flashing lights when a rolling retest is failed or skipped.

24VAC35-60-40. Approval of manufacturers and service providers.

A. The commission shall issue a request in compliance with the Commonwealth of Virginia procurement procedures to contract with ignition interlock service providers for the services and commodities required for the implementation and maintenance of the Commonwealth's ignition interlock program. Contracts will be for a length of time established by the commission.

B. Integrity of the ignition interlock program shall be upheld by restricting the delivery of interlock service to the actual provider of the product (authorized service provider), thereby effectively preventing the extension of subcontracts to other persons or businesses that lack long-term investment, long-term experience, or in-depth knowledge of product and service, potentially resulting in a higher likelihood of neglect of duty or illegal exchange of funds. Denial of subcontracting of the interlock service to the consumer is an integral part of protecting offender confidentiality and the chain of evidence for court testimony and evidentiary procedures.

C. A service provider seeking to contract with the commission shall:

1. Submit evidence demonstrating successful experience in the development and maintenance of an ignition interlock service program in Virginia, other states, or other countries. The service provider shall be dedicated to the installation and maintenance of ignition interlock devices;

2. Supply and train staff and service center supervisors to ensure good customer service and compliance with all contract requirements.

a. Personnel seeking to perform ignition interlock services or administrative duties in the Commonwealth of Virginia shall not necessarily be barred from employment due to a criminal record; however, a criminal record may be considered in conjunction with other information to determine the overall suitability of applicants for employment.

b. The authorized service provider shall provide, upon request of the commission or the court via a properly served subpoena, expert or other required testimony in any civil, criminal, or administrative proceedings as to the method of manufacturing the device, ignition interlock functionality, and the testing protocol by which the device is calibrated and serviced.

c. The service provider shall provide a completed application for state certification to the commission to perform ignition interlock services for all technicians and state directors seeking to work in the Commonwealth of Virginia. The application shall be submitted at least 10 days prior to the employee performing any ignition interlock services in the Commonwealth of Virginia with the exception of newly hired employees in training who shall be permitted to perform services while under the direct supervision of a certified technician for a period of 90 days prior to applying for state certification.

d. The service provider shall identify all key personnel who will be providing ignition interlock services for the Commonwealth of Virginia and furnish the commission with credentials on these personnel.

e. The service provider shall notify the commission at least five business days in advance of a reduction in staffing levels of key personnel at the local or district offices in the Commonwealth of Virginia.

f. The service provider shall ensure that technicians and the state director are trained and available to testify in court if required by a court or Commonwealth's Attorney or upon a 10-business-day notice by the ASAP in that court's jurisdiction, regardless of whether a subpoena is issued;

3. Submit a description of the service provider's plan to be approved by the commission, for distribution of the device in all locations of the Commonwealth of Virginia where ignition interlock services will be performed. At least one physical ignition interlock service facility shall be located within a 50-mile radius of every residence in the Commonwealth of Virginia unless otherwise authorized by the commission. Ignition interlock service providers shall provide the commission with a list of all service center days and hours of operation and provide an updated list within 24 hours of any changes. Interlock service facilities shall be inspected and certified by the commission prior to the initial provision of services to offenders. Each interlock service facility shall be inspected and certified at least annually thereafter. Interlock service providers shall:

a. Comply with all local business license and zoning regulations, and with all federal, state, and local health, fire, and building code requirements. Prior to the jurisdictional compliance deadline, a copy of a valid business license or business license payment receipt shall be forwarded to the commission. The official valid business license and tax document are required to be posted in a conspicuous place at the service facility immediately upon receipt when applicable;

b. Comply with all local, state, and federal laws pertaining to the provision of physical access to persons with disabilities;

c. Maintain offender records in a manner that complies with federal confidentiality guidelines. All offender files, payment receipts, and other identifying information shall be located in locked filing cabinets in one centralized location in the Richmond, Virginia area. Electronic storage of client files shall be encrypted and secured to prevent third party access;

d. Require and enforce maintenance of a drug-free workplace and have posted in a conspicuous place, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the service provider's workplace. The notice shall specify the actions that will be taken against employees for violations of the policy;

e. Replace an ignition interlock service facility within 90 days whenever the closing of an interlock service facility results in noncompliance with the requirement to possess

a facility within a 50-mile radius of every residence in the Commonwealth of Virginia. The service provider is also required to notify offenders of the closure date and the address of an alternate interlock service facility within 15 days of the closure date;

f. Ensure that technicians maintain a professional appearance and are attired in such a manner as to be readily identifiable as service provider employees;

g. Ensure that interlock service facilities are tidy and pose no hazards to public safety; and

h. Provide the commission a minimum of 20 days notice prior to the scheduled opening date of a new location. This requirement allows the commission reasonable time to schedule an inspection of the new facility prior to opening services to ASAP offenders;

4. Submit sufficient documentation to enable the verification of adequate insurance covering liability related to ignition interlock operations, services, and equipment, including coverage in Virginia, with a minimum policy limit of $1 million per occurrence and $3 million general aggregate total. The service provider's liability insurance shall be considered primary above all other available insurance and shall so stipulate in the "other insurance" or other applicable section of the service provider's insurance contract. The service provider shall provide a signed statement from the manufacturer holding harmless the Commonwealth of Virginia and the commission and its members, employees, and agents from all claims, demands, and actions as a result of damage or injury to persons or property that may arise directly or indirectly out of an act or omission by the manufacturer or its service provider relating to the installation, service, repair, use, or removal of an ignition interlock device. Coverage shall extend to any action taken or not taken by ASAPs or the commission due to verified errors in reporting of interlock activity by the service provider;

5. Submit documentation that the service provider will provide a full-time state ignition interlock director who will work exclusively with the Virginia interlock program. Among other duties, the state ignition interlock director will be expected to (i) respond promptly to problems in the field; (ii) upon request of the commission, testify before applicable courts, the General Assembly of Virginia, or the commission; (iii) assist and provide training to the commission, ASAP staffs, local and statewide, and other stakeholders as requested by the commission; and (iv) be responsible for quality control reports and statistics, updates to all required documentation, and field services reporting and repairs. Ignition interlock state directors are also permitted to oversee remote alcohol monitoring programs for a Virginia-approved remote alcohol monitoring device manufacturer. In the event of a state director vacancy, service providers shall submit to the commission the name of an interim state director within 10 days of the vacancy and the name of a permanent state director within 90 days of the vacancy;

6. Not discriminate against an employee or applicant for employment due to race, religion, color, sex, national origin, age, disability, or other basis prohibited by state or federal law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the service provider. The service provider agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. Furthermore, the service provider in all solicitations or advertisements for employees placed by or on behalf of the service provider shall state that the contractor is an equal opportunity employer. Notices, advertisements, and solicitations placed in accordance with federal law, rule, or regulation shall be deemed sufficient for the purpose of meeting the requirements of this subdivision;

7. Not knowingly employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986 (P.L. 99-603; 100 Stat. 3359) during the performance of the contract for goods and services; ~~and~~

8. Notify the commission in writing within 15 days of a disciplinary action taken by a state or other political entity in which the service provider conducts or has conducted ignition interlock business. This notification shall include the reason for the disciplinary action and other information as the commission may reasonably request. This requirement applies regardless of the existence of an appeal; and

9. Notify the commission in writing of all final adjudications unfavorable to the service provider related to the ignition interlock device or delivery of ignition interlock services.

D. Provided that all vendor and device certification requirements are met, the commission may contract with those manufacturers or service providers and may approve multiple makes and models of ignition interlock devices for use in the Commonwealth of Virginia.

24VAC35-60-50. Fees.

A. All potential service providers desiring to conduct business in the Commonwealth of Virginia's ignition interlock program shall submit a $250 nonrefundable application fee to the commission.

B. The following additional fees shall be paid by the service provider to the commission:

1. A $250 annual contract review fee;

2. A $75 annual review fee for each ignition interlock service center;

3. A $250 retest fee each and every time a service provider employee is required to take a second or subsequent Virginia Ignition Interlock Certification Exam due to an unsuccessful attempt on the first exam; ~~and~~

4. A ~~$10~~ $20 monthly ignition interlock administrative fee for each offender. The fee shall be accompanied by an associated offender list, categorized by ASAP, supporting the payment amounts. The ASAP offender list and payment shall be submitted no later than the 10th day of the month following the month when the ignition interlock services were provided; and

5. A $2,500 fee per each new ignition interlock device certification application submitted to the commission that was not previously certified in the Commonwealth.

~~C. A $10 monthly ignition interlock administrative fee shall be paid by the service provider directly to the servicing ASAP for each offender. The fee shall be accompanied by an associated offender list, categorized by ASAP, supporting the payment amounts. The ASAP offender list and payment shall be submitted no later than the 10th day of the month following the month when the applicable ignition interlock services were provided.~~

~~D.~~ C. Service providers may charge offenders for ignition interlock services at rates up to, but not to exceed, the following:

1. $65 for a standard ignition interlock installation;

2. $130 for the installation of an ignition interlock on a hybrid motor vehicle, motor vehicle with a push button starter, or other vehicle requiring more than four hours of installation labor time when approved by the commission;

3. $75 for a change of vehicle ignition interlock installation;

4. $0 for an ignition interlock removal;

5. $95 plus applicable taxes for monthly ignition interlock calibrations or monitoring, inclusive of the monthly administrative fees to be paid to the commission ~~and servicing ASAP~~;

6. $8.00 per month for optional insurance to cover theft or accidental damage to the ignition interlock and its components;

7. An amount of 10% over the actual replacement cost of the ignition interlock and its components when theft or accidental damage occurs and the offender has not purchased the optional insurance;

8. $50 plus mileage calculated at the Commonwealth of Virginia mileage rate in effect at the time, not to exceed 100 miles, for service calls;

9. $50 for violation resets, when the violation is determined to be due to the fault of the offender;

10. $35 for missed appointments;

11. An amount permitted by the Code of Virginia at the time for returned checks;

12. $50 for provision of a permanent lockout code, when the lockout is determined to be due to the fault of the offender; and

13. $50 per hour, not to exceed four total hours, for repairs and reinstallation of the ignition interlock when the commission determines that the offender illegally tampered with the device.

~~E.~~ D. In the event of changes to the Code of Virginia or the Ignition Interlock Program Regulations (24VAC35-60) mandating enhanced technological capabilities of ignition interlock devices used in the Commonwealth, the commission may increase offender installation and calibration fees up to a maximum of 25%.

~~F.~~ E. All service providers shall create and maintain an indigency fund for offenders who are eligible for a reduction in fees based upon a declaration of indigency by the court and approval by the commission. Service providers shall not deny service to any offender for whom there has been a declaration of indigency and approval by the commission.

24VAC35-60-60. Suspension or revocation of ignition interlock device or service facility certification.

A. The commission may indefinitely suspend or revoke certification of an ignition interlock device or ignition interlock service facility, and the Executive Finance Committee, for a period not to exceed 30 days, may suspend or revoke certification of an ignition interlock device or ignition interlock service facility for the following reasons:

1. When there is a voluntary request by a manufacturer to cancel certification of a device;

2. When a device is discontinued by the manufacturer;

3. When the manufacturer's liability insurance is terminated or canceled;

4. When the manufacturer or service provider attempts to conceal its true ownership;

5. When materially false or inaccurate information is provided relating to a device's performance standards;

6. When there are defects in design, materials, or workmanship causing repeated failures of a device;

7. When the manufacturer or service provider knowingly permits nonqualified service technicians to perform work;

8. When a manufacturer or service provider assists users with circumventing or tampering with a device;

9. When a service provider fails to fully correct an identified ignition interlock facility noncompliance issue within the timeframe required by the Code of Virginia, the provisions of this chapter, or a service provider contract;

10. When there is a pattern of identified interlock service facility noncompliance issues;

11. When a service provider impedes, interrupts, disrupts, or negatively impacts an investigation conducted by the commission involving customer service issues, vehicle damage, or other complaint brought forward by a third party; or

12. When there is an identified public safety or client confidentiality issue at an ignition interlock service facility.

B. If a suspension or revocation of an ignition interlock device or service facility certification occurs, the manufacturer or service provider may request~~, within 15 days of notification, a hearing with the commission to contest the decision~~ judicial review in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia). Should a revocation of certification be upheld, the manufacturer or service provider whose device has been revoked (i) shall be responsible for removal of all devices installed and serviced by the service provider that are subject to the revocation, and (ii) will bear the costs associated with the required removal and installation of new approved devices. In addition, the manufacturer or service provider whose device or facility is subject to the revocation shall continue to provide services for these ASAP offenders for a time to be determined by the commission, but no longer than 90 days.

C. When the certification of an ignition interlock device or ignition interlock service facility is suspended or revoked, service providers or manufacturers shall continue to provide services for ASAP offenders; however, no new ignition interlock installations shall be permitted during the period of suspension.

D. If a service provider terminates the contract or goes out of business, the manufacturer or service provider shall be responsible for removal of all devices installed and serviced by the service provider that terminates the contract or goes out of business and shall bear the costs associated with the required removal and installation of new approved devices. In addition, the manufacturer or service provider that terminates the contract or goes out of business shall continue to provide services for these ASAP offenders for 90 days from the date of the service provider's notification to the commission that they will be terminating ignition interlock services in Virginia.

24VAC35-60-70. Ignition interlock device specifications.

A. All ignition interlock devices used pursuant to §§ 18.2-270.1 and 46.2-391.01 of the Code of Virginia shall be approved by the commission. The commission shall maintain a list of approved ignition interlock devices.

B. A service provider seeking to contract with the commission shall submit:

1. The name and address of the ignition interlock device manufacturer;

2. The name and model number of the ignition interlock device; and

3. A detailed description of the device including drawings, schematics, wiring protocols, and instructions for its installation and operation.

C. The manufacturer or service provider shall provide literature promoting its device to the commission and for distribution to the ASAPs.

D. The manufacturer or service provider shall provide certification from an independent laboratory that its ignition interlock device has been tested in accordance with the most current model specifications published in the Federal Register by the National Highway Traffic Safety Administration. The manufacturer or service provider is required to provide a certified affidavit that the ignition interlock device model complies with all applicable state standards, including written documentation, current within five years, from either a certified testing laboratory or a National Highway Traffic Safety Administration testing lab that the ignition interlock model for which certification is being sought meets or exceeds the current National Highway Traffic Safety Administration's model specifications. Included with the certification report should be the name and location of the testing laboratory, the address and phone number of the testing laboratory, a description of the tests performed, copies of the data and results of the testing procedures, and the names and qualifications of the individuals performing the tests.

E. If a device is submitted for approval by a service provider other than the manufacturer, the submitting party shall submit a notarized affidavit from the manufacturer of the device certifying that the submitting party is an authorized manufacturer's representative.

F. Except where otherwise required in this chapter, all ignition interlock devices shall meet the model specifications for Breath Alcohol Ignition Interlock Devices as set forth in the most current model specifications published in the Federal Register by the National Highway Traffic Safety Administration and operate reliably over the range of motor vehicle environments or motor vehicle manufacturing standards. At a minimum, the following specifications shall be met:

1. The ignition interlock device shall work accurately and reliably in an unsupervised environment, at minimal inconvenience to others, and without impeding the safe operation of the motor vehicle.

2. The ignition interlock device shall be able to analyze a specimen of alveolar breath for alcohol concentration, correlate accurately with established measures of blood alcohol concentration, and be calibrated according to the manufacturer's specifications.

3. The ignition interlock device shall ~~be alcohol specific, using~~ use an electrochemical fuel cell that reacts to and measures ethanol~~, minimizing positive results from other substances~~.

4. The ignition interlock device shall indicate when a 1.5 L breath sample has been collected and shall indicate this by audible or visual means. The commission may authorize service providers to adjust the breath volume requirement to as low as 1.0 L upon receipt of documentation from a licensed physician verifying the existence of an applicable medical condition. The physician's documentation shall be submitted in a format approved by the commission.

5. The ignition interlock device shall detect and record a BAC that reaches the fail point for all completed breath samples.

6. The results of the test shall be noted through the use of green, yellow, and red signals or similar pass/fail indicators. No digital blood alcohol concentration shall be indicated to the offender.

7. The ignition interlock device shall lock out an offender when a BAC reaches the fail point.

8. The ignition interlock device shall have the ability to ~~activate~~ continuously flash the vehicle's lights ~~and~~, or other light source approved by the commission, while simultaneously activating the vehicle's horn ~~when~~ whenever a required rolling retest is missed or failed.

9. The ignition interlock device shall have the ability to perform a permanent lockout if the offender fails to appear for a scheduled monitoring appointment within 30 days of the later of the installation date or most recent calibration date. The service provider shall provide a code, smart key, or other similar unlock feature that has been approved by the commission to offenders whose interlock is in a permanent lockout status. The duration of the time period that the interlock is unlocked shall not be more than or less than three hours unless otherwise approved by the commission. The code shall only unlock the interlock device and shall not disable other interlock features. Interlock service providers shall not provide an ignition interlock code that disables the ignition interlock features to persons without first obtaining authorization from the commission.

10. The ignition interlock device shall automatically purge alcohol before allowing subsequent analyses.

11. The ignition interlock device shall issue a warning of an impending permanent lockout.

12. The ignition interlock device shall be capable of random retesting and timed retesting.

13. The ignition interlock device shall warn the offender of upcoming service appointments for at least five days prior to the appointment. Should the offender fail to appear, the device shall lock out on the 31st day after the later of the installation date or previous calibration date, and the motor vehicle shall not be operable until the service provider has reset the device.

14. The internal memory of the ignition interlock device shall be capable of recording and storing a minimum of 15,000 interlock events and shall enter a service reminder if the memory reaches 90% of capacity.

15. The ignition interlock device shall be designed and installed in a manner as to minimize opportunities for tampering, alteration, bypass, or circumvention. The ignition interlock device shall not spontaneously bypass the ignition system or starter relay, nor shall it be able to be made operational by a mechanical means of providing air to simulate alveolar breath. Bogus breath anti-circumvention features used to pass laboratory testing of the ignition interlock device shall be turned on. In addition, service providers shall connect the ignition interlock device to a constant and uninterrupted power source to further prevent an opportunity to circumvent the system.

16. The ignition interlock device shall be capable of recording and providing evidence of actual or attempted tampering, alteration, bypass, or circumvention.

17. The ignition interlock device shall operate accurately and reliably at temperatures between -40°C and 85°C.

18. The ignition interlock device shall operate up to altitudes of 2.5 km above sea level.

19. The readings of the ignition interlock device shall not be affected by humidity, dust, electromagnetic interference, smoke, exhaust fumes, food substance, or normal automobile vibration when used in accordance with the manufacturer's instructions.

20. The operation of the ignition interlock device shall not be affected by normal fluctuations of power source voltage.

21. The ignition interlock shall be installed with a fully functional camera that is equipped to record the date, time, and photo of all persons providing accepted breath samples to the ignition interlock device; however, this requirement shall not pertain to motorcycles and mopeds. In addition, service providers are required to present a reference photo of the offender to confirm the offender's identity.

G. All ignition interlock devices that have been approved by the commission shall have affixed to the ignition interlock handset a warning label with the following language: "Any person tampering with or attempting to circumvent this ignition interlock system shall be guilty of a Class 1 misdemeanor and, upon conviction, be subject to a fine or incarceration or both." The cost and supply of the warning labels to be affixed to the ignition interlock devices shall be borne by the manufacturer or service provider. The manufacturer or service provider shall submit to the commission a prototype of the warning label for approval.

H. For initial startup of the motor vehicle:

1. The ignition interlock device shall enable the starter relay after the successful completion of a breath alcohol test.

2. The device shall allow an operator to take up to two minutes after the starter relay is enabled to start the engine.

3. The ignition interlock device shall permit a free restart.

4. If the initial test results in a lockout due to the offender's BAC level, the ignition interlock device shall not allow an additional attempt for five minutes.

5. If the offender's BAC still reaches the fail point on the first retest, the machine shall lock out for an additional 10 minutes and shall do so thereafter for subsequent failed retests. A violation reset message shall instruct the offender to return the ignition interlock device to the service provider for servicing within five days.

6. If the ignition interlock device is not reset within five days, a permanent lockout shall occur.

I. A rolling retest feature is required for all ignition interlock devices. For rolling retests:

1. An ignition interlock device shall require a rolling retest ~~within the first five~~ not less than 10 minutes after the start of the motor vehicle and randomly thereafter at least once every ~~45 to~~ 60 minutes as long as the motor vehicle is in operation.

2. The ignition interlock device shall produce a visual and audible signal of the need to produce a breath sample for the rolling retest and shall be modified as necessary to accommodate operators who are hearing impaired. The offender shall have 15 minutes to provide the required rolling retest breath sample.

3. A free restart shall not apply if the ignition interlock device was awaiting a rolling retest that was not delivered.

4. A deep lung breath sample at or above the fail point or a failure to provide a rolling retest deep lung breath sample within the required time shall activate the motor vehicle's horn and cause the motor vehicle's headlights, parking lights, emergency lights, or other light source approved by the commission to flash until the engine is shut off by the offender or a passing breath test is provided.

5. Once the vehicle has been turned off, all prestart requirements shall become applicable.

6. The violations reset message shall instruct the offender to return the ignition interlock device to the service provider for servicing within five days.

7. If the ignition interlock device is not reset within five days, a permanent lockout will occur.

J. Additional technical specifications for the operation and installation of the ignition interlock device may be described in the contract between the commission and the service provider.

K. The vendor shall notify the commission in writing if the approval or certification of a device that is approved or has been submitted for approval for use in Virginia is or ever has been denied, withdrawn, suspended, or revoked in another state, whether the action occurred before or after approval in Virginia. This notification shall be made in a timely manner, not to exceed 15 days after the vendor has received notice of the denial, withdrawal, suspension, or revocation of approval or certification of the device, whether or not the action will or has been appealed.

24VAC35-60-80. Ignition interlock device installation.

A. No offender who has a case pending in the court system shall have an interlock installed in Virginia unless enrolled in and monitored by the ASAP program in the area where the case originated. Offenders subject to a DMV ignition interlock requirement shall not have an interlock installed in Virginia unless first authorized by the ASAP. Prior to installation of the device, the vendor must receive written or electronic authorization from the ASAP. This section also applies to out-of-state offenders who have a Virginia ignition interlock requirement. This enables the commission to maintain consistency in policy and use of ignition interlock devices in the Commonwealth of Virginia and allows for a consistent pattern of instruction to the service provider.

B. The ignition interlock device shall be installed by a commission-approved manufacturer or authorized service provider within 30 days of the date of the court order; if not, the service provider shall notify the ASAP. Once the ignition interlock has been installed, the service provider shall send an authorized installation report to the ASAP, via a method established by the commission, documenting that the ignition interlock device has been installed. Once verification of an authorized installation has been received by the ASAP, DMV shall be notified that the offender has successfully installed the interlock device.

C. All agreements between the service provider and the offender shall be in the form of a contract and signed by the service provider and the offender. Copies of the written contract shall be retained by the service provider with a copy given to the offender.

D. Prior to installation of the ignition interlock device, offenders shall provide to the service provider:

1. Photo identification. If no photo identification is available at the time of installation, other adequate proof of identification may be accepted to avoid delay of the installation. However, photo identification must be presented prior to the first calibration appointment;

2. A copy of the registration or title containing the vehicle identification number (VIN) of all motor vehicles owned or routinely driven by the offender and a statement disclosing the names of all other operators of the motor vehicles owned or driven by the offender;

3. A notarized affidavit, approved by the commission, from the registered owner of the vehicle granting permission to install the device if the car is not registered to the offender. If the owner is present at installation, provides valid identification, and signs the consent to install form in the service provider technician's presence, notarization of the consent to install form is not required; and

4. Written authorization from the commission if the air volume requirement, blow pressure, or anti-circumvention features of the ignition interlock device are to be lowered or disabled in order to compensate for an offender's diminished lung capacity, when applicable.

E. Under no circumstances shall an offender or anyone accompanying the offender be permitted to observe installation of the ignition interlock device.

F. The service provider shall inspect all motor vehicles prior to installation of the device to ensure that they are in acceptable mechanical and electrical condition. Under no circumstances

shall staff of the authorized service provider install a device until and unless the motor vehicle is approved following the inspection. A commission-approved pre-inspection checklist documenting the vehicle's condition at installation shall be completed and placed in the offender's file.

G. The installation shall include tamper-resistant features at all ignition interlock electrical connections so as to make evident all attempts to circumvent or otherwise alter the normal functioning of the ignition interlock. At a minimum, the service provider shall ensure that the vehicle starter wire connected to the ignition interlock is secured with uniquely identifiable heat shrink tubing or its equivalent and that all connected wires are wrapped with uniquely labeled service provider tape.

H. An oral, written, or video orientation to the ignition interlock device shall be developed and delivered by the service provider to the offender and other persons who may drive the motor vehicle, including information on the use and maintenance of the device as well as all service center locations, and procedures for regular and emergency servicing. A demonstration interlock will be available at the installation site for use in the training of customers.

I. If, during the installation, the offender fails to pass the initial breath test, the installation shall be halted and the ASAP notified.

J. The manufacturer or service provider shall maintain a toll-free 24-hour emergency phone service that may be used to request assistance in the event of failure of the ignition interlock device or motor vehicle problems related to operation of the ignition interlock device. The assistance provided by the authorized service provider shall include technical information and aid in obtaining towing or roadside service. The expense of towing and roadside service shall be borne by the offender unless it is determined by the commission that the ignition interlock device failed through no fault of the offender. If this is the case, the manufacturer or service provider shall be responsible for applicable expenses. The ignition interlock device shall be made functional within 48 hours of the call for assistance or the ignition interlock device shall be replaced.

K. At the time of device installation, a service provider may charge an installation fee. The maximum permissible cost for installation shall be set by the commission, and service providers shall not be permitted to exceed the maximum fee established by the commission. A portion of these fees shall include costs for offender indigency funds. In addition to the maximum fee permitted, service providers may collect applicable taxes and charge for optional insurance to cover device theft or accidental damage. Optional insurance shall be offered by the service provider, and a written copy of the insurance policy stating clearly the applicable coverages, coverage amounts, conditions, and exclusions shall be given to offenders who purchase the insurance. When the ignition interlock is installed on a motorcycle or moped, service providers may require offenders to provide a saddle bag or similar waterproof container in which the device components may be stored as a condition of eligibility for the optional insurance.

L. The manufacturer or the service provider shall provide service to those offenders who are eligible for a reduction in fees based upon a declaration of indigence by the court and approval by the commission.

M. No later than the first service appointment, the offender shall provide to the service provider a statement from the licensed drivers who will be driving the offender's motor vehicle acknowledging their understanding of the requirements of the use of the ignition interlock device.

N. An ignition interlock device installed and assigned to one offender shall not be assigned simultaneously to any additional offender for the purpose of attempting to comply with a Virginia ignition interlock requirement.

O. The ignition interlock device shall not be removed from any offender's vehicle for the sole purpose of permitting an offender to transfer to another interlock service provider without written permission from the commission. If the offender's reason to transfer to another interlock service provider is based upon a malfunctioning interlock device or a legitimate customer service issue, the commission shall not unreasonably deny permission and shall authorize the transfer within five business days of all relevant information being received.

24VAC35-60-90. Calibration and monitoring visit.

A. Only calibration units (i) found on the current National Highway Traffic Safety Administration's Conforming Products List of Calibrating Units for Breath Alcohol Testers or (ii) approved by the commission shall be used by the service provider to calibrate ignition interlock devices.

B. The service provider shall:

1. Provide service and monitoring of the ignition interlock device at least every 30 days. All ignition interlock calibrations shall occur at a service provider interlock service facility unless otherwise approved by the commission;

2. Calibrate the ignition interlock device at each service appointment using a dry gas or wet bath reference sample. The service provider shall ensure that dry gas and wet bath reference values are adjusted in a manner approved by the commission;

3. Calibrate the ignition interlock device for accuracy by using a wet bath simulator or dry gas alcohol standard with an alcohol reference value between.030 and.050 g/210L;

4. Expel a three-second purge from the wet bath simulator or dry gas standard prior to introducing the alcohol reference sample into the ignition interlock device;

5. Perform an accuracy check that will consist of two consecutive reference checks with the result of each individual check being within plus or minus 10% or 0.003, whichever is smaller, of the alcohol reference value

introduced into the ignition interlock device. The time period between the first and second consecutive accuracy check shall not exceed five minutes;

6. House and use wet bath simulators in environmentally stable, temperature controlled settings. Wet bath simulators shall contain mercury-in-glass thermometers or digital thermometers. The thermometers shall read 34°C, plus or minus 0.2°C, during analysis and be certified annually using a National Institute of Standards and Technology traceable digital reference thermometer. In addition, the service provider shall use alcohol reference solutions prepared and tested in a laboratory with reference values traceable to the National Institute of Standards and Technology. The 500-ml bottles containing simulator solution shall be tamper proof and labeled with the lot or batch number, value of the reference sample in g/210L, and date of preparation or expiration. Alcohol reference solutions must be used prior to expiration and within one year from the date of preparation. In addition, wet bath simulator solutions shall be replaced every 30 days or prior to every 30th test, whichever occurs first. A sticker shall be placed on the wet bath simulator indicating the date of the most recent simulator solution replacement. In addition, a written logbook or electronic database recording the date and result of each simulator test shall be maintained on site;

7. Store dry gas alcohol standard tanks in a manner consistent with the gas manufacturer's specifications. The dry gas tanks shall have a label attached that contains the components and concentration of the reference value of the gas, an expiration date that shall not be longer than three years from the date of preparation, and the lot or batch number. Dry gas alcohol standards must be certified to a known reference value and be traceable to the National Institute of Standards and Technology. The reference value shall be adjusted for changes in elevation and pressure. Interlock service vendors shall possess a certificate of analysis from the dry gas standard manufacturer. Dry gas tanks shall be secured in a manner as to prevent harm to the public;

8. Retrieve data from the ignition interlock device data log for the previous period and electronically submit it to the ASAP within 24 hours of calibration;

9. Record the odometer reading of the vehicle;

10. Check the ignition interlock device and wiring for signs of circumvention or tampering and electronically report violations to ASAP within the required timeframe established by the commission;

11. Collect the monthly monitoring fee from the offender. If an offender who has not been declared to be indigent by the court is three or more months delinquent in payments, the service provider may, in its discretion, refuse to provide calibration services, but shall not remove the ignition interlock device without authorization from the commission. Offenders with an outstanding balance in excess of $250 with any Virginia-approved ignition interlock service provider shall not be permitted to install an interlock device with another ignition interlock service provider;

12. Verify that the offender has a photo identification prior to calibrating the ignition interlock device if photo identification was not already presented at the time of installation; and

13. Conform to other calibration requirements established by the commission, as applicable.

C. All malfunctions of the ignition interlock device shall be repaired or the ignition interlock device replaced by the service provider within 48 hours at no additional expense to the offender. If it is shown that the malfunction is due to damage to the device as a result of mistreatment or improper use, the offender shall be responsible for applicable repair fees.

D. A certified technician shall be available at the service center during specified hours to answer questions and to deal with mechanical concerns that may arise with a motor vehicle as a result of the ignition interlock device.

E. The ignition interlock device shall record, at a minimum, the following data:

1. The time and date of failed breath tests;

2. The time and date of passed breath tests;

3. The breath alcohol level of all tests;

4. The time and date of attempts to tamper or circumvent the ignition interlock device;

5. A photo of each person delivering an accepted breath test sample for analysis by the ignition interlock device; ~~and~~

6. A reference photo of the offender; and

7. A photo of the vehicle's driver seat after every initial start-up provided on the interlock device within a timeframe established by the commission.

F. At the time of device calibration, a service provider may charge a monthly monitoring fee. The maximum permissible cost for monitoring and calibration shall be set by the commission through the ignition interlock regulations, and service providers shall not be permitted to exceed the maximum fee established by the commission. A portion of these fees shall include costs for administrative support and offender indigency funds. In addition to the maximum fee permitted, service providers may collect applicable taxes and charge for optional insurance to cover device theft and accidental damage. Fees for the first monthly monitoring and calibration visit will be collected from the user in advance at the time of installation and monthly thereafter when services are rendered.

24VAC35-60-110. Records and reporting.

A. The service provider shall be subject to announced or unannounced site reviews for the purpose of inspecting the facilities and offender records. Upon request, access to all service provider locations, records, and financial information

shall be provided to the commission for the purpose of verifying compliance with state law, commission regulations, and the service provider agreement.

B. In accordance with federal confidentiality guidelines, all personal and medical information provided to the service provider regarding offenders shall be kept confidential. If the information is temporarily held at the offender's service center, it shall be stored in a locked filing cabinet when unattended by a service provider employee.

C. After installing an interlock, the service provider shall provide the ASAP with an installation report, within 24 hours, that includes:

1. The name, address, and telephone number of the offender;

2. The registration information of the motor vehicle; and

3. The serial number of the installed ignition interlock device and camera.

D. After performing a monitoring and calibration check, the service provider shall submit to the ASAP, within 24 hours, all data generated to include:

1. Name of the offender whose device was monitored;

2. Name, address, and telephone number of the monitoring official;

3. Date of monitoring and calibration;

4. Motor vehicle make, model, year, identification number, and odometer reading;

5. Number of miles driven during the monitoring period;

6. Make, model, and serial number of the ignition interlock device and camera;

7. A change out of the device (handset or control box) and reason for the change out;

8. Data indicating that the offender has attempted to start or drive the motor vehicle with a positive BAC at or above the fail point;

9. Attempts to alter, tamper, circumvent, bypass, or otherwise remove the device;

10. Noncompliance with conditions of the ASAP or interlock program;

11. Offender concerns;

12. Charges incurred for the monitoring visit;

13. Date of next scheduled monitoring visit;

14. A photo of each person who has delivered an accepted breath test sample or missed a retest on the ignition interlock device; ~~and~~

15. A reference photo of the offender; and

16. A photo of the vehicle's driver seat after every initial start-up provided on the interlock device within a timeframe established by the commission.

E. In addition, the service provider shall have available monthly reports detailing:

1. Installations during the period covered;

2. Calibrations performed during the period, by date and offender name, detailing any unit replacements made during the monitoring period;

3. Datalogger information from all ignition interlock devices;

4. Evidence of misuse, abuse, or attempts to tamper with the ignition interlock device;

5. Device failure due to material defect or improper installation; and

6. A summary of complaints received and corrective action taken.

F. The service provider shall be responsible for purchasing and providing necessary computer hardware and software to convey all data and information requested by the commission if the equipment is not already present at the commission office or the ASAP.

G. Accurate reports shall be submitted to the ASAP in the format specified by the commission.

H. The service provider shall provide a copy of the most recent "ASAP Ignition Interlock Agreement" to each offender at the interlock installation appointment and shall require the offender to read and sign the agreement.

24VAC35-60-130. Service provider technician certification.

A. Service provider state directors and technicians are required to possess a Virginia Ignition Interlock Certification Letter to perform ignition interlock services in the Commonwealth of Virginia. Newly hired technicians, however, may perform ignition interlock services under the direct supervision of a certified technician for training purposes for up to 90 days prior to obtaining a Virginia Ignition Interlock Certification Letter. In order to apply for a certification letter, service providers shall submit a completed application to the commission for approval of newly hired technicians and state directors. If approved by the commission, this application process may be waived for technicians and state directors providing interlock services in the Commonwealth of Virginia prior to June 30, 2016. The completed application shall include submission of:

1. A completed applicant form provided by the commission;

2. A complete local and national criminal history check;

3. A complete driver's record; and

4. Documentation issued by the commission of successful completion of the Virginia Ignition Interlock Certification Exam.

Failure to submit a completed application will result in disqualification from consideration for a Virginia Ignition Interlock Certification Letter by the commission to perform ignition interlock services in the Commonwealth of Virginia. ~~The commission reserves the right to deny a certification letter to an interlock service provider technician or state director due~~

~~to concerns identified in the application to include, but not be limited to, criminal history background and driver's transcript issues.~~

B. Applicants shall be required to complete a Virginia Ignition Interlock Certification Exam. Successful completion of the exam requires a score of 80% or higher. Applicants who fail to successfully complete the state certification exam on the first attempt shall be allowed a second opportunity to successfully complete the exam. Applicants who fail to successfully complete the state certification exam on the second attempt shall not be allowed to reapply to provide ignition interlock services for the Commonwealth of Virginia for six months from the date of the second failed exam. Service providers shall be required to pay an administrative fee, as provided in 24VAC35-60-50 B 3, to the commission for all second and subsequent attempts to successfully complete the state certification exam. Applicants who successfully pass the state certification exam will receive documentation of successful completion from the commission that shall be submitted with the application for a Virginia Ignition Interlock Certification Letter to perform ignition interlock services in the Commonwealth of Virginia.

C. The commission may deny, revoke, suspend, or terminate a ~~previously issued~~ Virginia Ignition Interlock Certification Letter for a service provider technician or state director for any of the following reasons:

1. ~~The technician or state director is~~ Having been convicted of a felony;

2. ~~The technician or state director is~~ Having been convicted of a misdemeanor potentially punishable by confinement;

3. ~~The technician or state director commits~~ Committing an unethical, deceptive, or dishonest act that negatively impacts the integrity of the ignition interlock program;

4. ~~The technician or state director fails~~ Failing to demonstrate the ability to consistently comply with ordinances, statutes, administrative rules, or court orders, whether at the local, state, or federal level; ~~or~~

5. ~~The technician or state director fails~~ Failing to demonstrate ~~possession of the~~ sufficient knowledge or skill required to perform ignition interlock services in the Commonwealth of Virginia;

6. Making a material misstatement or omission in an application; or

7. Defrauding any client, service provider, or other person or entity in the conduct of the licensee's business.

A service provider technician or state director whose Virginia Ignition Interlock Certification Letter has been denied, revoked, suspended or ~~revoked~~ terminated may request~~, within 15 days of notification, a hearing with the commission to contest the decision~~ judicial review in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia). In the event that the decision to suspend or revoke the Virginia Ignition Interlock Certification Letter of a service provider's technician or state director is upheld, the technician or state director shall not perform interlock services in the Commonwealth of Virginia for the entire suspension period, ~~to include any period of contestment,~~ or in the case of a revocation or termination, on a permanent basis. This prohibition includes any period during which the denial, suspension, revocation, or termination is being contested. The service provider is required to return the Virginia Ignition Interlock Certification Letter to the commission within 15 days of the date that the certification was suspended, revoked, or terminated, by the commission.

D. Once the completed application has been approved by the commission and all other qualifications have been met by the applicant, a Virginia Ignition Interlock Certification Letter to perform ignition interlock services in the Commonwealth of Virginia shall be issued to the applicant by the commission. The certification letter shall contain the effective date of the letter and a certification number specific to the applicant. The certification letter will be valid for a time period specified by the commission unless otherwise suspended, revoked, or terminated but for no longer than the service provider contract end date. In the event that an applicant is not approved for a Virginia Ignition Interlock Certification Letter to perform interlock services in the Commonwealth of Virginia, the commission will notify the service provider in writing within 10 days of the determination. The Virginia Ignition Interlock Certification Letter is subject to review by the commission at its discretion during the course of the certification period.

E. An application to renew a Virginia Ignition Interlock Certification Letter for an ignition interlock technician or state director shall be submitted 30 days prior to the expiration date printed on the current certification letter. A technician or state director who has had his state certification revoked or terminated shall be ineligible to reapply for a Virginia Ignition Interlock Certification Letter unless otherwise approved by the commission.

F. Service providers are required to surrender Virginia Ignition Interlock Certification Letters for technicians and state directors who are no longer employed with their company. The surrendered certification letter shall be sent to the commission within 15 days of the date that the technician or state director is no longer employed with the service provider.

G. In addition to the successful completion of the Virginia Ignition Interlock Certification Exam required for application, the commission may order that a technician or state director performing ignition interlock services in the Commonwealth of Virginia review requirements and retake the state certification exam to demonstrate that the technician or state director possesses the knowledge required to perform ignition interlock services in the Commonwealth of Virginia.

24VAC35-60-140. Emergency declarations.

The commission reserves the right to suspend service-related requirements of this chapter in applicable geographical areas when there exists a federal or state disaster or declaration of emergency.

VA.R. Doc. No. R20-6270; Filed August 11, 2020, 11:14 a.m.

GUIDANCE DOCUMENTS

PUBLIC COMMENT OPPORTUNITY

Pursuant to § 2.2-4002.1 of the Code of Virginia, a certified guidance document is subject to a 30-day public comment period after publication in the Virginia Register of Regulations and prior to the guidance document's effective date. During the public comment period, comments may be made through the Virginia Regulatory Town Hall website (http://www.townhall.virginia.gov) or sent to the agency contact. Under subsection C of § 2.2-4002.1, the effective date of the guidance document may be delayed for an additional period. The guidance document may also be withdrawn.

The following guidance documents have been submitted for publication by the listed agencies for a public comment period. Online users of this issue of the Virginia Register of Regulations may click on the name of a guidance document to access it. Guidance documents are also available on the Virginia Regulatory Town Hall (http://www.townhall.virginia.gov) or from the agency contact or may be viewed at the Office of the Registrar of Regulations, 900 East Main Street, Richmond, Virginia 23219.

BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS, CERTIFIED INTERIOR DESIGNERS AND LANDSCAPE ARCHITECTS

Title of Document: Property lines along public roads without recorded fee simple right of way.

Public Comment Deadline: September 30, 2020.

Effective Date: October 1, 2020.

Agency Contact: Kathleen R. Nosbisch, Executive Director, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8514, or email apelscidla@dpor.virginia.gov.

STATE CORPORATION COMMISSION

Bureau of Insurance

July 28, 2020

Administrative Letter 2020-04

To: Pharmacy Benefits Managers; All Carriers Licensed to Write Accident and Sickness Insurance in Virginia; All Health Services Plans and Health Maintenance Organizations Licensed in Virginia; and Life and Health Interested Parties

Re: Licensure Requirements and Certain Prohibited Conduct

During its 2020 Session, the Virginia General Assembly passed Acts of Assembly Chapters 219 and 1288 (House Bill 1290 and Senate Bill 251, respectively), related to the licensing of pharmacy benefits managers and certain prohibited conduct by carriers and pharmacy benefits managers. Please see §§ 38.2-3465 through 38.2-3470 of the Code of Virginia (Code). This legislation is effective October 1, 2020.

Under § 38.2-3466 of the Code, any person providing pharmacy benefits management services or otherwise acting as a pharmacy benefits manager in the Commonwealth on or after October 1, 2020, shall obtain a license from the Bureau of Insurance (Bureau), unless otherwise covered by a carrier's license.[1] To obtain this initial license, a person must complete and submit the attached application and pay a $250 nonrefundable fee. The Bureau will begin accepting applications immediately. Please allow up to 30 days for processing.

Licenses will be renewable annually for the period October 1 through September 30 in the year following initial issuance. To renew the license, a licensed pharmacy benefits manager must submit a renewal application and pay a $100 nonrefundable renewal fee.

The Bureau also encourages carriers and pharmacy benefits managers to be aware of the conduct prohibited under the new law in § 38.2-3467, related to advertisements, claims adjudication fees, reimbursements for services, network restrictions or adequacy determinations, retaliation for exercising rights and spread pricing.

Questions concerning this administrative letter should be addressed to Stephen Hogge, Policy Advisor-Insurance, Policy, Compliance, & Administration Division, Bureau of Insurance, State Corporation Commission, email stephen.hogge@scc.virginia.gov, or telephone (804) 371-9895.

/s/ Scott A. White
Commissioner of Insurance

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[1]If pharmacy benefits management is performed within and under the authority of the carrier's license, then no separate pharmacy benefits manager license is required.

State Corporation Commission Bureau of Insurance PHARMACY BENEFIT MANAGER ("PBM") APPLICATION / RENEWAL

1. This is: ☐ an Application. ☐ a Renewal.		
2. Name of PBM	a) FEIN of PBM or, if an individual, last 4 digits of the SS#	
Business Address (P. O. Box is not an acceptable Business Address)		
b) Street	c) Suite	
d) City	e) State	f) Zip Code or Country
g) Phone Number ( ) Ext.	h) Fax Number ( )	i) Business E-mail
Mailing Address		
j) Street or P.O. Box	k) Suite	
l) City	m) State	n) Zip Code or Country

3. Name of person applying for or renewing the license of the PBM		a) Title or Position
Business Address		
b) Street		c) Suite
d) City	e) State	f) Zip Code or Country
g) Phone Number ( ) Ext.	h) Fax Number ( )	i) Business E-mail Address

4. PBM Structure:

☐ a.) Individual -OR-

☐ b.) Partnership or Other Unincorporated Association ☐ c.) Limited Liability Company ☐ d.) Corporation

If other than an Individual application, provide the ***total number*** of partners, members, or stockholders who each directly or indirectly own, control, or hold the power to vote, 10% or more of the entity's ownership -AND/OR- hold proxies representing 10% or more of the voting securities:

#

5. Name and Addresses of each individual or entity with management or control over the pharmacy benefits manager:

	Name	Address	City	State	ZIP
a.					
b.					
c.					
d.					
e.					

Attach a separate sheet titled "Management or Control Overflow Sheet" if more than 5 names and addresses

Form VA PBM (July 2020) Page 1 of 2

6. Name and Addresses of each person with a beneficial ownership interest in the pharmacy benefits manager.

Beneficial ownership interest means, if the PBM is seeking licensure under:
4.b above, each partner or member;
4.c above, each officer, manager, or member;
4.d above, each of its officers, directors, and stockholders with greater than 5% ownership interest:

a.
Name Address City State
ZIP

b.
Name Address City State
ZIP

c.
Name Address City State
ZIP

d.
Name Address City State
ZIP

e.
Name Address City State
ZIP

Attach a separate sheet titled "Ownership Interest Overflow Sheet" if more than 5 names and addresses

7. Service of Process Notice:

Except where prohibited by state or federal law, by submitting an application for a license, the applicant shall be deemed to have appointed the clerk of the Commission as the agent for service of process on the applicant in any action or proceeding arising in the Commonwealth out of or in connection with the exercise of the license. Such appointment of the clerk of the Commission as agent for service of process shall be irrevocable during the period within which a cause of action against the applicant may arise out of transactions with respect to subjects of pharmacy benefits management in the Commonwealth.
Service of process on the clerk of the Commission shall conform to the provisions of Chapter 8 of title 38.2-800 .

8. Felony Conviction and/or Violations of State Law Requirements Applicable to PBM

By checking one of the boxes below and signing this application, the applicant states that, to the best of the signer's knowledge:

☐ No officer with management or control of the pharmacy benefits manager listed in #5 above has been convicted of a felony or has violated any of the requirements of state law applicable to pharmacy benefits managers.

-OR-

☐ The following officer(s) with management or control of the pharmacy benefits manager listed in #5 above has been convicted of a felony or has violated requirements of state law applicable to pharmacy benefits manager (the applicant must provide on a separate sheet titled "Officer Conviction/Law Requirement Violation Detail Sheet" that lists the name, date, jurisdiction, and description of the relevant conviction or violation).

9. Signature of person applying for or renewing the license of the PBM	10. Date

11. Print Name of Signer

The fee for initial licensure is $250. The fee for license renewal is $100. All fees are non-refundable. Make check payable to Treasurer of Virginia. Submit applicable fees with your completed registration form to:

Street Address:
PBM Licensing
Policy, Compliance, & Administration Division
Bureau of Insurance
1300 E. Main Street
Richmond, VA 23219

Mailing Address:
PBM Licensing
Policy, Compliance, & Administration Division
Bureau of Insurance
P.O. Box 1157
Richmond, VA 23218

If you have questions regarding this form, please e-mail bureauofinsurance@scc.virginia.gov or call (804) 371-9741.

For additional information, please see Administrative Letter 2020-04 at https://scc.virginia.gov/typedfiles/Administrative-Letters.

Form VA PBM (July 2020) Page 2 of 2

July 28, 2020

Administrative Letter 2020-05

TO: All Carriers Licensed to Write Accident and Sickness Insurance in Virginia, All Health Services Plans and Health Maintenance Organizations Licensed in Virginia, and All Interested Parties

RE: Implementation and Enforcement of Chapters 1080 and 1081 of the 2020 Acts of Assembly (House Bill 1251 and Senate Bill 172, respectively) (Balance Billing Legislation)

The purpose of this Administrative Letter is to provide guidance to health carriers regarding the reporting requirements described in Enactment Clauses 4 and 5 of the Balance Billing Legislation. These reports will inform the report the Bureau of Insurance will provide to the Chairmen of the House Committee on Labor and Commerce and the Senate Committee on Commerce and Labor annually beginning no later than December 1, 2021. Although statutory revisions from the Balance Billing Legislation become effective January 1, 2021, reporting and other requirements of the Balance Billing Legislation became effective July 1, 2020.

Enactment Clauses 4 and 5 require reporting by "health carriers" providing "individual or group health insurance coverage." Refer to the definition of these terms in § 38.2-3438 of the Code of Virginia to determine the applicability of these reporting requirements to coverage offered. Coverage provided under a fully-insured managed care plan for the years in question is subject to the reporting requirements. Coverage subject to the reporting requirements does not include short-term limited duration or excepted benefit plans but does include fully-insured student health plan coverage provided by a managed care plan.

The Bureau will provide carriers with an Excel template detailing the data needed for completion of the reporting requirements. The template includes information the Bureau considers necessary to produce the report the Bureau must provide as required by Enactment Clause 6.

Carriers must submit the first reports by September 1, 2020. All information required to be reported will be required by September 1 of each year in order for the Bureau to produce its report by each December 1 beginning with December 1, 2021.

Any questions concerning this Administrative Letter may be addressed to Eric Lowe, Policy Analyst, Policy, Compliance and Administrative Division, Bureau of Insurance, State Corporation Commission, email eric.lowe@scc.virginia.gov, or telephone (804) 371-9628.

/s/ Scott A. White
Commissioner of Insurance

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Draft Hospital Provider Manual

Public comment: August 11, 2020, to September 10, 2020.

The draft Hospital Provider Manual Chapter V is now available on the Department of Medical Assistance Services website at http://dmas.virginia.gov/#/manualdraft.

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 Physician Provider Manual

Public comment August 11, 2020, to September 10, 2020.

The draft Physician Provider Manual Chapters IV and V are now available on the Department of Medical Assistance Services website at http://dmas.virginia.gov/#/manualdraft.

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.

VIRGINIA DEPARTMENT OF PLANNING AND BUDGET

Commercial Activities List - Public Comments and Recommendations

Pursuant to § 2.2-1501.1. of the Code of Virginia, the Virginia Department of Planning and Budget (DPB) published the Commercial Activities List (CAL) on September 9, 2019. The CAL is posted on the DPB website under Documents, Instructions and Publications as "Commercial Activities List - 2019" and is also included as an attachment to this notice.

DPB is seeking written comments on the CAL and invites recommendations from the public regarding activities being performed by state agencies that might better be performed by the private sector. The public comment period will begin August 31, 2020, and end September 14, 2020. Please include "CAL" in the subject of the email.

Contact Information: Cari Corr, Virginia Department of Planning and Budget, 1111 East Broad Street, Richmond, VA 23219, telephone (804) 225-4549, or email cari.corr@dpb.virginia.gov.

Virginia Commercial Activities List for
FY 2018 and FY 2019

NIGP	NIGP title
90608	Automation; Controls; Instrumentation - Architectural Services
90648	Historical Preservation
91013	Elevator Installation, Maintenance and Repair
91223	Construction, General (Backfill Services, Digging, Ditching, Road Grading, Rock Stabilization, etc.)
91265	Maintenance and Repair, Tennis/Sport Court
91316	Construction, Communication Equipment (Includes Antenna Towers)
91359	Construction and Upgrades, Wastewater Treatment Plant
91360	Construction, Water System/Plants, Main and Service Line
91427	Carpentry
91464	Plastering
91500	Communications and Media Related Services
91522	Communications Marketing Services
91806	Administrative Consulting
91815	Architectural Consulting
91819	Buildings, Structures and Components Consulting
91831	Construction Consulting
91875	Management Consulting
91878	Medical Consulting
91885	Personnel/Employment Consulting (Human Resources)
91887	Purchasing Consulting (Incl. Specification Development)
92000	Data Processing, Computer, Programming, and Software Services
92022	Data Preparation and Processing Services (Including Bates Coding)

92032	Intelligent Transportation System Software (Including Design, Development, and Maintenance Services)
92037	Networking Services (Including Installation, Security, and Maintenance)
92039	Processing System Services, Data (Not Otherwise Classified)
92040	Programming Services, Computer
92416	Course Development Services, Instructional/Training
92418	Educational Services, Alternative
92474	Special Education
92480	Tutoring
92500	Engineering Services, Professional
93881	Scientific Equipment Maintenance and Repair
93921	Computers, Data Processing Equipment and Accessories (Not Word Processing Equipment), Maintenance and Repair
94155	HVAC Systems Maintenance and Repair, Power Plant
94620	Auditing
94649	Financial Services (Not Otherwise Classified)
94650	Fund Raising Services
94807	Administration Services, Health
94828	Dental Services
94876	Psychologists/Psychological and Psychiatric Services (Including Behavioral Management Services)
95226	Day Care (Adult)
95277	Research and Evaluation, Human Services (Including Productivity Audits)
95285	Support Services
95605	Business Research Services
95826	Construction Management Services
95839	Financial Management Services
95859	Industrial Management Services
95874	Personnel Management Services
95939	Dam and Levee Construction, Maintenance, Management and Repair
95973	Ship Maintenance and Repair
95984	Towing Services, Marine
96114	Commissioning of Facilities Services (Functional and Prefunctional)
96116	Claims Processing Services
96129	Economic Impact Studies

96130	Employment Agency and Search Firm Services (Including Background Investigations and Drug Testing for Employment)
96191	Water and Petroleum Pipeline Services
96196	Non-Professional Services (Not Otherwise Classified)
96269	Personnel Services, Temporary
96343	Intergovernmental/Inter-Agency Contracts
96847	Inspection Services, Construction Type
96881	Traffic Sign Maintenance and Repair
98854	Lighting Services for Parks, Athletic Fields, Parking Lots, etc.
98863	Park Area Construction/Renovation
99029	Disaster Preparedness/Emergency Planning Services
99067	Patrol Services

STATE WATER CONTROL BOARD

Proposed Enforcement Action for Blackstone Energy Ltd.

An enforcement action has been proposed for Blackstone Energy Ltd. for violations of the State Water Control Law at eight mine sites located in Lee, Wise, and Tazewell Counties (A&G Mine Permit Nos. 1602074 and 11020280; Sigmon Mine Permit No. 1702073; and Black River Coal Mine Permit No. 1402094). A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. Ralph T. Hilt will accept comments by email at ralph.hilt@deq.virginia.gov, FAX at (276) 676-4899, or postal mail at Department of Environmental Quality, Southwest Regional Office, 355-A Deadmore Street, Abingdon, VA 24210, from September 1, 2020, through September 30, 2020.

Proposed Enforcement Action for Criss Cross Properties LLC

The State Water Control Board has proposed an enforcement action for Criss Cross Properties LLC, located in New Kent County Property at New Kent Highway (TM# 22-65), to address noncompliance with State Water Control Law and regulations. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. Frank Lupini will accept comments by email at frank.lupini@deq.virginia.gov or postal mail at Department of Environmental Quality, Piedmont Regional Office, 4949A Cox Road, Glen Allen, VA 23060, from August 31, 2020, to October 1, 2020.

Proposed Consent Order for Cutalong Virginia LLC

An enforcement action has been proposed for Cutalong Virginia LLC for violations of the State Water Control Law and regulations associated with the Cutalong project located in Louisa County, Virginia. The State Water Control Board proposes to issue a consent order to resolve violations associated with the Cutalong project. A description of the proposed action is available at the Department of Environmental Quality office listed 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 September 1, 2020, through October 1, 2020.

Proposed Enforcement Action for Homestead Oil Corporation

An enforcement action has been proposed for Homestead Oil Corporation for violations of the State Water Control Law at E and R Oil in Independence, Virginia. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. Ralph T. Hilt will accept comments by email at ralph.hilt@deq.virginia.gov, FAX at (276) 676-4899, or postal mail at Department of Environmental Quality, Southwest Regional Office, 355-A Deadmore Street, Abingdon, VA 24210, from September 1, 2020, through September 30, 2020.

Proposed Enforcement Action for Le Suraj Inc.

An enforcement action has been proposed for Le Suraj Inc. for violations of the State Water Control Law in Belle Haven, Virginia. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. Russell Deppe will accept comments by email at russell.deppe@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 September 2, 2020, to October 2, 2020.

Proposed Consent Special Order for The Oaks Development LC

The State Water Control Board proposes to issue a consent special order to The Oaks Development LC for alleged violation of the State Water Control Law at Oak Rise Road in New Kent County, Virginia. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. Cara Witte will accept comments by email at cara.witte@deq.virginia.gov, FAX at (804) 527-5106, or postal mail at Department of Environmental Quality, Piedmont Regional Office (Enforcement), 4949-A Cox Road, Glen Allen, VA 23060, from August 31, 2020, to October 1, 2020.

Proposed Consent Order for Rock Wood Products of Dillwyn Inc.

The State Water Control Board has proposed an enforcement action for Rock Wood Products of Dillwyn Inc. for violations at the Pierce and Johnson Lumber Company, 19135 North James Madison Highway, Dillwyn, Virginia. The board proposes to issue a consent order to address noncompliance with State Water Control Law and regulations. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. Frank Lupini will accept comments by email at frank.lupini@deq.virginia.gov or postal mail at Department of Environmental Quality, Piedmont Regional Office, 4949A Cox Road, Glen Allen, VA 23060, from August 31, 2020, to October 1, 2020.

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

MARINE RESOURCES COMMISSION

Title of Regulation: **4VAC20-540. Pertaining to Spanish and King Mackerel.**

Publication: 36:26 VA.R. 2758-2759 August 17, 2020.

Correction to Effective Dates:

Page 2758, after "Statutory Authority: §§ 28.2-201 and 28.2-210 of the Code of Virginia" add

"Effective dates: August 3, 2020, through September 1, 2020."

VA.R. Doc. No. R20-6467; Filed August 10, 2020, 11:31 a.m.