VIRGINIA REGISTER OF REGULATIONS

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THE 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).

February 2022 through March 2023

Volume: Issue	Material Submitted By Noon*	Will Be Published On
38:14	February 9, 2022	February 28, 2022
38:15	February 23, 2022	March 14, 2022
38:16	March 9, 2022	March 28, 2022
38:17	March 23, 2022	April 11, 2022
38:18	April 6, 2022	April 25, 2022
38:19	April 20, 2022	May 9, 2022
38:20	May 4, 2022	May 23, 2022
38:21	May 18, 2022	June 6, 2022
38:22	June 1, 2022	June 20, 2022
38:23	June 15, 2022	July 4, 2022
38:24	June 29, 2022	July 18, 2022
38:25	July 13, 2022	August 1, 2022
38:26	July 27, 2022	August 15, 2022
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39:6	October 19, 2022	November 7, 2022
39:7	November 2, 2022	November 21, 2022
39:8	November 14, 2022 **(Monday)**	December 5, 2022
39:9	November 30, 2022	December 19, 2022
39:10	December 14, 2022	January 2, 2023
39:11	December 27, 2022 **(Tuesday)**	January 16, 2023
39:12	January 11, 2023	January 30, 2023
39:13	January 25, 2023	February 13, 2023
39:14	February 8, 2023	February 27, 2023
39:15	February 22, 2023	March 13, 2023

*Filing deadlines are Wednesdays unless otherwise specified.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD FOR BARBERS AND COSMETOLOGY

Agency Decision

Title of Regulation: **18VAC41-70. Esthetics Regulations.**

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

Name of Petitioner: Christine Werne.

Nature of Petitioner's Request: Amend 18VAC41-70-270 C 4 to allow an esthetics facility to make use of bathroom space that is not exclusive to its clients, as long as the bathroom is geographically close to the facility and the facility takes responsibility for the sanitation and safety requirements of the bathroom.

Agency Decision: Request denied.

Statement of Reason for Decision: The Board for Barbers and Cosmetology agrees with the policy change suggested in the petition, but the petition excludes several professions that are also impacted by the petition's specified regulatory requirement. The board rejects the petition because the petition as written would exclude four other professions from the benefits of the proposal. The board intends to reconsider this proposal but encompassing all professions under the board at its March 2022 meeting.

Agency Contact: Stephen Kirschner, Executive Director, Board for Barbers and Cosmetology, 9960 Mayland Drive, Suite 400, Richmond, VA, 23233, telephone (804) 367-8590, or email barbercosmo@dpor.virginia.gov.

VA.R. Doc. No. PFR22-12; Filed January 20, 2022, 1:21 p.m.

BOARD OF SOCIAL WORK

Agency Decision

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: Adrian Rodriguez.

Nature of Petitioner's Request: Amend 18VAC140-20-45 to allow long years of experience to count as supervised experience for licensure.

Agency Decision: Request denied.

Statement of Reason for Decision: The petition was considered by the Board of Social Work at its meeting on January 14, 2022. While the board is proposing changes to its regulations for licensure by endorsement to eliminate requirements for active practice in another jurisdiction, the board did not choose to eliminate the requirement for supervised clinical experience if the practitioner does not already hold a clinical license in the other jurisdiction. Therefore, the board determined it would take no action on the petition.

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. PFR21-38; Filed January 14, 2022, 2:52 p.m.

Agency Decision

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: Adeyola Hendrickson.

Nature of Petitioner's Request: Delete the requirement of passage of a board-approved national exam for applicants with a licensed clinical social worker license in another state applying for licensure by endorsement.

Agency Decision: Request granted.

Statement of Reason for Decision: The petition was considered by the Board of Social Work at its meeting on January 14, 2022. The board has begun the regulatory action to propose acceptance of a state examination if the national exam was not required at the time a social worker was initially licensed in the other state. During the process of promulgating amendments to the regulation, the board will consider acceptance of licensure by endorsement for applicants with lengthy experience who were grandfathered without examination in another state.

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. PFR21-40; Filed January 14, 2022, 2:53 p.m.

PERIODIC REVIEWS AND SMALL BUSINESS IMPACT REVIEWS

TITLE 1. ADMINISTRATION

TREASURY BOARD

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Treasury Board conducted a periodic review and a small business impact review of **1VAC75-20, Virginia Security for Public Deposits Act Regulations**, and determined that this regulation should be amended.

The proposed regulatory action to amend 1VAC75-20, which is published in this issue of the Virginia Register, serves as the report of findings.

Contact Information: Kristin A. Reiter, Director of Operations, Department of the Treasury, James Monroe Building, 101 North 14th Street, 3rd Floor, Richmond, VA 23219, telephone (804) 225-3240, FAX (804) 225-3187, or email kristin.reiter@trs.virginia.gov.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

VIRGINIA SOIL AND WATER CONSERVATION BOARD

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Virginia Soil and Water Conservation Board conducted a periodic review and a small business impact review of **4VAC50-85, Nutrient Management Training and Certification Regulations**, and determined that this regulation should be amended.

The fast-track regulatory action to amend 4VAC50-85, which is published in this issue of the Virginia Register, serves as the report of findings.

Contact Information: Lisa McGee, Policy and Planning Director, Department of Conservation and Recreation, 600 East Main Street, 24th Floor, Richmond, VA 23219, telephone (804) 786-4378, FAX (804) 786-6141, or email lisa.mcgee@dcr.virginia.gov.

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

STATE BOARD OF LOCAL AND REGIONAL JAILS

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Local and Regional Jails conducted a periodic review and a small business impact review of **6VAC15-20, Regulations Governing Certification and Inspection**, and determined that this regulation should be amended. The department is publishing its report of findings dated January 6, 2022, to support this decision.

Regulations Governing Certification and Inspection (6VAC15-20) meets the criteria set out in Executive Order 14 (as amended, July 16, 2018) in that it is necessary for the protection of the health, safety, and welfare of staff, defendants, and inmates within local, regional, and community correctional facilities. This regulation has proven effective in meeting this need and is deemed to be easily understandable. Due to changes in the Code of Virginia, technical and clarifying amendments are necessary to reflect changes in the name of the board and other technical and clarification amendments to reflect similar changes.

There have been no complaints or comments received from the public concerning the regulation. The regulation is not deemed to be overly complex, nor does it overlap, duplicate, or conflict with federal or state law or regulation. Technology, economic conditions, or other factors have not significantly changed in the area affected by the regulation since it was last updated. The regulation was last reviewed in 2015 and last updated in 2011. Small businesses do not operate the facilities that are covered by the Code of Virginia and subject to this regulation as they are all public facilities; therefore, the regulation has no impact on small businesses.

Contact Information: Ryan McCord, Executive Director, State Board of Local and Regional Jails, 6900 Atmore Drive, Richmond, VA 23225, telephone (804) 887-8340.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Local and Regional Jails conducted a periodic review and a small business impact review of **6VAC15-28, Regulations for Public/Private Joint Venture Work Programs Operated in a State Correctional Facility**, and determined that this regulation should be repealed.

The final regulatory action to repeal 6VAC15-28, which is published in this issue of the Virginia Register, serves as the report of findings.

Contact Information: Ryan McCord, Executive Director, State Board of Local and Regional Jails, 6900 Atmore Drive, Richmond, VA 23225, telephone (804) 887-8340, or email ryan.mccord@vadoc.virginia.gov.

BOARD OF JUVENILE JUSTICE

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Juvenile Justice conducted a periodic review and a small business impact review of **6VAC35-180, Regulations Governing Mental Health Services Transition Plans for Incarcerated Juveniles**, and determined that this regulation should be amended.

The notice of intended regulatory action to amend 6VAC35-180, which is published in this issue of the Virginia Register, serves as the report of findings.

Contact Information: Ken Davis, Regulatory Affairs Coordinator, Department of Juvenile Justice, 600 East Main Street, 20th Floor, Richmond, VA 23219, telephone (804) 807-0486, FAX (804) 371-6490, or email kenneth.davis@djj.virginia.gov.

TITLE 9. ENVIRONMENT

VIRGINIA WASTE MANAGEMENT BOARD

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Virginia Waste Management Board conducted a periodic review and a small business impact review of **9VAC20-81, Solid Waste Management Regulations**, and determined that this regulation should be amended.

The proposed regulatory action to amend 9VAC20-81, which is published in this issue of the Virginia Register, serves as the report of findings.

Contact Information: Priscilla Rohrer, Department of Environmental Quality, 4411 Early Road, P.O. Box 3000, Harrisonburg, VA 22801, telephone (540) 574-7852, FAX (804) 698-4178, or email priscilla.rohrer@deq.virginia.gov.

TITLE 12. HEALTH

STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Behavioral Health and Developmental Services conducted a periodic review and a small business impact review of **12VAC35-12, Public Participation Guidelines**, and determined that this regulation should be retained as is. The department is publishing its report of findings dated January 14, 2022, to support this decision.

This regulation is required per § 2.2-4007.02 of the Code of Virginia and meets the requirements of Executive Order 14 (as amended, July 16, 2018) in that it lays out a structure for the agency to actively seek input for proposed regulations from interested parties, stakeholders, citizens, and members of the General Assembly. Regulations function best when citizen input is gained and balanced with state and federal requirements, which should be kept to a minimum while helping to ensure the health, safety, and welfare of citizens.

There are no necessary changes at this time as the regulation meets the requirements in the Administrative Process Act and Executive Order 14 for public participation regarding regulatory activity. The regulation is needed to comply with § 2.2-4007.02 of the Code of Virginia. No comments were received concerning the regulation. The regulation is straightforward and minimal while meeting requirements for notification to the public. The regulation does not overlap, duplicate, or conflict with federal or state law or regulation. It has been four years since the regulation was; technology, economic conditions, or other factors have not changed in the area affected by the regulation.

The agency's decision will minimize the economic impact of regulations on small businesses as the requirements on the agency will help to keep regulants informed of proposed changes to regulations and how to comment on them in a timely manner.

Contact Information: Ruth Anne Walker, Director of Regulatory Affairs, Department of Behavioral Health and Developmental Services, Jefferson Building, 1220 Bank Street, 4th Floor, Richmond, VA 23219, telephone (804) 225-2252.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Board of Behavioral Health and Developmental Services conducted a periodic review and a small business impact review of **12VAC35-240, Eugenics Sterilization Compensation Program**, and determined that this regulation should be retained as is. The department is publishing its report of findings dated January 20, 2022, to support this decision.

This regulation is necessary to carry out the requirements mandated by the General Assembly (2021 Appropriation Act, Item 320.T.1-2. and meets the requirements of Executive Order 14 in that the regulation helps to protect the welfare of individuals who were victims of forced sterilization pursuant to the Virginia Eugenical Sterilization Act through the provision of compensation to victims. This regulation clearly articulates administrative guidelines for filing appropriate

documentation and verification of any claim of individuals who were victims.

The regulation will be retained as is as nothing has changed regarding the application and review processes.

The regulation is needed to carry out the requirements of Item 320.T.1-2. of the Appropriation Act. No comments were received concerning the regulation. The regulation is straightforward and minimal while meeting requirements for filing and verifying applications for compensation. The regulation does not overlap, duplicate, or conflict with federal or state law or regulation. It has been four years since the regulation was reviewed; technology, economic conditions, or other factors have not changed in the area affected by the regulation.

The agency's decision will have no economic impact on small businesses.

Contact Information: Ruth Anne Walker, Director of Regulatory Affairs, Department of Behavioral Health and Developmental Services, Jefferson Building, 1220 Bank Street, 4th Floor, Richmond, VA 23219, telephone (804) 225-2252.

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TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF PHARMACY

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Pharmacy conducted a periodic review and a small business impact review of **18VAC110-20, Regulations Governing the Practice of Pharmacy**, and determined that this regulation should be amended. The department is publishing its report of findings dated December 8, 2021, to support this decision.

This chapter was in effect as VR530-01-1 before the creation of the Virginia Administrative Code. It has been amended 40 times in the past five years. It continues to be effective in protecting the public by scheduling dangerous chemicals in Schedule I; by setting rules for the safety, efficacy, and integrity of prescription medications; and by updating rules as new technologies and techniques are introduced in the practice of pharmacy. Whenever amendments are promulgated, language is reviewed to ensure that it is clearly written and easily understandable.

The board will amend the regulation. The board has identified several sections that it will consider for amendments:

18VAC110-20-10, amend definition of "personal supervision" to allow audio-visual technology by pharmacist on premises for supervision of compounding in retail pharmacies.

18VAC110-20-25, amend the unprofessional conduct section to add the following language:

Acting in a manner that causes an individual to feel threatened or intimidated so that such individual is discouraged from reporting a public safety concern in good faith or is discouraged from cooperating with an employee of the Department of Health Professions in the conduct of an investigation or inspection.

Failure to provide a working environment for all pharmacy personnel that protects the health, safety, and welfare of a patient including:

- Sufficient personnel to prevent fatigue, distraction, or other conditions that interfere with a pharmacist's ability to practice with competency and safety or creates an environment that jeopardizes patient care;
- Appropriate opportunities for uninterrupted rest periods and meal breaks;
- Adequate time for a pharmacist to complete professional duties and responsibilities including: (i) drug utilization review; (ii) immunization; (iii) counseling; and (iv) verification of the accuracy of a prescription.
- Introducing external factors such as productivity or production quotas or other programs to the extent that they interfere with the ability to provide appropriate professional services to the public; and
- Incenting or inducing the transfer of a prescription absent professional rationale.

18VAC110-20-110, amend to address appropriate opportunities for uninterrupted rest periods and meal breaks which may or may not require the pharmacy to close.

18VAC110-20-110, amend to include additional information to be required on a pharmacy permit or nonresident pharmacy registration application and include a requirement to notify board of any changes within timeframe consistent with current laws.

18VAC110-20-110 J, amend to require an applicant for a pharmacy permit to report to the board any prior disciplinary action by a regulatory authority, prior criminal convictions, or ongoing investigations related to the practice of pharmacy

18VAC110-20-110, extending timeframe beyond 14 days for notification of a change in the pharmacist-in-charge (PIC)

18VAC110-20-270, allow a pharmacist to use the pharmacist's professional judgment to alter or adapt a prescription; to change dosage, dosage form, or directions; to complete missing information; or to extend a maintenance drug.

- Including a requirement for an e-profile identification number for facilities; and
- Extending timeframe beyond 14 days for notification of a change in the PIC.

18VAC110-20-275 B, C, and F, consider including exemption to requirement for returning to initiating pharmacy any prescriptions not delivered to the patient if prohibited under federal law.

18VAC110-20-275, amend to include record requirement for an alternate delivery site further delivering the drug to a patient's home.

18VAC110-20-290, consider amendment to provision that allows dispensing of a Schedule II drug for up to six months after the date on which the prescription was issued.

18VAC110-20-550, amend to remove the restriction that a stat-drug box contain no more than 20 solid dosage units per schedule of Schedules II through V drugs.

18VAC110-20-690, prohibit controlled substance registration from being issued to private dwelling or residence just as there is a current prohibition on such issuance of a pharmacy permit.

- Clarifying expectation regarding administration records, particularly if drug administered by someone other than the pharmacist whose initials are captured on the dispensing record.
- Including a requirement for an e-profile identification number for facilities.

After further opportunity for comment and recommendations for amendments, the board will publish a Notice of Intended Regulatory Action.

There is a continued need for the regulation since the Code of Virginia requires pharmacies and other entities to be permitted, registered, or licensed by the board. The board has not received any of complaints or comments concerning the regulation. Practitioners do not find the regulation to be overly complex, but the board will consider whether requirements could be simplified or clarified. There is no overlap, duplication, or conflict with federal or state law or regulation.

As stated, the chapter has been amended 40 times in the last five years and has five additional regulatory actions in process, including amendments to incorporate allowances for newer technology in hospital pharmacies. The last periodic review began in 2016 but was only finalized in 2019, so the board has continually updated regulations while protecting the safety, integrity, and efficacy of dispensing medications.

In its review, the board will consider any additional amendments that are recommended that will streamline or clarify the regulation in order to minimize the economic impact on small businesses. The Board of Pharmacy is seeking public comment on its decisions or any other topics that should be included in a Notice of Intended Regulatory Action to be adopted at the board's March meeting.

Contact Information: Caroline Juran, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4456.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Pharmacy conducted a periodic review and a small business impact review of **18VAC110-21, Regulations Governing the Licensure of Pharmacists and Registration of Pharmacy Technicians**, and determined that this regulation should be amended. The department is publishing its report of findings dated December 8, 2021, to support this decision.

This chapter was carved out of Regulations Governing the Practice of Pharmacy (18VAC110-20) as a result of a periodic review begun in 2016 and completed in 2019. All of the provisions of 18VAC110-21 were included in 18VAC110-20, which has been in effect as VR530-01-1 before the creation of the Virginia Administrative Code. It has been amended 40 times in the past five years. It continues to be effective in protecting the public by setting rules for qualifications and practice of pharmacists and pharmacy technicians. Whenever amendments are promulgated, language is reviewed to ensure that it is clearly written and easily understandable.

The board will amend the regulation. The board has identified at least two sections that it will consider for amendments:

18VAC110-21-80, to include a prohibition on taking the board-approved integrated pharmacy examination when the candidate fails to pass on five occasions.

18VAC110-21-80, to authorize the board to delegate to the National Association of Boards of Pharmacy the review and granting of testing accommodations for either examination based on a physical or mental impairment that substantially limits one or more major life activities, subject to the Americans with Disabilities Act (42 USC § 12101).

18VAC110-21-90 to require FPGEC prior to obtaining pharmacist license through endorsement or score transfer and delete exemption from FPGEC in 18VAC110-21-90 D. A FPGEC is the certificate given by the Foreign Pharmacy Equivalency Committee of the National Association of Boards of Pharmacy that certifies that the holder of such certificate has passed the Foreign Pharmacy Graduate Equivalency Examination and Test of English as a Foreign Language Internet-Based Test, and that a foreign pharmacist's education meets comparable requirements to pharmacists educated from United States pharmacy colleges.

After further opportunity for comment and recommendations for amendments, the board will publish a Notice of Intended Regulatory Action.

There is a continued need for the regulation since Chapter 33 of Title 54.1 (§ 54.1-3300 et seq.) of the Code of Virginia requires pharmacist to be licensed and pharmacy technicians to be registered by the board. The board has not received any of complaints or comments concerning the regulation. Practitioners do not find the regulation to be overly complex, but the board will consider whether requirements could be simplified or clarified. There is no overlap, duplication, or conflict with federal or state law or regulation. The provisions of this chapter were part of 18VAC110-20, which has been amended 40 times in the last five years. The last periodic review began in 2016 but was only finalized in 2019, so the board has continually updated regulations while protecting the safety, integrity, and efficacy of dispensing medications.

In its review, the board will consider any additional amendments that are recommended that will streamline or clarify the regulation in order to minimize the economic impact on small businesses. The Board of Pharmacy is seeking public comment on its decisions or any other topics that should be included in a Notice of Intended Regulatory Action to be adopted at the board's March meeting.

Contact Information: Caroline Juran, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4456.

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Pharmacy conducted a periodic review and a small business impact review of **18VAC110-30, Regulations for Practitioners of the Healing Arts to Sell Controlled Substances**, and determined that this regulation should be amended. The department is publishing its report of findings dated December 8, 2021, to support this decision.

All of the provisions of 18VAC110-30 were included as VR530-01-2 before the creation of the Virginia Administrative Code. The regulation has been amended 12 times since 2001 as changes in practice and statutory authority have changed. The regulation continues to be effective in protecting the public by setting rules for the security and integrity of drugs being sold by practitioners of the healing arts in their practices. Whenever amendments are promulgated, language is reviewed to ensure that it is clearly written and easily understandable.

The board will amend the regulation. While there was no public comment on this chapter resulting from the Notice of Periodic Review, the board has identified at least two sections that the board will consider for amendments:

Insertion of requirements, similar to other facilities permitted by the Board of Pharmacy, to declare hours of operation the location will be open to service the public and report changes in the hours of operation expected to last for more than one week to the board and the public at least 14 days prior to the anticipated change. Include exemptions for emergency circumstances beyond control of the owner or responsible party or expansion of hours.

18VAC110-30-80 to prohibit license and permit from being issued to private dwelling or residence.

After further opportunity for comment and recommendations for amendments, the board will publish a Notice of Intended Regulatory Action.

There is a continued need for the regulation since § 54.1-3302 of the Code of Virginia provides that a practitioner of the healing arts shall not sell or dispense controlled substances except as provided in §§ 54.1-2914 and 54.1-3304.1. Section 54.1-3302 specifically authorizes the board "authority to license and regulate the dispensing of controlled substances by practitioners of the healing arts." Such regulation can only occur through the continuation of 18VAC110-30. The board has not received any of complaints or comments concerning the regulation. Practitioners do not find the regulation to be overly complex, but the board will consider whether requirements could be simplified or clarified. There is no overlap, duplication, or conflict with federal or state law or regulation. The board has continually updated regulations while protecting the safety, integrity, and efficacy of dispensing medications. There is a current regulatory action (replacing emergency regulations) expanding the authority for nurse practitioners and physician assistants in free clinics to dispense Schedule VI medications.

In its review, the board will consider any additional amendments that are recommended that will streamline or clarify the regulation in order to minimize the economic impact on small businesses. The Board of Pharmacy is seeking public comment on its decisions or any other topics that should be included in a Notice of Intended Regulatory Action to be adopted at the board's March meeting.

Contact Information: Caroline Juran, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4456.

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

BOARD OF JUVENILE JUSTICE

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 Juvenile Justice intends to consider amending **6VAC35-180, Regulations Governing Mental Health Services Transition Plans for Incarcerated Juveniles**. The purpose of the proposed action is to conduct a comprehensive review and amendment of this existing regulatory chapter to ensure that the regulation (i) establishes requirements that are feasible for applicable staff in juvenile correctional centers, court service units, and postdispositional programs operated by juvenile detention centers; (ii) is not broader in scope than intended by the governing statute; and (iii) includes provisions aimed at successfully transitioning youth with recognized mental health, substance abuse, or other treatment needs from these facilities to the community. The Regulation Governing Mental Health Service Transition Plans for Incarcerated Juveniles (6VAC35-180) establishes a process for ensuring the provision of post-release services for juveniles committed to the Department of Juvenile Justice or detained in a postdispositional program who have been identified as having a recognized mental health, substance abuse, or other therapeutic treatment need. The department has not amended this regulation since it took effect in 2008.

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

Statutory Authority: §§ 16.1-293.1 and 66-10 of the Code of Virginia.

Public Comment Deadline: March 16, 2022.

Agency Contact: Ken Davis, Regulatory Affairs Coordinator, Department of Juvenile Justice, 600 East Main Street, 20th Floor, Richmond, VA 23219, telephone (804) 807-0486, FAX (804) 371-6490, or email kenneth.davis@djj.virginia.gov.

VA.R. Doc. No. R22-7078; Filed January 19, 2022, 1:14 p.m.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Health intends to consider amending **12VAC5-590, Waterworks Regulations**. The purpose of the proposed action is to amend the Waterworks Regulations (12VAC5-590) to comply with the amendments to § 32.1-169 of the Code of Virginia to adopt regulations establishing maximum contaminant levels (MCLs) for perfluorooctanoic acid (PFOA), perfluorooctane sulfonate (PFOS), and chromium-6, 1,4-dioxane, and such other perfluoroalkyl and polyfluoroalkyl substances (PFAS) as the board deems necessary. The board's intent is to review the occurrence and public health implications of PFOA, PFOS, chromium-6, and 1,4-dioxane in public drinking water in Virginia and to establish MCLs for each of the contaminants based on the results of the occurrence study completed in 2021.

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

Statutory Authority: §§ 32.1-12 and 32.1-170 of the Code of Virginia.

Public Comment Deadline: March 16, 2022.

Agency Contact: Tony Singh, Deputy Office Director, Office of Drinking Water, Virginia Department of Health, 109 Governor Street, 6th Floor, Richmond, VA 23219, telephone (804) 310-3927, FAX (804) 864-7521, or email tony.singh@vdh.virginia.gov.

VA.R. Doc. No. R22-7068; Filed January 14, 2022, 12:29 p.m.

TITLE 1. ADMINISTRATION

TREASURY BOARD

Proposed Regulation

Title of Regulation: **1VAC75-20. Virginia Security for Public Deposits Act Regulations (amending 1VAC75-20-10, 1VAC75-20-30, 1VAC75-20-50 through 1VAC75-20-160; repealing 1VAC75-20-20, 1VAC75-20-40).**

Statutory Authority: § 2.1-364 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: April 15, 2022.

Agency Contact: Kristin A. Reiter, Director of Operations, Department of the Treasury, James Monroe Building, 101 North 14th Street, 3rd Floor, Richmond, VA 23219, telephone (804) 225-3240, FAX (804) 225-3187, or email kristin.reiter@trs.virginia.gov.

Basis: The Treasury Board's regulatory authority for this action can be found at §§ 2.2-4405 and 2.2-2416 of the Code of Virginia.

Purpose: The regulation is essential to protect the financial stability of the Commonwealth and citizens by ensuring public deposits of the Commonwealth of Virginia and its counties, cities, towns, and other public entities are adequately protected against economic consequences of a failure of a financial institution holding public funds. Certain changes are being made to improve the types, values, and ease of liquidation of required collateral and establish minimum requirements banks must meet to become and remain qualified public depositories (QPDs) and escrow agents, with the intent of strengthening the Security for Public Deposits Act (SPDA) program and better protecting Virginia public funds.

Substance: The proposed amendments revise the statutory authority; bring the regulatory language in line with the SPDA as amended in 2009 and 2010; make certain changes to the types of securities eligible to be pledged as collateral and their valuation; establish formal eligibility criteria for banks to become and remain QPDs and escrow agents; and make other changes determined to be necessary to better administer the SPDA to accommodate the needs of Virginia's banking community and public institutions while ensuring the protection of public funds.

Issues: The primary advantage to the public is the enhanced safety of public funds deposits. The primary disadvantage would be to pooled QPDs that pledge municipal securities as collateral, as the revision would subject these securities to a haircut. This means that some QPDs may have to pledge more or different collateral. The primary advantage to public agencies and the Commonwealth is the enhanced safety of public funds deposits; a possible disadvantage would be if a QPD decided to leave the SPDA program because of the new requirements, meaning public agencies banking at the QPD would need to close their accounts at that QPD and open new accounts at a different QPD.

Department of Planning and Budget's Economic Impact Analysis:

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 14 (as amended, July 16, 2018). The analysis presented represents DPB's best estimate of these economic impacts.[1]

Summary of the Proposed Amendments to Regulation. As the result of a 2018 periodic review,[2] the Treasury Board (Board) proposes to: 1) update the regulation to reflect legislative changes that occurred in 2009 and 2010, 2) increase the amount of collateral required for municipal securities in the pooled collateralization method, 3) exclude corporate notes from eligible collateral types in the pooled method, 4) add a requirement for public depositors to periodically verify their account balances through the Department of Treasury's (Treasury) website, and 5) formalize in the regulation minimum qualifications to become a Qualified Public Depository (QPD) and an escrow agent and update compliance requirements for continued eligibility.

Background. The Virginia Security for Public Deposits Act (Act), § 2.2-4400 et seq. of the Code of Virginia, establishes a single body of law applicable to the pledge of collateral for public deposits in financial institutions. Consequently, the Treasury requires collateral that QPDs must pledge in order to secure public deposit balances in excess of the insurance coverage provided by the Federal Deposit Insurance Corporation. The purpose of collateral is to safeguard the financial stability of the Commonwealth by ensuring that public deposits of the Commonwealth and its counties, cities, towns, and other public entities are adequately protected against the economic consequences of a failure of a financial institution holding public funds.

According to the Treasury, significant changes were made to the Act in 2009 and 2010. These changes include Chapter 64 of the 2009 Acts of Assembly and Chapters 640 and 674 (identical) of the 2010 Acts of Assembly.[3] However, the regulation has not been amended to reflect these changes. This

action largely involves updating the regulatory text to reflect the legislative changes that took place in practice more than a decade ago. However, several proposed changes would depart from current practices as discussed below.

Estimated Benefits and Costs. The Treasury may require that certain securities (those that are difficult-to-value, subject to rapid declines in value, or otherwise represent a risk of decrease in value) be valued for collateral purposes at a rate that is less than 100% of their market value. This valuation approach is intended to minimize the risk that any securities used as collateral will diminish in value and thus no longer serve as adequate protection against financial loss. The percentage difference between an asset's market value and the amount that can be used as collateral is commonly referred to as the "haircut" in the context of this regulation. For example, if the Treasury counts only 80% of an asset's value as collateral, that translates to a 20% haircut on that security. Currently, there is a 20% haircut on mortgage-backed pass-through securities pledged as collateral by both dedicated and pooled QPDs,[4] and a 10% and a 20% haircut on Virginia municipal securities and non-Virginia municipal securities respectively that are pledged by dedicated QPDs.

The Board proposes to introduce a 10% and a 20% haircut respectively for Virginia based and non-Virginia based municipal securities pledged by pooled QPDs. According to the Treasury, this change would provide consistency with the dedicated method and better protect public deposits at pooled QPDs by requiring them to either increase their pledged collateral, or pledge different security types that are more easily valued and liquidated in the event of a QPD failure. Using balances as of June 30, 2021, three pooled QPDs would either need to pledge approximately $45 million in additional securities combined (individually $35 million, $8 million, and $2 million), or substitute other security types with lower or no haircuts for municipal securities, in order to maintain sufficient collateral and improve protection of public funds.[5]

Similarly, the Board proposes to exclude corporate notes from eligible collateral types for pooled QPDs in order to achieve consistency with the collateral types accepted for dedicated QPDs. A corporate note is a short term loan agreement between a lending source and a company and as such is riskier relative to some other types of collateral. According to the Treasury, there is currently only one QPD that pledges two corporate notes with a combined market value of $1.9 million. However, that bank is currently over-collateralized by $13.6 million and would still be over-collateralized by $11.7 million without the corporate notes under this change. Thus, this change would not have an immediate impact. In the long-term, if the bank wants to maintain its deposit capacity at the current level it would have to replace its corporate notes with other types of collateral. This change would provide consistency between the pooled and dedicated methods as well as reduce public funds' exposure to risk in the long-term.

The Board also proposes to add a requirement for public depositors to verify their fund account balances after the end of each quarter, using the search feature presented on the Treasury's website for that purpose, to ensure their accounts are being properly reported to the Board by the QPDs. This requirement would help reveal any public fund accounts that were not reported or reported inaccurately so corrections can be made. According to the Treasury, many public depositors are already doing this voluntarily. Thus, the administrative cost to QPDs is expected to be modest.

Finally, the Board proposes to formalize in the regulation minimum qualifications to become a QPD and an escrow agent as well as update compliance requirements for continued eligibility. The Board would also make numerous changes to conform the regulatory language to the Code of Virginia. According to the Treasury, these changes are primarily housekeeping measures to reflect in the regulation the current standards that are already followed in practice. Thus, no significant economic impact is expected from these changes other than improving the accuracy of the regulatory text.

Businesses and Other Entities Affected. This regulation applies to 83 banks that hold public deposits. Of these, 57 are collateralized using the pooled method and 26 using the dedicated method.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.[6] An 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. As noted above, three pooled QPDs would be affected by the increased haircut requirements for municipal securities and would therefore be required to pledge additional collateral or pledge different collateral with lower or no haircuts. One pooled QPD would be affected by the exclusion of corporate notes from use as collateral and would therefore be required to pledge additional collateral if it wishes to maintain its current deposit capacity. Thus, an adverse impact is indicated on the four banks.

Small Businesses[7] Affected.[8] The proposed amendments appear to adversely affect banks that are small businesses.

Types and Estimated Number of Small Businesses Affected. The Treasury reports that two of the three banks affected by the increased haircut to municipal securities appear to be small businesses (employ fewer than 500 full-time employees) and thus an adverse impact on small businesses is indicated. More generally, of the current total of 57 pooled QPDs, approximately 20 to 25 appear to fit the criteria for a small business and could potentially be impacted at some time in the future.

Costs and Other Effects. The proposed amendments would require affected small banks to increase the amount of collateral provided to continue as QPDs or pledge different collateral with lower or no haircuts. Thus, an adverse economic impact on them is indicated.

Alternative Method that Minimizes Adverse Impact. There does not appear to be a clear alternative method that both reduce adverse impact and meet the intended policy goals. The affected banks could potentially decide to no longer hold public funds if the costs of doing so because of this regulation exceed the benefits. The Treasury notes, however, that this outcome would be unlikely.

Localities[9] Affected.[10] The proposed amendments primarily affect banks that hold deposits of public entities including towns, cities, and counties. However, the proposed changes do not appear to introduce costs for local governments and no localities appear to be disproportionately affected.

Projected Impact on Employment. The proposed amendments do not appear to directly affect total employment.

Effects on the Use and Value of Private Property. Having to provide additional collateral or pledge different collateral with lower or no haircuts may negatively affect the profitability and hence the asset values of banks using the pooled method. Otherwise, the proposed amendments do not appear to affect the use and value of private property or the real estate development costs.

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[1]Section 2.2-4007.04 of the Code of Virginia requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

[2]https://townhall.virginia.gov/L/ViewPReview.cfm?PRid=1757

[3]https://leg1.state.va.us/cgi-bin/legp504.exe?ses=091&typ=bil&val=ch64

https://leg1.state.va.us/cgi-bin/legp504.exe?ses=101&typ=bil&val=ch640

https://leg1.state.va.us/cgi-bin/legp504.exe?ses=101&typ=bil&val=ch644

[4]Under the dedicated method, a depository collateralizes deposits made by a public depositor individually without contingent liability. Under the pooling method, however, the depositories secure all of their public deposits collectively by establishing a pool of collateral with contingent liability.

[5]Using balances three months earlier, March 31, 2021, there was a fourth QPD under-collateralized by $71,826.

[6]Pursuant to Code § 2.2-4007.04 D: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

[7]Pursuant to § 2.2-4007.04a, 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."

[8]If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

[9]"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.

[10]Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

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

Summary:

The proposed amendments (i) bring the regulatory language in line with the Security for Public Deposits Act (SPDA); (ii) make certain changes to the types of securities eligible to be pledged as collateral and their valuation; (iii) establish formal eligibility criteria for banks to become and remain qualified public depositories and escrow agents; and (iv) make other changes determined to be necessary to better administer the regulation to accommodate the needs of Virginia's banking community and public institutions while ensuring the protection of public funds.

1VAC75-20-10. General.

A. The definitions provided by ~~§ 2.1-360~~ § 2.2-4401 of the Code of Virginia shall be used throughout this chapter unless the context requires otherwise.

B. The Treasury Board has designated the State Treasurer to be the chief administrative officer with respect to the provisions of the Virginia Security for Public Deposits Act (the ~~"~~Act~~"~~) (~~§ 2.1-359~~ § 2.2-4400 et seq. of the Code of Virginia) and the State Treasurer reserves the right to designate a representative to act on his behalf.

C. The primary responsibility for compliance with the Act rests upon the financial institutions that accept and hold public deposits. If the deposit is a "public deposit," the deposit must be secured pursuant to the Act. If a depositor or a depository is unable to ascertain whether a particular deposit is a "public deposit" for purposes of the Act, ~~he~~ they should obtain ~~the essential details~~ information about the purpose of the account, the custodian of the account, and under what authority the account was established and communicate with the State Treasurer's office ~~by the use of a notice of election form~~. A final determination will be made by the State Treasurer's office with the assistance of the Office of the Attorney General, if needed.

1VAC75-20-20. ~~Effective date.~~ (Repealed.)

~~This chapter, as amended, shall be effective on and after November 18, 1993.~~

1VAC75-20-30. ~~Required collateral for banks~~ Collateral requirements for qualified public depositories.

~~The required collateral of a national or state chartered bank to secure public deposits shall be determined according to the following applicable criteria and shall consist of securities qualifying as eligible collateral pursuant to these regulations which have a value for collateralization purposes not less than:~~

~~1. Fifty percent. Fifty percent of the actual public deposits held at the close of business on the last banking day of the immediately preceding month, or 50% of the average balance of public deposits for the immediately preceding month, whichever is greater;~~

~~2. Seventy-five percent.~~ A. The Treasury Board shall establish the required collateral that qualified public depositories must pledge to secure public deposit balances in excess of insurance coverage provided by the Federal Deposit Insurance Corporation based on resolutions and guidelines approved by the Treasury Board. These collateral requirements shall be made available for public access. Public depositors and qualified public depositories will be notified of changes to the requirements in advance of their effective dates.

B. In the event a ~~bank's~~ depository's average daily public deposits for the immediately preceding month exceed one-fifth of its average daily total deposits for that month, the required collateral will be ~~75% of the actual public deposits held at the close of business on the last banking day of the immediately preceding month, or 75% of the average balance of public deposits for the immediately preceding month, whichever is greater; 3. One hundred percent.~~ in accordance with the Treasury Board's established collateral requirements with the added stipulation that no public deposit be collateralized at less than 75% of the actual public deposits held at the close of business on the last day of the immediately preceding month, or no public deposit be collateralized at less than 75% of the average balance of public deposits for the immediately preceding month, whichever is greater.

C. In the event a ~~bank's~~ depository's average daily public deposits for the immediately preceding month exceed one-fifth of its average daily total deposits and the ~~bank~~ depository has not been actively engaged in the commercial banking business for at least three years, or in the event that a ~~bank's~~ depository's average daily public deposits for the immediately preceding month exceed one-third of its average daily total deposits, or in the event that a ~~bank~~ depository has not been actively engaged in the commercial banking business for at least one year, the required collateral will be no less than 100% of the actual public deposits held at the close of business on the last ~~banking~~ day of the immediately preceding month, or no less than 100% of the average balance of public deposits for the immediately preceding month, whichever is greater.

D. In the event a ~~bank~~ depository has violated the ~~pledging statutes and regulations~~ Security for Public Deposits Act, this chapter, or for other reasons deemed ~~sufficient~~ prudent by the Treasury Board, such as the deteriorating financial condition of the ~~bank~~ depository or ~~the reasons referred to in 1VAC75-20-130~~ the failure to meet compliance requirements established by the Treasury Board pursuant to 1VAC75-20-130, the Treasury Board may increase the ~~bank's ratio of required collateral to 100% of its actual public deposits~~ depository's collateral requirement.

1VAC75-20-40. ~~Required collateral for savings institutions.~~ (Repealed.)

~~The required collateral of a savings institution to secure public deposits shall consist of securities qualifying as eligible collateral pursuant to these regulations which have a value, for collateralization purposes, not less than a sum equal to 100% of the average daily balance of public deposits held by such savings institution for the immediately preceding month, but shall not be less than 100% of the public deposits held by such savings institution at the close of business on the last banking day of the immediately preceding month.~~

~~In the event that a savings institution has violated the pledging statutes and regulations, or for other reasons deemed sufficient, such as the financial condition of the savings institution or the reasons referred to in 1VAC75-20-130, the Treasury Board may increase such savings institution's ratio of required collateral above 100% of its actual public deposits.~~

1VAC75-20-50. Average daily balance computation.

A. The average daily balance for any month shall be derived by dividing the sum of the daily balances of any item being computed by the number of calendar days in the month.

B. In computing the amount of public deposits and the average balance of public deposits to be collateralized during any month, there shall be excluded the amount of each deposit which is insured by ~~federal deposit insurance~~ the Federal Deposit Insurance Corporation.

1VAC75-20-60. Eligible collateral.

A. Securities eligible for collateral are limited to:

1. Obligations of the Commonwealth. Bonds, notes and other evidences of indebtedness of the Commonwealth of Virginia, and securities unconditionally guaranteed as to the payment of principal and interest by the Commonwealth of Virginia.

2. Obligations of the United States. Bonds, notes and other obligations of the United States, and securities unconditionally guaranteed as to the payment of principal and interest by the United States, or any agency thereof.

3. Obligations of Virginia counties, cities, ~~etc.~~ and other public bodies. Bonds, notes and other evidences of indebtedness of any county, city, town, district, authority or other public body of the Commonwealth ~~of Virginia~~ upon which there is no default provided that such bonds, notes and

other evidences of indebtedness of any county, city, town, district, authority or other public body are either direct legal obligations of, or unconditionally guaranteed as to the payment of principal and interest by, the county, city, town, district, authority or other public body in question and revenue bonds issued by agencies or authorities of the ~~State of Virginia~~ Commonwealth or its political subdivisions upon which there is no default and which are rated ~~BBB~~ Baa2 or better by Moody's Investors Service, Inc. or BBB or better by Fitch Ratings, Inc. or Standard & Poor's ~~Corporation~~ Financial Services LLC.

4. ~~Obligations of the International Bank for Reconstruction and Development, African Development Bank, and Asian Development Bank.~~ Bonds and other obligations issued, guaranteed, or assumed by the International Bank for Reconstruction and Development by the African Development Bank, or by the Asian Development Bank.

5. Obligations partially insured or guaranteed by any U.S. Government Agency.

6. Obligations (including revenue bonds) of states, other than Virginia, and their municipalities or political subdivisions rated ~~A~~ A2 or better by Moody's Investors Service, Inc. or A or better by Fitch Ratings, Inc. or Standard & Poor's ~~Corporation~~ Financial Services LLC.

~~7. Corporate Notes rated AA by both Moody's Investors Services, Inc. and Standard & Poor's Corporation with a maximum maturity of 10 years.~~

~~8. Any additional securities approved by the Treasury Board pursuant to § 2.1-364(d) of the Code of Virginia for which written notification to qualified public depositories from the State Treasurer will be provided.~~

7. Any additional securities approved by the Treasury Board pursuant to § 2.2-4405.4 of the Code of Virginia.

B. Federal Home Loan Bank letters of credit issued in accordance with the Security for Public Deposits Act are eligible as collateral.

C. No security which is in default as to principal or interest shall be acceptable as collateral.

~~C.~~ D. No qualified public depository shall utilize securities issued by itself, its holding company, or any affiliate for purposes of collateralizing its public deposits.

~~D.~~ E. Securities excluded by action of the Treasury Board pursuant to ~~§ 2.1-364(d)~~ § 2.2-4405.4 of the Code of Virginia shall not be acceptable. ~~Written notification of securities excluded will be provided to qualified public depositories by the State Treasurer.~~

1VAC75-20-70. Valuation of collateral.

A. Each qualified public depository shall value its securities for reporting purposes at current market value as of the close of business on the last ~~banking~~ day of the immediately preceding month. Weekly, qualified public depositories that have elected the dedicated method of collateralization must additionally report current market values as of the close of business on Friday of the immediately preceding week. At all times the current market value of collateral must be equal to or greater than a depository's required collateral as defined in 1VAC75-20-30~~, 1VAC75-20-40~~ and 1VAC75-20-80 of this chapter. Current market value is defined as the market value of a security priced on a same day basis or no older than one business day. Business day is defined as ~~the close of a commercial business at 5 p.m. The State Treasurer, upon written notice to any or all qualified public depositories and eligible escrow agents, may require as deemed necessary for reporting purposes~~ any day other than a Saturday, Sunday, a legal holiday, or a day in which banking institutions are authorized or required by law or other governmental action to be closed.

B. The Treasury Board may require that certain securities that are difficult-to-value or subject to rapid declines in value or otherwise represent a risk of decrease in value be valued at a rate less than 100% of their market value. Accordingly, this shall apply to all of the following security types: mortgage-backed securities (MBS) and collateralized mortgage obligations (CMO) issued by United States agencies or government-sponsored enterprises (GSE) shall be valued at 80% of their market value; obligations (bonds, notes and other evidences of indebtedness) of the Commonwealth of Virginia and any Virginia county, city, town, authority, or other public body shall be valued at 90% of their market value; and obligations (bonds, notes and other evidences of indebtedness) of other states and their municipalities and political subdivisions shall be valued at 80% of their market value. Qualified public depositories shall have six months from the date these regulations are effective to adjust their pledged collateral, if necessary.

1VAC75-20-80. Deposit of collateral.

A. No qualified public depository shall accept or retain any public deposit which is required to be secured unless it has previously executed a "Public Deposit Security Agreement," approved by the depository's Board of Directors or Loan Committee, with such approval reflected in the minutes of said board or committee. The depository shall maintain the security agreement as an official record continuously from the time of its execution. The depository must also have deposited eligible collateral, as defined in these regulations, equal to its required collateral, determined as herein provided, with an eligible escrow agent approved by the State Treasurer. Each depository is responsible for providing a written notification and executing new agreements upon its name change.

B. Whether or not a qualified public depository has eligible collateral deposited as heretofore provided at the time it receives a public deposit, if such deposit would result in an

increase in the qualified public depository's required collateral computed as of the day on which the deposit is received, such qualified public depository shall immediately deposit sufficient securities to increase its collateral to an amount equal to that determined pursuant to 1VAC75-20-30 ~~or 1VAC75-20-40, whichever is applicable,~~ utilizing the qualified public depository's actual public deposits held at the close of business on the ~~banking~~ day such deposit is received ~~in lieu of those held at the close of business on the last banking day in the immediately preceding month. Banking day is defined as the financial institution's close of business at 2 p.m.~~ Written notice of deposit of collateral shall be submitted to the ~~State Treasurer~~ Treasury Board.

~~At the time of the deposit of registered securities, the qualified public depository owning the securities shall attach appropriate bond power forms as required to allow the State Treasurer to transfer ownership of such registered securities for the purpose of satisfying the qualified public depository's liabilities under the Act in the event the collateral needs to be liquidated.~~

1VAC75-20-90. Substitution of eligible collateral.

A. A substitution of eligible collateral may be made by the qualified public depository at any time provided that the current market value of the collateral substituted is equal to or greater than the current market value of the collateral withdrawn.

B. At the time of making a collateral substitution, the qualified public depository shall prepare a request for the substitution upon a form approved by the ~~State Treasurer~~ Treasury Board and ~~deliver the original~~ provide it to the escrow agent and ~~a copy~~ to the ~~State Treasurer~~ Treasury Board. The escrow agent shall not allow a collateral substitution unless the current market value of the collateral to be substituted is equal to or greater than the current market value of the collateral to be withdrawn. Current market value for the escrow agent in regards to a substitution is the market value of a security priced on a same day basis or no older than one business day prior to the date of the substitution. The escrow agent shall calculate adjustments to the current market value of collateral that the ~~State Treasurer~~ Treasury Board has identified as difficult-to-value or subject to rapid declines in value or otherwise represents a risk of decrease in value at the time of substitution to determine if the market value is equal to or greater than the value of the collateral to be withdrawn in accordance with 1VAC75-20-70.

C. In the event the current market value of the substituted collateral is not equal to or greater than the value of the collateral to be withdrawn as determined in accordance with 1VAC75-20-70, the qualified public depository shall obtain written approval of the ~~State Treasurer~~ Treasury Board to substitute the collateral.

1VAC75-20-100. Withdrawal of collateral.

A qualified public depository shall not be permitted to withdraw collateral previously pledged without the prior written approval of the ~~State Treasurer~~ Treasury Board. The ~~State Treasurer~~ Treasury Board may grant such approval only if the qualified public depository certifies in writing that such withdrawal will not reduce the current market value of its pledged collateral below its required collateral as defined by ~~these regulations~~ this chapter, and this certification is substantiated by a statement reporting the qualified public depository's current public deposits, which indicates that after withdrawal such deposits will continue to be secured to the full extent required by the law and regulations. Current public deposits ~~are defined as~~ for this purpose are the amount of public deposits held at the time of withdrawal of collateral. ~~If a qualified public depository cannot determine the amount of current public deposits when collateral is to be withdrawn, the depository shall request an exception to this provision from the State Treasurer stating why the depository cannot comply and how it intends to determine the current public deposit balance under this provision. The request for exception must be in writing and formally approved by the State Treasurer.~~ The escrow agent shall not permit the qualified public depository to withdraw collateral without the prior written approval of the ~~State Treasurer~~ Treasury Board.

1VAC75-20-110. Reports by qualified public depositories.

A. Within 10 ~~business~~ calendar days after the end of ~~every~~ the month, each qualified public depository shall submit to the ~~State Treasurer a written report, under oath, signed by an authorized officer of the financial institution indicating~~ Treasury Board an electronic report of such data required by the Treasury Board, certified as to its accuracy by an authorized official of the qualified public depository. The report shall include the total amount of public deposits held by it at the close of business on the last ~~banking~~ day in the immediately preceding month; the average daily balance for such month of all public deposits held by it during the immediately preceding month; the average daily balance of all bank deposits for the immediately preceding month; the total required collateral; the total par value and the total current market value of collateral ~~for~~ at the close of business on the last day in the immediately preceding month; and the average daily collateral balance. Included with this report shall be a detailed schedule of pledged collateral to include~~, but not limited to,~~ the security description, coupon rate, CUSIP (Committee on Uniform Securities Identification Procedures) number, maturity date, debt rating by Moody's Investors Service~~s~~, Inc., Fitch Ratings, Inc. or Standard & Poor's ~~Corporation~~ Financial Services LLC, par value amount, book or principal value amount, and current market value amount, determined pursuant to 1VAC75-20-70.

B. Qualified public depositories selecting the dedicated method to collateralize their public deposit balances shall also

submit reports similar to those outlined in subsection A of this section each week for the immediately preceding week.

C. At the request of ~~any~~ a public depositor for which ~~it~~ a qualified public depository holds deposits, within 10 ~~business~~ calendar days after the end of ~~any~~ a month, the qualified public depository shall submit a statement indicating the total public deposits in each account to the credit of such depositor on the last banking day in the immediately preceding month and the total amount of all public deposits held by it upon such date.

D. Within the first 10 ~~business~~ calendar days of each ~~calendar~~ quarter, ~~every~~ qualified public ~~depository~~ depositories shall submit to the ~~State Treasurer a~~ Treasury Board an electronic report ~~indicating the account number, type of account, amount of federal deposit insurance applied, total amount on deposit and total amount on deposit to be secured by its pledged collateral or a combined listing containing the same information as an attachment to the "Public Depository Monthly Report" as of the close of business on the last banking day of the calendar quarter being reported. At the same time every qualified public depository shall submit to each public depositor for whom it holds public deposits, a report indicating the account number, type of account, and total account amount to be secured by its pledged collateral~~ by public deposit account to include the account number, type of account (demand or savings), full name of account, name of public entity, custodian name and title, federal tax identification number, amount on deposit in the account, amount on deposit secured by federal deposit insurance, and amount of deposit secured by pledged collateral. Qualified public depositories shall also within the first 10 calendar days of each quarter provide to each public depositor for whom it holds public deposits, a schedule detailing the public deposit accounts reported to the Treasury Board for that depositor, indicating the account name and number, type of account, amount on deposit secured by federal deposit insurance, and total account amount to be secured by its pledged collateral.

~~With the submission of the "Public Depository Monthly Report" to the State Treasurer for the month ending on June 30,~~ E. By the 10th calendar day of July, qualified public depositories shall ~~attach~~ submit an annual certification from an independent certified public accountant or their internal audit department, attesting to the accuracy of the public deposit balances reported to the ~~State Treasurer~~ Treasury Board during their previous fiscal year in accordance with the instructions issued by the Treasury Board.

1VAC75-20-120. Reports by State Treasurer.

The State Treasurer shall ~~report to the auditors of any public depositor, upon their written request, the status of any qualified public depository's collateral account and its compliance with the reporting requirements of the Act. The State Treasurer shall notify any public depositor that maintains accounts with any bank or savings institution of any irregularities, including, but not limited to, the late filing of the required monthly reports or deficiencies in the qualified public depository's eligible collateral at any time.~~ make available to public depositors and their auditors reports of compliance irregularities of public depositories including undercollateralization and repeated late filings of required compliance reports. The Treasury Board shall be notified of ~~the sending of any reports of irregularities required herein no later than at its next~~ compliance irregularities during the board's regularly scheduled ~~meeting~~ meetings.

1VAC75-20-130. ~~Compliance requirements~~ Eligibility criteria and compliance requirements for qualified public depositories.

Pursuant to the power granted under ~~§ 2.1-364~~ § 2.2-4405 of the Code of Virginia, the Treasury Board may establish criteria ~~for determining the continued eligibility of public depositories to accept public deposits. By formal request, any depository may receive a copy of the approved policy enacted by the Treasury Board. The State Treasurer shall notify public depositors of any policy irregularity regarding their depository~~ to become a qualified public depository and compliance requirements for continued eligibility.

1. To become a qualified public depository, the minimum qualifications are that a bank:

a. Meet the requirements of a qualified public depository as defined in § 2.2-4401 of the Code of Virginia.

b. Have an average or above rating from the Treasury Board's designated rating service for the most recent eight calendar quarters.

c. Cannot be under a formal federal or state bank regulatory enforcement action that would impair its ability to serve as a qualified public depository, to be determined on a case by case basis. Banks will be required to disclose to the Treasury Board any such formal enforcement actions currently in force.

2. For continued eligibility, compliance requirements are:

a. Sufficient collateralization, pooled method. If a qualified public depository using the pooled method of collateralization is undercollateralized three months in a rolling 12-month period, the Treasury Board may take action, including the following, as it deems appropriate:

(1) Increase the depository's collateral requirement.

(2) Prohibit the depository from opening any new public deposit accounts.

(3) Restrict the types of securities the depository may pledge as collateral.

b. Sufficient collateralization, dedicated method. If a qualified public depository using the dedicated method of collateralization is undercollateralized for weekly reporting, it will be penalized accordingly.

c. Timely monitoring and collateralization of public deposit balances. Failing to monitor public deposit

balances daily and pledge additional collateral when necessary may result in the Treasury Board taking action, including the actions outlined in subdivisions 2 a (1), 2 a (2), and 2 a (3) of this section.

d. Timely reporting. If a qualified public depository reports late or otherwise fails to report when required, the Treasury Board may take action as it deems necessary.

e. Rating from Treasury Board's designated rating service.

(1) Pooled method: If the depository's rating should fall below average, the collateral requirement will increase to at least 100% of public deposits, net of FDIC coverage, until the rating is again average or above for two consecutive quarters. If the depository's rating should fall into the rating service's lowest rating tier, the Treasury Board may restrict the types of securities the depository may pledge as eligible collateral, or require securities be valued at less than 100%, or both.

(2) Dedicated method: If the depository's rating should fall from one category to another, the collateral requirement will be increased accordingly.

1VAC75-20-140. ~~Criteria for the selection of~~ Eligibility criteria and compliance requirements for escrow agents.

~~Pursuant to the powers granted to the Treasury Board by § 2.1-362 of the Code of Virginia, the State Treasurer has determined that the selection of an escrow agent or agents is consistent with administration of the Act and the State Treasurer shall define all escrow agent criteria under an agreement labeled "Public Deposit Security Agreement" to be signed and sealed by an authorized officer for the escrow agent, depository and State Treasurer.~~ All escrow agent requirements shall be outlined under a "Master Custodial Agreement" to be signed by an authorized officer for the escrow agent and the State Treasurer, acting on behalf of the Treasury Board. A depository may have no more than one escrow agreement for Virginia public deposits in effect at any given time period. ~~Each depository and~~ The escrow agent is responsible for providing a written notification and executing new agreements upon ~~their~~ its name change. ~~Every qualified public depository shall comply with this section within 60 days of the effective date of this chapter.~~ An escrow agent selected by a qualified public depository for the purpose of holding collateral pledged to the Treasury Board under the Virginia Security for Public Deposits Act (the Act) must meet the following requirements:

~~1. The escrow agent must sign a "Public Deposit Security Agreement," which shall also be signed by the depository and the State Treasurer, acting on behalf of the Treasury Board.~~

~~2. The escrow agent shall hold in a separate account for the Treasury Board eligible collateral pledged under the provisions of the Act and, if acting as escrow for more than one public depository, the collateral must be accounted for in a manner that will allow separate reporting by account and public depository. The escrow shall hold the eligible collateral in a section of the institution which is separate from daily activities performed by that institution such as its trust department and be held accountable for the regulatory requirements of such department.~~

~~3. The escrow agent shall be an independent entity in the performance of its duties on behalf of the Treasury Board. The escrow agent may not be the depository itself, its holding company, or any affiliate of the depository.~~

~~4. The escrow agent must be able to ascertain whether pledged collateral is eligible in accordance with 1VAC75-20-60. The escrow agent shall distribute all interest, dividends, or other income for the pledged securities to the depository and shall be payable thereto provided the escrow agent has not received written notice from the Treasury Board that the depository is in a condition of "default or insolvency" as defined in the Act, in which event the escrow agent shall hold such income subject to the order of the Treasury Board.~~

~~5. The escrow agent shall allow the Treasury Board to examine pledged securities held as collateral at any time, upon 24-hour notice, during the regular business hours of the escrow agent without cost to the Treasury Board. Upon notification from the Treasury Board of the "default or insolvency" of a depository, the escrow agent shall deliver the pledged securities to the Treasury Board for disposition as provided in the Act, and take a receipt thereof, which shall relieve the escrow agent from any further liability to the depository.~~

~~6. The escrow agent shall price securities held as collateral at a current market value no older than one business day from the date of a substitution of collateral and from the close of business on the last banking day of the month for monthly reporting purposes.~~

~~7. The escrow agent shall adhere to the reporting requirements as detailed in the "Public Deposit Security Agreement."~~

~~8. The escrow agent shall allow substitutions in accordance with 1VAC75-20-90.~~

~~9. The escrow agent shall ensure that withdrawals of collateral will be in accordance with 1VAC75-20-100.~~

1. To become an escrow agent, the minimum requirements are that an entity:

a. Be a bank or trust company organized under federal law, Virginia law, or under the laws of another state.

b. Be located in Virginia, meaning it has a main office or branch office in the Commonwealth where deposits are accepted, checks are paid, and money is lent, or where similar services required by an escrow agent under the SPDA Master Custodial Agreement are offered. Existing escrow agents not located in Virginia are grandfathered in.

c. Have an Average or above rating from the Treasury Board's designated rating service for the most recent eight calendar quarters.

d. Cannot be under a formal federal or state bank regulatory enforcement action that would impair its ability to serve as an escrow agent, to be determined on a case by case basis. Banks will be required to disclose to the Treasury Board any such formal enforcement actions currently in force.

e. Be an independent entity in the performance of its duties on behalf of the Treasury Board. The escrow agent may not be the depository itself, its holding company, or any affiliate of the depository.

2. For continued eligibility, compliance requirements are:

a. The escrow agent shall hold in a separate account for the Treasury Board eligible collateral pledged under the provisions of the Act and, if acting as escrow for more than one public depository, a separate account must be opened for each depository. The escrow shall hold the eligible collateral in a section of the institution which is separate from daily activities performed by that institution such as its trust department and be held accountable for the regulatory requirements of such department.

b. The escrow agent must be able to ascertain whether pledged collateral is eligible collateral in accordance with 1VAC75- 20-60.The escrow agent shall distribute all interest, dividends, or other income for the pledged securities to the depository and such income shall be payable thereto provided the escrow agent has not received written notice from the Treasury Board that the depository is in a condition of "default or insolvency" as defined in the Act, in which event the escrow agent shall hold such income subject to the order of the Treasury Board.

c. The escrow agent shall price securities held as collateral at a current market value no older than one business day from the date of a substitution of collateral, as of the close of business on the last day of the month for monthly reporting purposes, and as of the close of business Friday for weekly reporting purposes for depositories using the dedicated method.

d. The escrow agent shall adhere to the reporting requirements as detailed in the "Master Custodial Agreement" and the "Public Deposit Security Agreement."

e. The escrow agent shall allow substitutions in accordance with 1VAC75-20-90.

f. The escrow agent shall ensure that withdrawals of collateral will be in accordance with 1VAC75-20-100.

The State Treasurer, acting on behalf of the Treasury Board, will determine that an escrow agent ~~can meet~~ is eligible based upon the criteria established under this section prior to executing the "Master Custodial Agreement" and the "Public Deposit Security Agreement." The State Treasurer may request information from an escrow agent to substantiate its ability to meet the aforementioned criteria.

In the event an escrow agent violates the requirements of the "Master Custodial Agreement" or the "Public Deposit Security Agreement," the State Treasurer shall notify the escrow agent and applicable public depositories of the violation and require the escrow agent to comply with all terms of the ~~agreement~~ agreements. The escrow agent must provide the State Treasurer and public depositories a written statement, within 30 days of the notification, outlining how and when the violations will be remedied. This statement must be acceptable to the State Treasurer, who will monitor adherence to it. If the escrow agent fails to provide a statement or adhere to ~~it or violates the agreement three times within a two year period, the State Treasurer will classify such an escrow agent as "disqualified" as an escrow agent under the provisions of the Act and notify all parties~~ its remediation plan or continues to violate the agreements, the Treasury Board may take disciplinary action, up to and including termination of the "Master Custodial Agreement". Qualified public depositories shall ~~have 90 days to~~ select a new escrow agent after such a disqualification in accordance with Treasury Board instructions.

~~In the event an escrow agent is classified as "disqualified," the term of suspension shall be for one year from the date of disqualification. After "disqualification," an escrow agent must request from the Treasury Board approval to be reinstated as an eligible escrow agent.~~

After "disqualification," an escrow agent may request approval from the Treasury Board to be reinstated as an eligible escrow agent if correction of prior deficiencies is demonstrated.

1VAC75-20-150. Suspension of authority to receive public deposits.

For failure to comply with ~~or the regulations~~ the Virginia Security for Public Deposits Act (the Act) or this chapter, the Treasury Board may rescind the authority of a qualified public depository to ~~receive further public deposits~~ open new public deposit accounts, or accept new deposits into existing public deposit accounts in accordance with ~~1VAC75- 20-130~~ 1VAC75-20-130. A depository that continues to hold public deposits after its authority to do so has been rescinded remains fully subject to the provisions of the Act. This includes, without limitation, continuing to meet collateralization and reporting requirements and acting as a qualified public depository for purposes of §§ ~~2.1-363~~ 2.2-4403 and ~~2.1-363.1~~ 2.2-4404 of the Code of Virginia.

1VAC75-20-160. Exception ~~reports~~ reportings by public depositors.

Upon receipt of the quarterly public depositor report, as ~~stated~~ outlined in 1VAC75-20-110, public depositors shall notify the

State Treasurer of any unresolved discrepancy between the information provided and the public depositors' records. Additionally, public depositors shall verify and confirm to Treasury their account balances as reported by the "Public Fund Accounts" search feature on the Department of the Treasury's website after the end of each quarter to ensure their public funds accounts are being properly reported to the Treasury Board by their qualified public depositories.

NOTICE: The following forms used in administering the regulation have been filed by the agency. Amended or added forms are reflected in the listing and are published following the listing. Online users of this issue of the Virginia Register of Regulations may also click on the name to access a form. The forms are also available from the agency contact or may be viewed at the Office of Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

FORMS (1VAC75-20)

~~Public Deposit Security Agreement (and relevant exhibits), # 1001.~~

~~Notice of Election to Require Security for Public Deposit, # 1004.~~

Master Custodial Agreement (filed 1/2022)

Public Deposit Security Agreement (filed 1/2022)

VA.R. Doc. No. R21-6701; Filed January 13, 2022, 2:03 p.m.

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TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

Final Regulation

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

Title of Regulation: **4VAC20-950. Pertaining to Black Sea Bass (amending 4VAC20-950-20, 4VAC20-950-45).**

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

Effective Date: January 27, 2022.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 380 Fenwick Road, Fort Monroe, VA 23551, telephone (757) 247-2248, or email jennifer.farmer@mrc.virginia.gov.

Summary:

The amendments remove the February recreational black sea bass season.

4VAC20-950-20. Definitions.

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

"Annual quota" means Virginia's 15.88% share of the annual coastwide commercial black sea bass quota managed by the Atlantic States Marine Fisheries Commission.

"Black sea bass" means any fish of the species Centropristis striata.

"Land" or "landing" means to (i) enter port with finfish, shellfish, crustaceans, or other marine seafood on board any boat or vessel; (ii) begin offloading finfish, shellfish, crustaceans, or other marine seafood; or (iii) offload finfish, shellfish, crustaceans, or other marine seafood.

"Recreational vessel" means any vessel, kayak, charter vessel, or headboat fishing recreationally.

"Snout" means the most forward projection from a fish's head that includes the upper and lower jaw.

"Total length" means the length of a fish measured from the most forward projection of the snout, with the mouth closed, to the tip of the longer lobe of the tail (caudal) fin, excluding the caudal fin filament, measured with the tail compressed along the midline, using a straight-line measure, not measured over the curve of the body.

~~"Virginia Saltwater Fisherman's Journal" means the online web-based resource provided by the Marine Resources Commission to report recreational harvest of seafood at https://www.vasaltwaterjournal.com.~~

4VAC20-950-45. Recreational possession limits and seasons.

A. It shall be unlawful for any person fishing with hook-and-line, rod and reel, spear, gig, or other recreational gear to possess more than 15 black sea bass. When fishing from a recreational vessel where the entire catch is held in a common hold or container, the possession limit shall be for that vessel and shall be equal to the number of persons on board legally licensed to fish, multiplied by 15. The captain or operator of the vessel shall be responsible for that vessel possession limit. Any black sea bass taken after the possession limit has been reached shall be returned to the water immediately.

B. Possession of any quantity of black sea bass that exceeds the possession limit described in subsection A of this section shall be presumed to be for commercial purposes.

C. The open recreational fishing season shall be from ~~February 1 through the last day of February,~~ May 15 ~~through May 31, and June 16~~ through December 31.

D. It shall be unlawful for any person fishing recreationally to take, catch, or possess any black sea bass, except during an open recreational season.

~~E. From February 1 through the last day of February, it shall be unlawful for any person to possess or land any black sea bass harvested from a recreational vessel, unless the captain or operator of that recreational vessel has obtained a Recreational Black Sea Bass Permit from the Marine Resources Commission.~~

~~1. The captain or operator shall be responsible for reporting for all anglers on the recreational vessel and shall provide that captain's or that operator's Marine Resources Commission identification (MRC ID) number, the date of fishing, the number of persons on board, the mode of fishing, and the number of black sea bass kept or released. That report shall be submitted to the Marine Resources Commission (commission) on forms provided by the commission or through the Virginia Saltwater Fisherman's Journal.~~

~~a. It shall be unlawful for any permittee to fail to report each trip where black sea bass were targeted, whether black sea bass were harvested, released, or not caught, by March 15 of the current calendar year.~~

~~b. It shall be unlawful for any permittee who did not take any fishing trips to target black sea bass in the February recreational black sea bass season to fail to report lack of participation by March 15 of the current calendar year.~~

~~2. It shall be unlawful for any permittee to fail to contact the Law Enforcement Operations at 1-800-541-4646 before or immediately after the start of each fishing trip. The permittee shall provide the Law Enforcement Operations with the permittee's name, MRC ID number, the point of landing, a description of the vessel, estimated return to shore time, and a contact phone number.~~

~~3. Any permittee shall allow the commission to sample the vessel's catch to obtain biological information for scientific and management purposes.~~

VA.R. Doc. No. R22-7063; Filed January 25, 2022, 1:08 p.m.

DEPARTMENT OF ENERGY

Fast-Track Regulation

Titles of Regulations: **4VAC25-11. Public Participation Guidelines (amending 4VAC25-11-10, 4VAC25-11-20, 4VAC25-11-120).**

4VAC25-20. Board of Coal Mining Examiners Certification Requirements (amending 4VAC25-20-15, 4VAC25-20-50, 4VAC25-20-70, 4VAC25-20-90, 4VAC25-20-140, 4VAC25-20-180, 4VAC25-20-185, 4VAC25-20-190, 4VAC25-20-200, 4VAC25-20-210, 4VAC25-20-220, 4VAC25-20-360, 4VAC25-20-370, 4VAC25-20-410, 4VAC25-20-420).

4VAC25-31. Reclamation Regulations for Mineral Mining (amending 4VAC25-31-10, 4VAC25-31-30, 4VAC25-31-40, 4VAC25-31-120, 4VAC25-31-130, 4VAC25-31-150, 4VAC25-31-160, 4VAC25-31-170, 4VAC25-31-180, 4VAC25-31-200, 4VAC25-31-220 through 4VAC25-31-250, 4VAC25-31-280, 4VAC25-31-310, 4VAC25-31-320, 4VAC25-31-430, 4VAC25-31-500, 4VAC25-31-570).

4VAC25-35. Certification Requirements for Mineral Miners (amending 4VAC25-35-5, 4VAC25-35-30, 4VAC25-35-110, 4VAC25-35-120).

4VAC25-40. Safety and Health Regulations for Mineral Mining (amending 4VAC25-40-10, 4VAC25-40-25, 4VAC25-40-270, 4VAC25-40-300, 4VAC25-40-5760).

4VAC25-70. Regulations Governing Disruption of Communications in Mines (amending 4VAC25-70-10).

4VAC25-90. Regulations Governing the Use of Diesel-Powered Equipment in Underground Coal Mines (amending 4VAC25-90-10, 4VAC25-90-70).

4VAC25-101. Regulations Governing Vertical Ventilation Holes and Mining Near Gas and Oil Wells (amending 4VAC25-101-10, 4VAC25-101-50, 4VAC25-101-150, 4VAC25-101-160, 4VAC25-101-190, 4VAC25-101-200).

4VAC25-110. Regulations Governing Blasting in Surface Mining Operations (amending 4VAC25-110-10, 4VAC25-110-210). 4VAC25-125. Regulations Governing Coal Stockpiles and Bulk Storage and Handling Facilities (amending 4VAC25-125-10).

4VAC25-125. Regulations Governing Coal Stockpiles and Bulk Storage and Handling Facilities (amending 4VAC25-125-10).

4VAC25-130. Coal Surface Mining Reclamation Regulations (amending 4VAC25-130-700.1, 4VAC25-130-700.2, 4VAC25-130-700.3, 4VAC25-130-700.5, 4VAC25-130-700.11, 4VAC25-130-700.14, 4VAC25-130-701.11, 4VAC25-130-702.11, 4VAC25-130-702.17, 4VAC25-130-705.24, 4VAC25-130-740.15, 4VAC25-130-761.1, 4VAC25-130-761.3, 4VAC25-130-761.12, 4VAC25-130-761.16, 4VAC25-130-762.14, 4VAC25-130-764.13, 4VAC25-130-764.19, 4VAC25-130-773.13, 4VAC25-130-773.15, 4VAC25-130-774.12, 4VAC25-130-775.11, 4VAC25-130-775.13, 4VAC25-130-780.18, 4VAC25-130-784.13, 4VAC25-130-784.20, 4VAC25-130-789.1, 4VAC25-130-790.1, 4VAC25-130-790.11, 4VAC25-130-795.1, 4VAC25-130-800.16, 4VAC25-130-800.21, 4VAC25-130-800.40, 4VAC25-130-800.51, 4VAC25-130-800.52, 4VAC25-130-801.11, 4VAC25-130-801.17, 4VAC25-130-801.18, 4VAC25-130-816.76, 4VAC25-130-840.11, 4VAC25-130-840.14, 4VAC25-130-840.16, 4VAC25-130-842.12, 4VAC25-130-842.15, 4VAC25-130-843.11, 4VAC25-130-843.12, 4VAC25-130-843.13, 4VAC25-130-843.15, 4VAC25-130-843.16, 4VAC25-130-845.2, 4VAC25-130-845.15, 4VAC25-130-845.18, 4VAC25-130-845.19, 4VAC25-130-846.14, 4VAC25-130-850.15, 4VAC25-130-882.13).

4VAC25-145. Regulations on the Eligibility of Certain Mining Operators to Perform Reclamation Projects

(amending 4VAC25-145-10, 4VAC25-145-20, 4VAC25-145-30).

4VAC25-150. Virginia Gas and Oil Regulation (amending 4VAC25-150-10, 4VAC25-150-20, 4VAC25-150-40, 4VAC25-150-80, 4VAC25-150-90, 4VAC25-150-100, 4VAC25-150-110, 4VAC25-150-120, 4VAC25-150-130, 4VAC25-150-140 through 4VAC25-150-180, 4VAC25-150-220, 4VAC25-150-290, 4VAC25-150-365, 4VAC25-150-410, 4VAC25-150-435, 4VAC25-150-470, 4VAC25-150-480, 4VAC25-150-510, 4VAC25-150-560, 4VAC25-150-590, 4VAC25-150-620).

4VAC25-160. Virginia Gas and Oil Board Regulations (amending 4VAC25-160-10 through 4VAC25-160-80, 4VAC25-160-100, 4VAC25-160-120 through 4VAC25-160-150, 4VAC25-160-190, 4VAC25-160-200).

4VAC25-165. Regulations Governing the Use of Arbitration to Resolve Coalbed Methane Gas Ownership Disputes (amending 4VAC25-165-10, 4VAC25-165-30 through 4VAC25-165-60, 4VAC25-165-80, 4VAC25-165-90, 4VAC25-165-100, 4VAC25-165-120, 4VAC25-165-130).

4VAC25-170. Geothermal Energy Regulations (amending 4VAC25-170-10, 4VAC25-170-30, 4VAC25-170-40, 4VAC25-170-60).

Statutory Authority: § 45.2-103 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: March 16, 2022.

Effective Date: March 31, 2022.

Agency Contact: Michael Skiffington, Regulatory Coordinator, Department of 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@energy.virginia.gov.

Basis: The Department of Energy's regulatory authority for this action can be found in § 45.2-103 of the Code of Virginia.

Purpose: The purpose of this regulatory action is to ensure all references to the agency name and citations of the Code of Virginia are up to date and accurate. It is in the best interest of the public's welfare for regulation and statute to conform.

Rationale for Using Fast-Track Rulemaking Process: This action is expected to be noncontroversial because no substantive changes are proposed. The action merely updates regulations to conform to statute.

Substance: There are no substantive changes made to the regulations. The proposed changes conform regulations to the department name change in Chapter 532 of the 2021 Acts of Assembly, Special Session I, and make other technical updates to conform to Chapter 387 of the 2021 Acts of Assembly, Special Session I, which recodified Titles 45.1 and 67 of the Code of Virginia into Title 45.2 of the Code of Virginia.

Issues: The primary advantage of this regulatory action is ensuring the agency's regulations are up to date and conform to statute. There are no disadvantages to the public or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 14 (as amended, July 16, 2018). The analysis presented represents DPB's best estimate of these economic impacts.[1]

Summary of the Proposed Amendments to Regulation. Pursuant to legislation from the 2021 Special Session I, the Department of Energy proposes to amend in its regulations: 1) the name of the agency and two of its divisions, and 2) citations to the Code of Virginia.

Background. Chapter 532 of the 2021 Special Session I Acts of Assembly[2] renamed the Department of Mines, Minerals and Energy as the Department of Energy (NRG). Within NRG, the legislation renamed the Division of Mined Land Reclamation as the Division of Mined Land Repurposing, and the Division of Energy as the Division of Renewable Energy and Energy Efficiency. NRG proposes to amend its regulations to reflect these name changes.

Chapter 387 of the 2021 Special Session I Acts of Assembly[3] recodified Titles 45.1 and 67 of the Code of Virginia, which pertain to NRG, into the new Title 45.2. NRG proposes to update Code of Virginia citations in its regulations to reflect Title 45.2.

Estimated Benefits and Costs. The proposed amendments would have no impact on requirements in practice, but may be beneficial in that readers of the regulations would be better informed concerning the proper names of the agency and its divisions, and may more easily find relevant sections of the Code of Virginia.

Businesses and Other Entities Affected. The proposed amendments affect readers of the agency's regulations. It would particularly affect those seeking relevant sections of the Code of Virginia.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.[4] An 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. No adverse impact is indicated for this proposal.

Small Businesses[5] Affected.[6] The proposed amendments do not appear to adversely affect small businesses.

Localities[7] Affected.[8] The proposed amendments do not disproportionately affect particular localities and do not introduce costs for local governments.

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

Effects on the Use and Value of Private Property. The proposed amendments do not substantively affect the use and value of private property. The proposed amendments do not affect real estate development costs.

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[1]Section 2.2-4007.04 of the Code of Virginia requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

[2]See https://lis.virginia.gov/cgi-bin/legp604.exe?212+ful+CHAP0532

[3]See https://lis.virginia.gov/cgi-bin/legp604.exe?212+ful+CHAP0387

[4]Pursuant to Code § 2.2-4007.04 D: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

[5]Pursuant to § 2.2-4007.04, 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."

[6]If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

[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 Virginia Department of Energy concurs with the economic impact analysis conducted by the Department of Planning and Budget.

Summary:

The amendments (i) conform regulations to the department name change in Chapter 532 of the 2021 Acts of Assembly, Special Session I, and (ii) correct citations to the Code of Virginia and other technical updates to conform regulations to Chapter 387 of the 2021 Acts of Assembly, Special Session I, which recodifies Titles 45.1 and 67 of the Code of Virginia into Title 45.2 of the Code of Virginia. No substantive amendments are made.

4VAC25-11-10. Purpose.

The purpose of this chapter is to promote public involvement in the development, amendment or repeal of the regulations of the Department of ~~Mines, Minerals and~~ Energy. This chapter does not apply to regulations, guidelines, or other documents exempted or excluded from the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

4VAC25-11-20. Definitions.

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

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

"Agency" means the Department of ~~Mines, Minerals and~~ Energy, which is the unit of state government empowered by the agency's basic law to make regulations or decide cases. Actions specified in this chapter may be fulfilled by state employees as delegated by the agency.

"Basic law" means provisions in the Code of Virginia that delineate the basic authority and responsibilities of an agency.

"Commonwealth Calendar" means the electronic calendar for official government meetings open to the public as required by § 2.2-3707 C of the Freedom of Information Act.

"Negotiated rulemaking panel" or "NRP" means an ad hoc advisory panel of interested parties established by an agency to consider issues that are controversial with the assistance of a facilitator or mediator, for the purpose of reaching a consensus in the development of a proposed regulatory action.

"Notification list" means a list used to notify persons pursuant to this chapter. Such a list may include an electronic list maintained through the Virginia Regulatory Town Hall or other list maintained by the agency.

"Open meeting" means any scheduled gathering of a unit of state government empowered by an agency's basic law to make regulations or decide cases, which is related to promulgating, amending or repealing a regulation.

"Person" means any individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or any other legal or commercial entity and any successor, representative, agent, agency, or instrumentality thereof.

"Public hearing" means a scheduled time at which members or staff of the agency will meet for the purpose of receiving public comment on a regulatory action.

"Regulation" means any statement of general application having the force of law, affecting the rights or conduct of any person, adopted by the agency in accordance with the authority conferred on it by applicable laws.

"Regulatory action" means the promulgation, amendment, or repeal of a regulation by the agency.

"Regulatory advisory panel" or "RAP" means a standing or ad hoc advisory panel of interested parties established by the agency for the purpose of assisting in regulatory actions.

"Town Hall" means the Virginia Regulatory Town Hall, the website operated by the Virginia Department of Planning and Budget at www.townhall.virginia.gov, which has online public comment forums and displays information about regulatory meetings and regulatory actions under consideration in Virginia and sends this information to registered public users.

"Virginia Register" means the Virginia Register of Regulations, the publication that provides official legal notice of new, amended and repealed regulations of state agencies, which is published under the provisions of Article 6 (§ 2.2-4031 et seq.) of the Administrative Process Act.

4VAC25-11-120. Agency secretary for purpose of appeal.

For appeals of regulatory or case decisions, pursuant to Rule 2A:2 of the Rules of the Supreme Court of Virginia, the agency herein names individuals to perform the function of agency secretary.

1. For appeals relating to Chapter ~~14.2 (§ 45.1-161.7 et seq.), 14.3 (§ 45.1-161.105 et seq.), 14.4 (§ 45.1-161.253 et seq.) or 18 (§ 45.1-221 et seq.) of Title 45.1~~ 5 (§ 45.2-500 et seq.), 7 (§ 45.2-700 et seq.), 8 (§ 45.2-800 et seq.), or 9 (§ 45.2-900 et seq.) of Title 45.2 of the Code of Virginia, the division head of the Division of Mines (Chief) shall perform the functions of agency secretary.

2. For appeals relating to Chapter ~~14.4:1 (§ 45.1-161.292:1 et seq.), 14.5 (§ 45.1-161.293 et seq.), 14.6 (§ 45.1-161.304 et seq.), 16 (§ 45.1-180 et seq.), 18.1 (§ 45.1-225.1 et seq.) or 21 (§ 45.1-272 et seq.) of Title 45.1~~ 11 (§ 45.2-1100 et seq.), 12 (§ 45.2-1200 et seq.), 13 (§ 45.2-1300 et seq.), 14 (§ 45.2-1400 et seq.), or 15 (§ 45.2-1500 et seq.) of Title 45.2 of the Code of Virginia, the division head of the Division of Mineral Mining (Division Director) shall perform the functions of agency secretary.

3. For appeals relating to Chapter ~~15.1 (§ 45.1-179.1 et seq.) or 22.1 (§ 45.1-361.1 et seq.) of Title 45.1~~ 16 (§ 45.2-1600 et seq.) or 20 (§ 45.2-2000 et seq.) of Title 45.2 of the Code of Virginia, the division head of the Division of Gas and Oil (Division Director) shall perform the functions of agency secretary.

4. For appeals relating to ~~Chapters 17 (§ 45.1-198 et seq.) and 19 (§ 45.1-226 et seq.) of Title 45.1~~ Chapter 10 (§ 45.2-1000 et seq.) of Title 45.2 of the Code of Virginia, the division head of the Division of Mined Land ~~Reclamation~~ Repurposing (division director) shall perform the functions of agency secretary.

4VAC25-20-15. Definitions.

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

"Appropriately related work experience" means work experience which demonstrates the applicant's skill and level of responsibility in performing tasks and prepares and equips him to perform in the capacity of a certified person.

"BCME" means Board of Coal Mining Examiners.

"Chief" means the Chief of the Division of Mines.

"~~DMME~~ Department" means the Department of ~~Mines, Minerals and~~ Energy.

"Division" means the Division of Mines.

"DMLR" means Division of Mined Land ~~Reclamation~~ Repurposing.

"EMT" means emergency medical technician.

"GCM" means general coal miner.

"MSHA" means the Mine Safety and Health Administration.

"Virginia coal mine safety regulations" means 4VAC25-60 through 4VAC25-125.

4VAC25-20-50. Underground mine foreman.

A. Applicants shall possess five years mining experience, three of which shall be underground, and shall pass the underground mine foreman, map, and gas detection examinations.

B. Applicants shall be given three years credit for a degree in mining engineering from an approved four-year college or two years credit for a degree in mining technology.

C. Applicants shall be at least 23 years of age.

D. Certified mine foremen shall complete the continuing education requirements in this section within two years from the date of their certification and every two years thereafter. The holder of the certificate shall submit documentation to the division indicating the required continuing education has been completed prior to these deadlines.

E. The holder of the certificate, in order to receive continuing education credit, shall satisfactorily complete an underground mine foreman continuing education course approved by the chief and taught by a certified instructor or other instructor approved by the chief.

F. The underground mine foreman shall complete at least four hours of continuing education every two years.

G. The content of the continuing education course shall include the:

1. Coal Mine Safety Act, Chapter ~~14.2~~ 5 (~~§ 45.1-161.7~~ § 45.2-500 et seq.) of Title ~~45.1~~ 45.2 of the Code of Virginia;

2. Virginia coal mine safety regulations;

3. Responsibilities of underground mine foreman;

4. Virginia coal mine safety policies and division operators' memos; and

5. Review of fatalities and accident trends in Virginia underground coal mines.

H. A maximum of four hours in excess of the required hours may be carried over to the next continuing education period.

I. Failure to complete continuing education requirements shall result in suspension of a person's certification pending completion of continuing education. If the continuing education requirement is not met within two years from the suspension date, the certification shall be revoked by the BCME.

J. The division shall send notice of any suspension to the last address the certified person reported to the division in accordance with 4VAC25-20-20 I. Upon request, ~~DMME~~ the department will provide the mine operator and other interested parties with a list of individuals whose certification is in suspension or has been revoked.

4VAC25-20-70. Surface mine foreman.

A. Applicants shall possess five years of surface coal mining experience.

B. Applicants shall pass the surface mine foreman, first aid, and gas detection examinations.

C. Certified persons shall complete the continuing education requirements in this section within two years from the date of their certification and every two years thereafter. The holder of the certificate shall submit documentation to the division indicating the required continuing education has been completed prior to these deadlines.

D. The holder of the certificate, in order to receive continuing education credit, shall satisfactorily complete a surface mine foreman continuing education course approved by the chief and taught by a certified instructor or other instructor approved by the chief.

E. The surface mine foreman shall complete at least four hours of continuing education every two years.

F. The content of the continuing education course shall include the:

1. Coal Mine Safety Act, Chapter ~~14.2~~ 5 (~~§ 45.1-161.7~~ § 45.2-500 et seq.) of Title ~~45.1~~ 45.2 of the Code of Virginia;

2. Virginia coal mine safety regulations;

3. Responsibilities of surface mine foreman;

4. Virginia coal mine safety policies and division operators' memos; and

5. Review of fatalities and accident trends in Virginia surface coal mines.

G. A maximum of four hours in excess of the required hours may be carried over to the next continuing education period.

H. Failure to complete continuing education requirements shall result in suspension of a person's certification pending completion of continuing education. If the continuing education requirement is not met within two years from the suspension date, the certification shall be revoked by the BCME.

I. The division shall send notice of any suspension to the last known address of the certified person reported to the division in accordance with 4VAC25-20-20 I. Upon request, ~~DMME~~ the department will provide the mine operator and other interested parties with a list of individuals whose certification is in suspension or has been revoked.

4VAC25-20-90. Underground shot firer.

A. Applicants shall possess two years coal mining experience underground, one year of the two years shall have included handling and using explosives underground under the direction of a certified underground shot firer, or appropriately related work experience approved by the chief.

B. Applicants shall pass the underground shot firer and gas detection examinations.

C. Beginning August 25, 2005, a certified underground shot firer must be recertified every five years by:

1. Presenting written proof that he has performed underground blasting duties in his work during two of the last three years immediately preceding the expiration date;

2. Retaking and passing the underground shot firer examination; or

3. Presenting verification of completion of underground mine foreman or other continuing education that included underground blasting safety training.

D. Failure to maintain education or training requirements shall result in suspension of a person's certification pending completion of continuing education or training. If the continuing education or training requirement is not met within two years from the suspension date, the certification shall be revoked by the BCME.

E. The division shall send notice of any suspension to the last address the certified person reported to the division in accordance with 4VAC25-20-20 I. Upon request, ~~DMME~~ the department will provide the mine operator and other interested parties with a list of individuals whose certification is in suspension or has been revoked.

4VAC25-20-140. Hoisting engineer.

A. Applicants shall possess two years of practical mining experience and one year of hoisting experience under the direction of a certified hoisting engineer or appropriately related work experience approved by the chief. A certified hoisting engineer shall verify the hoisting experience.

B. The applicant shall pass the hoisting engineer and gas detection examinations.

C. After the examination has been successfully completed, the applicant shall obtain written permission from a mine official to have a representative from the division observe the applicant's operation of hoisting equipment at the mine. Permission shall be on company stationery, signed by the company official, and submitted to the division.

D. A certified hoisting engineer may act as an automatic elevator operator after completing the on-site demonstration required by 4VAC25-20-240 C.

E. A hoisting engineer must be recertified every five years by:

1. Presenting written proof that he has performed hoisting engineer duties in his work during two of the last three years immediately preceding the expiration date; or

2. Retaking and passing the practical demonstration section of the hoisting engineer examination and meeting requirements of subsection C of this section.

F. Failure to maintain education or training requirements shall result in suspension of a person's certification pending completion of continuing education or training. If the continuing education or training requirement is not met within two years from the suspension date, the certification shall be revoked by the BCME.

G. The division shall send notice of any suspension to the last address the certified person reported to the division in accordance with 4VAC25-20-20 I. Upon request, ~~DMME~~ the department will provide the mine operator and other interested parties with a list of individuals whose certification is in suspension or has been revoked.

4VAC25-20-180. Underground mine inspector.

A. Applicants shall possess mining experience as described in ~~§ 45.1-161.20~~ § 45.2-512 of the Code of Virginia.

B. Applicants shall be given three years credit for a degree in mining engineering from an approved four-year college.

C. Applicants shall hold a valid Underground Mine Foreman Certificate.

D. Applicants shall meet the continuing education requirements of 4VAC25-20-50 for underground mine foreman.

E. Applicants shall pass the underground mine inspector examination.

F. A certificate will not be issued until an applicant is employed by the ~~DMME~~ department and shall only remain valid while the person is employed by the department.

4VAC25-20-185. Surface mine inspector.

A. Applicants shall possess mining experience as described in ~~§ 45.1-161.20~~ § 45.2-512 of the Code of Virginia.

B. Applicants shall be given three years credit for a degree in mining engineering from an approved four-year college.

C. Applicants shall hold a valid Surface Mine Foreman Certificate.

D. Applicants shall meet the continuing education requirements of 4VAC25-20-70 for surface mine foreman.

E. Applicants shall pass the surface mine inspector examination.

F. A certificate will not be issued until an applicant is employed by ~~DMME~~ the department and shall only remain valid while the person is employed by the department.

G. Applicants who already possess a valid underground mine inspector certification pursuant to 4VAC25-20-180 shall be deemed to have met the requirements of this section.

4VAC25-20-190. Underground diesel engine mechanic.

A. All maintenance work performed on diesel engines used to power equipment in underground coal mines shall be performed by, or under the direct supervision of, a person possessing a Diesel Engine Mechanic Certificate issued by the BCME. In addition, no operator of an underground coal mine in the Commonwealth of Virginia may use diesel-powered equipment in the mine without first employing a diesel engine mechanic who is certified by the BCME.

B. "Maintenance" shall include all of the tasks required to be performed routinely to ensure that the engine exhaust emissions conform with the requirements of the laws and regulations of Virginia and MSHA, and with the maintenance recommendations of the manufacturer of the engine.

C. Applicants shall possess six months experience as a diesel engine mechanic, complete a diesel engine mechanic course approved by the division, or possess appropriately related work experience approved by the chief. A one-year diesel engine mechanic program approved by the division may be substituted for the diesel engine mechanic experience.

D. Applicants shall pass the underground diesel engine mechanic, first aid, and gas detection examinations.

E. The initial training course for diesel engine mechanics shall include at least 32 hours of classroom instruction and be taught by a certified instructor.

F. To qualify for approval by the chief, the content of the initial training course for diesel engine mechanics shall include, but is not limited to:

1. Diesel engine principles;

2. Diesel fuel and fuel systems;

3. Engine exhaust systems;

4. State and federal diesel laws and regulations;

5. Safe use of equipment;

6. Emission controls, testing procedures and recordkeeping; and

7. Protection of health of workers exposed to diesel equipment.

G. The annual continuing education course for diesel engine mechanics shall include at least four hours of classroom instruction and be taught by a certified instructor.

H. The content of the continuing education course shall include, but not be limited to:

1. Diesel technology;

2. State and federal diesel laws and regulations;

3. Safe use of equipment;

4. Protection of the health of workers exposed to diesel equipment; and

5. Required emission test procedures and recordkeeping.

I. A Diesel Engine Mechanic Certificate shall remain valid until December 31 following the anniversary date of the initial training, providing the certification requirements are met, unless the certificate is revoked by the BCME.

J. The holder of the certificate shall renew the certificate by satisfactorily completing a diesel engine mechanic continuing education course approved by the chief and taught by a certified instructor.

K. The holder of the certificate shall submit documentation to the division indicating the required continuing education has been completed before the expiration of the card.

L. Failure to complete the required education shall result in suspension of certification pending completion of continuing education. If the continuing education requirement is not met within two years from the suspension date, then the certification shall be revoked by the BCME.

M. The division shall send notice of any suspension to the last known address that the certified person reported to the division in accordance with 4VAC25-20-20 I. Upon request, ~~DMME~~ the department will provide the mine operator and other interested parties with a list of individuals whose certification is in suspension or has been revoked.

4VAC25-20-200. Diesel engine mechanic instructor.

A. Applicants shall have teaching experience and be a certified diesel engine mechanic or possess appropriately related work experience approved by the chief.

B. Applicants shall maintain the certificate by teaching at least one approved diesel engine mechanic course every two years or at least one approved diesel engine mechanic continuing education course every year.

C. Documentation shall be submitted to the division indicating the required teaching has been completed.

D. Failure to complete the required teaching shall result in suspension of the certification. Applicants may meet the teaching requirement by teaching under the supervision of a certified diesel mechanic engine instructor. If the teaching requirement is not met one year from suspension, then the certification shall be revoked by the BCME.

E. The division shall send notice of any suspension to the last known address that the certified person reported to the division in accordance with 4VAC25-20-20 I. Upon request, ~~DMME~~ the department will provide the mine operator and other interested parties with a list of individuals whose certification is in suspension or has been revoked.

4VAC25-20-210. Advanced first aid.

A. Applicants shall complete a 24-hour advanced first aid class, at minimum, taught by a certified advanced first aid instructor or possess appropriately related work experience approved by the chief and pass the advanced first aid examination.

B. Approved advanced first aid classes shall cover the following subjects:

1. Introduction to first aid;

2. Respiratory emergencies and cardiopulmonary resuscitation; i.e., heart saver or other four-hour equivalent;

3. Removal of foreign bodies from the throat (the Heimlich Maneuver);

4. Wounds;

5. Shock;

6. Specific injuries including head and chest;

7. Contamination, infection, and prevention;

8. Burns;

9. Cold exposure and frost bite;

10. Bone and joint injuries;

11. Dressings and bandages;

12. Sudden illness;

13. Emergency underground rescue and transfer;

14. Unusual rescue situations related to mining;

15. Poisoning, toxic and hazardous materials;

16. Transportation of victims; and

17. Heat exposure.

C. An advanced first aid certification in good standing with the BCME shall remain valid until the last day of the month following the anniversary date of the initial or continuing education training. Certified persons shall complete four hours continuing education annually, which is taught by a certified advanced first aid instructor, to maintain their advanced first aid card. This continuing education requirement shall include documented annual training in CPR and recertification every two years.

D. The holder of the certificate shall submit documentation to the division indicating the required continuing education has been completed.

E. Applicants holding a valid EMT card or EMT first responder card, shall be deemed eligible to receive advanced first aid certification without having to complete the initial advanced first aid class or without passing the advanced first aid examination. All applicants shall complete eight hours of continuing education. The advanced first aid certification shall start on the day the applicant's EMT certification or EMT first responder certification expires.

F. Failure to complete required continuing education shall result in suspension of the certification pending completion of the continuing education. If the continuing education requirement is not met within one year from the suspension date, then the certification shall be revoked by the BCME.

G. The division shall send notice of any suspension to the last known address of the certified person reported to the division in accordance with 4VAC25-20-20 I. Upon request, ~~DMME~~ the department will provide the mine operator and other interested parties with a list of individuals whose certification is in suspension or has been revoked.

4VAC25-20-220. Advanced first aid instructor.

A. Applicants shall be certified as an advanced first aid instructor by the American Red Cross, National Safety Council, Virginia Office of Emergency Medical Services, or as otherwise approved by the chief. Applicants shall also be certified in cardiopulmonary resuscitation by the American Heart Association, the American Red Cross, or other training programs approved by the Virginia Office of Emergency Medical Services and approved by the chief. Advanced first aid instructors must use the materials and training aids necessary to deliver the skills and training associated with advanced first aid.

B. The holder of the certificate shall submit documentation to the division indicating that they have continued their certification as required by subsection A of this section or by teaching one initial or refresher first aid training course for ~~DMME~~ the department within a two-year period.

C. Failure to maintain a certified advanced first aid instructor's certification will result in suspension of the applicant's BCME certification. Applicants may meet the teaching requirement by teaching under the supervision of an advanced first aid instructor. If the certification is not renewed within one year from the suspension date, then the certification shall be revoked by the BCME.

D. The division shall send notice of any suspension to the last known address of the certified person reported to the division in accordance with 4VAC25-20-20 I. Upon request, ~~DMME~~ the department will provide the mine operator and other interested parties with a list of individuals whose certification is in suspension or has been revoked.

4VAC25-20-360. Purpose and scope.

A. ~~Section 45.1-161.35 A~~ Section 45.2-528 of the Code of Virginia provides for on-site examination of an underground mine foreman by a mine inspector to determine that the foreman has a thorough understanding of the roof control plan and ventilation for the area of the mine for which he is responsible. The procedures followed by the inspector in conducting an on-site examination of an underground mine foreman must be consistent with requirements in Part IV (4VAC25-20-340 et seq.) of this chapter. This includes the use of questions approved by the board which are administered in accordance with this chapter.

B. The purpose of examining an underground mine foreman is to measure and evaluate his knowledge and understanding of mine roof control and ventilation for the areas of his responsibility. Underground mine foremen are required to demonstrate this and other elements of mine safety when they become certified to act as mine foremen in the Commonwealth of Virginia.

C. An on-site examination by the mine inspector will only be initiated when there is just cause that the underground mine foreman has failed to maintain safe roof control and ventilation for his area of responsibility at the mine. Just cause for an on-site examination of an underground mine foreman by a mine inspector must be based on issuance of an order of closure or violation related to a hazardous condition pertaining to roof control or ventilation.

4VAC25-20-370. Determination by the inspector to conduct an on-site examination.

A. An order of closure issued in accordance with ~~§ 45.1-161.91~~ § 45.2-569 of the Code of Virginia, or notice of violation issued in accordance with ~~§ 45.1-161.90~~ § 45.2-568 of the Code of Virginia that relate to roof control or ventilation hazards, shall be reviewed at the time it is issued for evidence of underground mine foreman negligence, which could require on-site examination of the mine foreman by the mine inspector.

In making the determination whether or not to conduct an on-site examination, the mine inspector must establish the following:

1. The roof or ventilation hazards cited resulted from performing his duties with less than ordinary care. Ordinary care means the use of such care as a reasonably prudent and careful underground mine foreman could use under similar circumstances.

2. The underground mine foreman knew or should have known of the existence of the hazardous condition.

B. When these criteria have been established, the mine inspector will undertake an on-site examination of the underground mine foreman.

4VAC25-20-410. Prehearing procedures.

A. Any person wishing to bring any matter before the board shall use these procedures except for good cause shown before the board.

B. Petitions for action by the board shall be in writing, shall state the grounds for the petition before the board, shall state the relief sought, and shall include any applicable supporting material, as set out below:

1. For certification to be revoked in accordance with ~~§ 45.1-161.35 B~~ § 45.2-528 of the Code of Virginia, the petitioner or petitioners shall submit specific charges, which set forth the reasons why the certification should be revoked.

2. To request a reexamination for a certificate revoked pursuant to ~~§ 45.1-161.35~~ § 45.2-528 of the Code of Virginia, the holder of the revoked certificate shall submit a request for reexamination with evidence that the cause for revocation of his certificate has ceased to exist.

3. For other petitions before the board, the petitioner shall submit a written petition explaining the request being made and the relief being sought.

C. The division shall assign a docket number to all petitions before the board. The division shall provide written notice to all parties to any proceeding in accordance with ~~§ 45.1-161.35 D~~ § 45.2-528 of the Code of Virginia and the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

D. Persons wishing to address the board, except those making a petition for board action, will be provided an opportunity at the conclusion of the board meeting.

E. Persons shall make any request for change to the board's regulations in accordance with the ~~DMME~~ department's and the board's Public Participation Guidelines, ~~4VAC25-10~~ 4VAC25-11.

4VAC25-20-420. Conduct of formal hearings.

A. All hearings shall be heard during scheduled meetings of the board, on a case-by-case basis, in the order the petitions appear on the docket.

B. Hearings shall be held in the ~~DMME,~~ department's Big Stone Gap office, unless a different location is agreed to by mutual consent of the parties to the hearing and the Chairman of the BCME.

C. Hearings requiring case decisions shall be recorded.

D. Each party has the right to be represented by legal counsel.

E. The chairman, with the concurrence of the majority of the board present at a hearing, shall have the authority to limit evidence to that relevant to the issues. Any proofs, rebuttal, and cross examination which are immaterial, insubstantial, privileged, or repetitive may be excluded.

F. The chairman may continue, adjourn and reconvene the hearing as necessary.

G. Decisions of the board shall be made based on a preponderance of the evidence placed before it.

4VAC25-31-10. Definitions.

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

"Acre-foot" means a unit of volume equal to 43,560 cubic feet or 325,853 gallons. One acre-foot of water is equivalent to one acre covered by water one foot deep.

"Berm" means a stable ridge of material used in reclamation for the control of sound and surface water, safety, aesthetics, or such other purpose as may be applicable.

"Critical areas" means problem areas such as those with steep slopes, easily erodible material, hostile growing conditions, concentration of drainage or other situations where revegetation or stabilization will be potentially difficult.

"Dam break inundation zone" means the area downstream of a dam that would be inundated or otherwise directly affected by the failure of a dam.

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

"Director" means the Director of the Department of ~~Mines, Minerals and~~ Energy or his designee.

"Division" means the Division of Mineral Mining.

"Fifty-year storm" means the storm magnitude expected to be equaled or exceeded on the average of once in 50 years. It may also be expressed as a probability that there is a 2.0% chance that the storm magnitude may be equaled or exceeded in any given year. A 50-year, 24-hour storm occurs when the total 50-year storm rainfall occurs in a 24-hour period.

"Inert waste" means brick, concrete block, broken concrete, and uncontaminated minerals or soil.

"Intermittent stream" means a stream that contains flowing water for extended periods during a year, but does not carry flows at all times.

"Internal service roads" means roads that are to be used for internal movement of raw materials, soil, overburden, finished, or in-process materials within the permitted area, some of which may be temporary.

"Natural drainageway" means any natural or existing channel, stream bed, or watercourse that carries surface or ground water.

"One hundred-year storm" means the storm magnitude expected to be equaled or exceeded on the average of once in 100 years. It may also be expressed as a probability that there is a 1.0% chance that the storm magnitude may be equaled or exceeded in any given year. A 100-year, 24-hour storm occurs when the total 100-year storm rainfall occurs in a 24-hour period.

"On-site generated mine waste" means the following items generated by mineral mining or processing activities taking place on the permitted mine site:

Drill steel	Tree stumps/land clearing debris
Crusher liners	Large off-road tires
Conveyor belting	Scrap wood or metal
Steel cable	Steel reinforced air hoses
Screen cloth	Broken concrete or block
Punch plate	V-belts

"Perennial stream" means a well-defined channel that contains water year round during a year of normal rainfall. Generally, the water table is located above the streambed for most of the year and groundwater is the primary source for stream flow. A perennial stream exhibits the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.

"Permitted area" means the area within the defined boundary shown on the application map including all disturbed land area, and areas used for access roads and other mining-related activities.

"Principal access roads" means roads that are well-defined roads leading from scales, sales offices, or loading points to a public road.

"Probable maximum flood (PMF)" means the flood that might be expected from the most severe combination of critical meteorologic and hydrologic conditions that are reasonably possible in the region. The PMF is derived from the current probable maximum precipitation (PMP) available from the National Weather Service, National Oceanic and Atmospheric Administration. In some cases local topography or meteorological conditions will cause changes from the generalized PMP values; therefore, it is advisable to contact local, state, or federal agencies to obtain the prevailing practice in specific cases.

"Qualified person" means a person who is suited by training or experience for a given purpose or task.

"Regrade" or "grade" means to change the contour of any surface.

"Riparian buffer" means an area of trees, shrubs, or other vegetation that is managed to maintain the integrity of the stream channel and reduce the effects of upland sources of pollution by trapping, filtering, and converting sediments, nutrients, and other chemicals.

"Sediment" means undissolved organic or inorganic material transported or deposited by water.

"Sediment basin" means a basin created by the construction of a barrier, embankment, or dam across a drainageway or by excavation for the purpose of removing sediment from the water.

"Spillway design flood (SDF)" means the largest flood that needs be considered in the evaluation of the performance for a given project. The impounding structure shall perform so as to safely pass the appropriate SDF. Where a range of SDF is indicated, the magnitude that most closely relates to the involved risk should be selected.

"Stabilize" means any method used to prevent movement of soil, spoil piles, or areas of disturbed earth. This includes increasing bearing capacity, increasing shear strength, draining, compacting, rip-rapping, vegetating or other approved method.

"State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands.

"Ten-year storm" means the storm magnitude expected to be equaled or exceeded on the average of once in 10 years. It may also be expressed as a probability that there is a 10% chance that the storm magnitude may be equaled or exceeded in any given year. A 10-year 24-hour storm occurs when the total 10-year storm rainfall amount occurs in a 24-hour period.

"Top soil" means the surface layer and its underlying materials that have properties capable of producing and sustaining vegetation.

4VAC25-31-30. Compliance.

The permittee shall comply fully with the requirements of Chapter ~~16~~ 12 (~~§ 45.1-180~~ § 45.2-1200 et seq.) of Title ~~45.1~~ 45.2 of the Code of Virginia and this regulation and shall further ensure compliance by all employees, contractors, or other persons performing mining or reclamation activities.

4VAC25-31-40. Modifications.

The division may approve modifications or amendments to any drainage, reclamation and operation plan required under Chapter ~~16~~ 12 (~~§ 45.1-180~~ § 45.2-1200 et seq.) of Title ~~45.1~~ 45.2 of the Code of Virginia and provisions of these regulations. All modifications or amendments shall be valid only when approved in writing.

4VAC25-31-120. Permit fee and bond.

A. Permit fees for the initial permit application and permit renewal shall be submitted upon receipt of a billing notice from the director and before the permit is issued or renewed. Fees shall be paid in accordance with ~~§ 45.1-181~~ § 45.2-1205 of the Code of Virginia.

B. Permit fees for the transfer of a mine permit shall be submitted upon receipt of a billing notice from the director and before the transferred permit is issued. Fees shall be paid in accordance with ~~§ 45.1-184.2~~ § 45.2-1211 of the Code of Virginia.

C. All fees shall be in the form of cash, check, money order, or other form of payment acceptable to the director.

D. A bond is required as set forth in Part III of this regulation. Bonding shall be provided once the permit application is deemed complete.

4VAC25-31-130. Mineral mining plans.

Mineral mining plans shall be attached to the application and consist of the following:

1. The operation plan shall include a description of the proposed method of mining and processing; the location of top soil storage areas; overburden, refuse, and waste disposal areas; stockpiles, equipment storage, and maintenance areas; cut and fill slopes; and roadways. The operation plan shall address plans for the storage and disposal of scrap metal, scrap tires, used lubricants, coolants, and other equipment service products, batteries, process chemicals, trash, debris, and other hazardous materials. The operation plan shall also include all related design and construction data. The method of operation shall provide for the conducting of reclamation simultaneously where practicable with the mining operation. For the impoundments that meet the criteria of ~~§ 45.1-225.1 A~~ § 45.2-1301 A of the Code of Virginia, plans shall be provided as required under 4VAC-25-31-180 and 4VAC25-31-500.

2. The drainage plan shall consist of a description of the drainage system to be constructed before, during, and after mining; a map or overlay showing the natural drainage system; and all sediment and drainage control structures to be installed along with all related design and construction data.

3. The reclamation plan shall include a statement of the planned land use to which the disturbed land will be returned through reclamation, the proposed actions to assure suitable reclamation, and a time schedule for reclamation. The method of grading; removal of metal, lumber, and debris, including processing equipment; buildings; and other equipment relative to the mining operation and revegetation of the disturbed area shall be specified. Reclamation plans for underground mines shall include plans for closing or securing all entrances to underground workings.

4. Adequate maps, plans and cross sections, and construction specifications shall be submitted to demonstrate compliance with the performance standards of Part IV (4VAC25-31-330 et seq.) of this chapter and Chapter ~~16~~ 12 (~~§ 45.1-180~~ § 45.2-1200 et seq.) of Title ~~45.1~~ 45.2 of the Code of Virginia. Designs, unless otherwise specified, shall be prepared by a qualified person, using accepted engineering design standards and specifications.

5. A copy of the Virginia Department of Transportation land use permit for roads that connect to public roads.

6. If mining below the water table is to take place, the following conditions apply:

a. The application shall contain an assessment of the potential for impact on the overall hydrologic balance from the proposed operations to be conducted within the permitted area for review and approval.

b. A plan for the minimization of adverse effects on water quality or quantity shall be prepared based on the assessment in subdivision 6 a of this section and included in the application.

c. Permanent lakes or ponds created by mining shall be equal to or greater than four feet deep or otherwise constructed in a manner acceptable to the director.

4VAC25-31-150. Maps.

A. Maps shall be supplied as described in §§ ~~45.1-181~~ 45.2-1205 and ~~45.1-182.1~~ 45.2-1206 of the Code of Virginia and in this chapter that show the total area to be permitted and the area to be affected in the next ensuing year (with acreage calculated).

B. Preparation of maps.

1. All application, renewal, and completion maps shall be prepared and certified under the direction of a professional engineer, licensed land surveyor, licensed geologist, issued by a standard mapping service, or prepared in such a manner as to be acceptable to the director.

2. If maps are not prepared by the applicant, the certification of the maps shall read as follows: "I hereby certify that this map is correct and shows to the best of my knowledge and belief, all the information required by the mineral mining laws and regulations of the ~~DMME~~ Department of Energy."

3. The applicant shall submit a general location map showing the location of the mine, such as a county highway map or equivalent, in the initial application.

4. Sensitive features within 500 feet of the permit boundary including state waters, cemeteries, oil and gas wells, underground mine workings, public utilities and utility lines, buildings, roads, schools, churches, and occupied dwellings shall be shown.

5. All properties, and their owners, within 1,000 feet of the permit boundary shall be identified in the initial application.

6. Wetlands that have been previously delineated shall be shown within the permit boundary.

7. Riparian buffers that have been previously delineated shall be shown within the permit boundary.

C. Map code and legend.

1. A color code as prescribed by the director shall be used in preparing the map.

2. Graphic symbols may be used to represent the different areas instead of a color-coded map.

3. The map shall include a legend that shows the graphic symbol or color code and the acreage for each of the different areas.

4VAC25-31-160. Legal right.

A. A statement of the source of the legal right of the applicant to enter and conduct operations on the land proposed to be covered by the permit as noted in ~~§ 45.1-181~~ § 45.2-1205 of the Code of Virginia shall be submitted to the division. In addition, the applicant shall submit proof of right of entry, which shall consist of a copy of the lease or deed, or names of parties to the lease or deed, date of execution, and recording information.

B. On the permit application, the applicant shall disclose any type of mining permit, revocations, security deposited in lieu of bond that has been revoked or forfeited, and bond forfeitures in Virginia or any other state with which he or any individual, corporation, trust, partnership, association, or other legal entity with which he has or has had control or common control.

4VAC25-31-170. Permit application notifications.

A. The applicant shall notify the following parties of a new permit application via certified mail:

1. Property owners within 1,000 feet of the permit boundary.

2. The Chief Administrative Official of the local political subdivision where the prospective mining operation would take place.

3. All public utilities on or within 500 feet of permit boundary.

B. All notifications shall contain:

1. The name of the permit applicant issuing notice and the date of notification;

2. The permit applicant's address, phone number, and other contact information as available;

3. The name and address of the property owner, chief administrative official, or utility receiving the notification;

4. A statement as required by ~~§ 45.1-184.1~~ § 45.2-1210 of the Code of Virginia to property owners that requires land owners within 1,000 feet of the permit boundary to be notified that the operator is seeking a mining and reclamation permit from the Department of ~~Mines, Minerals and~~ Energy. The statement shall also note that the mining permit must address department requirements for regrading, revegetation, and erosion controls of mineral mine sites;

5. The location of the proposed mine, the city or county in which it is located, the distance of the nearest town or other easily identified landmark, and the tax map identification number of the parcels to be permitted; and

6. A notice that informs property owners within 1,000 feet of the permit boundary that they have 10 days from receipt of the permit notification to specify written objections or request a hearing. This request shall be in writing and shall be sent to the division. The current address for the division shall be provided on the notification.

C. No permit will be issued until at least 15 days after receipt of the application by the division. If all persons required to receive notice have issued a statement of no objection, the permit may be issued in less than 15 days.

D. Copies of all permit notifications shall be submitted to the division at the time they are mailed to the parties identified in subsection A of this section.

E. Documentation of certified mail receipts of the notifications described in this section shall be included with the permit application.

4VAC25-31-180. Impoundments.

The design data and construction plans and specifications for impoundments meeting the criteria set forth in Chapter ~~18.1~~ 13 (~~§ 45.1-225.1~~ § 45.2-1300 et seq.) of Title ~~45.1~~ 45.2 of the Code of Virginia shall be submitted to the director prior to initiation of construction activities. Such a plan shall be certified as prepared by, or under the supervision of, a registered professional engineer and shall include:

1. Design and construction specifications;

2. Examination and monitoring;

3. Emergency procedures; and

4. Closure and abandonment plans.

4VAC25-31-200. Exemption for restricted mining.

Any operator engaging in mining and disturbing less than a total of one acre of land and removing less than a total of 500 tons of minerals, is exempt from all mining permit fees, renewal fees and bonding requirements in this chapter. The mining operator shall submit an application for a permit, a sketch of the mining site, and an operations plan, which shall be adhered to in accordance with §§ ~~45.1-181~~ 45.2-1205 and ~~45.1-182.1~~ 45.2-1206 of the Code of Virginia.

4VAC25-31-220. Requirements for bonding of mineral mines.

A. Once the permit application is deemed complete, the applicant shall submit a bond or bonds on a form meeting the requirements in 4VAC25-31-220 through 4VAC25-31-270, made payable to the department and conditioned upon the satisfactory performance of all the requirements of this chapter, the approved permit, and Chapter ~~16~~ 12 (~~§ 45.1-180~~ § 45.2-1200 et seq.) of Title ~~45.1~~ 45.2 of the Code of Virginia, including completion of the reclamation plan so that the land will be capable of supporting the approved post-mining land use.

B. The bond or bonds shall cover the entire area presently disturbed by mining plus the estimated number of acres to be disturbed in the upcoming year.

C. As additional areas outside the bonded acreage are to be disturbed to facilitate the mining operation, the permittee shall file a bond or bonds to cover the acreage with the division.

D. Bond shall be posted and accepted by the division prior to disturbing an area for mining-related activity.

E. Permitted operators shall certify annually with the permit renewal the type, current insurer or bank, and the amount of all reclamation bonds.

4VAC25-31-230. Period of liability.

A. The bond liability shall be for the duration of the mineral mining operation and for the period following reclamation, which is necessary to demonstrate the success of the final reclamation.

B. In lieu of the requirements of 4VAC25-31-240 through 4VAC25-31-270, a permittee accruing five years of satisfactory operation under Chapter ~~16~~ 12 (~~§ 45.1-180~~ § 45.2-1200 et seq.) of Title 45.1 of the Code of Virginia shall be required to enter the Minerals Reclamation Fund as established in Article 4 (~~§ 45.1-197.8~~ § 45.2-1234 et seq.) of Chapter ~~16~~ 12 of Title ~~45.1~~ 45.2 of the Code of Virginia and 4VAC25-31-320. All performance bonds will be released upon acceptance in the Minerals Reclamation Fund and payment of required fees.

4VAC25-31-240. Bond amount.

A. Bond shall be set in accordance with ~~§ 45.1-183~~ § 45.2-1208 of the Code of Virginia.

B. The minimum bond for a mineral mining permit shall be $3,000, except for restricted permits and Minerals Reclamation Fund participants.

4VAC25-31-250. General terms and conditions of bond.

A. The bond shall be of the form and amount as specified by the division.

B. The performance bond shall be payable to the department.

C. The performance bond shall be conditioned upon satisfactory performance of all the requirements of this chapter, the approved permit, and Chapter ~~16~~ 12 (~~§ 45.1-180~~ § 45.2-1200 et seq.) of Title ~~45.1~~ 45.2 of the Code of Virginia, including completion of the reclamation plan so that the land will be capable of supporting the approved post-mining land use.

4VAC25-31-280. Release of bond.

The division may release all or part of the bond for the entire permit area or a portion of the permit area if the division is satisfied that all reclamation covered by the bond or portion thereof has been accomplished in accordance with this chapter, the approved permit, and Chapter ~~16~~ 12 (~~§ 45.1-180~~ § 45.2-1200 et seq.) of Title ~~45.1~~ 45.2 of the Code of Virginia, including completion of the reclamation plan so that the land will be capable of supporting the approved post-mining land use.

4VAC25-31-310. Bond forfeiture.

A. If the permittee refuses or is unable to comply with an order by the director under ~~§ 45.1-186.1~~ § 45.2-1213 of the Code of Virginia, fails to comply with the terms of the permit, or defaults on the conditions under which the bond was accepted, the division shall take the following action to revoke the permit and forfeit the bond or bonds for the permit area or a portion of the permit area:

1. Send written notification by certified mail, return receipt requested, to the permittee and the surety on the bond informing them of the decision to revoke the permit and forfeit all or part of the bond, and the reasons for this action.

2. Advise the permittee and surety of the conditions under which forfeiture may be avoided. Such conditions may include:

a. Agreement by the permittee or another party to perform reclamation operations in accordance with a compliance schedule acceptable to the division, which meets the conditions of the permit and the reclamation plan, and demonstrates that such party has the ability to satisfy the conditions; or

b. The division may allow a surety to complete the reclamation plan if the surety can demonstrate an ability to complete the reclamation in accordance with the approved reclamation plan. Except where the division may approve partial release, no surety liability shall be released until successful completion of all reclamation under the terms of the permit.

B. In the event forfeiture of the bond is required, the division shall:

1. Proceed to collect the forfeited amount as provided by Virginia law for the collection of defaulted bonds or other debts if actions to avoid forfeiture have not been taken, if any rights of appeal have not been exercised within a time established by the division, or if such appeal is unsuccessful.

2. Use funds collected from bond forfeiture to complete the reclamation plan on the permit area.

C. Upon default the division may cause the forfeiture of any and all bonds deposited to complete reclamation for which the bonds were posted. Bond liability shall extend to the entire permit area under conditions of forfeiture.

D. Reclamation costs in excess of the forfeited bond amount will constitute a debt of the operator to the Commonwealth of Virginia and shall be collected in accordance with ~~§ 45.1-186.2~~ § 45.2-1214 of the Code of Virginia.

E. In the event the amount of performance bond forfeited was more than the amount necessary to complete reclamation, the unused funds shall be returned by the division to the party from whom they were collected.

F. Appeal of bond forfeiture decisions may be made by the operator by providing notice of appeal to the director in accordance with Article 3 (§ 2.2-4018 et seq.) of the Administrative Process Act. If the operator files a notice of appeal, then the director's orders revoking the permit and declaring forfeiture shall be held in abeyance until the appeal is determined.

4VAC25-31-320. Minerals Reclamation Fund (MRF).

A. Each operator who has had five years of satisfactory operation in the Commonwealth under Chapter ~~16~~ 12 (~~§ 45.1-180~~ § 45.2-1200 et seq.) of Title ~~45.1~~ 45.2 of the Code of Virginia shall become a member of the fund by making an initial payment to the fund of $50 for each acre currently disturbed and each acre estimated to be affected by mining operations during the next year. Thereafter the member shall make an annual payment of $12.50 for each acre currently disturbed plus each acre estimated to be affected during the next ensuing year. No annual Minerals Reclamation Fund deposits will be collected from members where the permit Minerals Reclamation Fund deposits divided by the number of bonded acres in the next ensuing year is equal to or greater than $500.

B. Entry into the Minerals Reclamation Fund shall be mandatory for all eligible permittees.

C. Operator deposits into the Minerals Reclamation Fund shall be released or retained under the following conditions:

1. When the operation and reclamation are complete and the reclaimed area is suitable for bond release, Minerals Reclamation Fund deposits for the reclaimed area shall be returned to the operator.

2. When the mining permit is transferred to another permittee and division approval is granted, Minerals Reclamation Fund deposits for the permit may be returned to the transferring permittee.

3. When a mining permit is completely relinquished to another operator, other than in a permit transfer, all of the Minerals Reclamation Fund deposits for the permit shall be returned to the relinquishing operator upon division approval of the relinquishment.

4. After bond release applications are approved by the division, Minerals Reclamation Fund deposits for the permit shall be held or retained according to the following formulas:

a. If the permit Minerals Reclamation Fund balance divided by the number of acres remaining under bond is equal to or greater than $500, Minerals Reclamation Fund deposits for the permit will be released so that the remaining deposits equal $500 per acre for the acres remaining under bond.

Example: 50 acres permitted; 10 acres bonded; 2 acres requested for release; Minerals Reclamation Fund deposits = $4,000;

Minerals Reclamation Fund balance ÷ remaining bonded acres = $500;

$4,000 ÷ (10-2) acres = $500.

b. If the permit Minerals Reclamation Fund balance divided by the number of acres remaining under bond is less than $500, the bond release amount will be determined by dividing the permit Minerals Reclamation Fund deposit by the number of bonded acres including the acres to be released and then multiplying by the number of acres to be released.

Example: 50 acres permitted; 10 acres bonded; 2 acres requested for release; Minerals Reclamation Fund deposits = $3,000;

Minerals Reclamation Fund balance ÷ total bonded acres = Release amount $ per acre;

$3,000 ÷ 10 acres = $300 per acre;

Release amount = $300 per acre x 2 acres = $600.

D. Moneys available in the Minerals Reclamation Fund may be less than the total of all operator deposits due to expenditures for bond forfeiture as required by ~~§ 45.1-197.12~~ § 45.2-1238 of the Code of Virginia. Minerals Reclamation

Fund refunds are subject to availability of moneys in the Minerals Reclamation Fund and shall be suspended if the fund decreases below $250,000. Payments to the fund are then proportionately assessed until the fund returns to a minimum, $250,000 or bond or other securities are posted as required by the director in accordance with ~~§ 45.1-197.14~~ § 45.2-1240 of the Code of Virginia.

E. Minerals Reclamation Fund deposits will be transferred to the successor operator when a permit transfer occurs due to a change in organization status or restructuring that does not involve a complete change of ownership.

4VAC25-31-430. Completion of active mining.

A. Except as provided in subsection B of this section and with the director's approval, a mining operation where no mineral has been removed or overburden removed or regraded, or where no substantial mine-related activity has been conducted for a period of 12 consecutive months shall be declared complete, and total reclamation shall begin.

B. At the option of the operator and with the director's approval, an operation may remain under permit for an indefinite period during which no mineral or overburden is removed if the following conditions are met to the director's satisfaction:

1. All disturbed areas are reclaimed or adequately stabilized, or all erosion and sediment control systems are maintained in accordance with mining plans and proper engineering practices.

2. All drainage structures are constructed and maintained in accordance with mining plans and proper engineering practices.

3. All vegetation is maintained, including reseeding if necessary.

4. All improvements on site, including machinery and equipment, are maintained in a state of good repair and condition.

If the conditions listed in this subsection are not met, the permit may be revoked by the director in accordance with ~~§ 45.1-186.1~~ § 45.2-1213 of the Code of Virginia.

4VAC25-31-500. Water impoundments.

A. Structures that impound water or sediment to a height of five feet or more above the lowest natural ground area within the impoundment and have a storage volume of 50 acre-feet or more, or impound water or sediment to a height of 20 feet or more regardless of storage volume, shall meet the following criteria (noted in Chapter ~~18.1~~ 13 (~~§ 45.1-225.1~~ § 45.2-1300 et seq.) of Title ~~45.1~~ 45.2 of the Code of Virginia):

1. Impoundments meeting or exceeding the size criteria set forth in this section shall be designed utilizing a spillway flood and hazard potential classification as specified in the following table:

Class of Impoundment*	Spillway Design Flood (SDF)**	Minimum Threshold for Incremental Damage Analysis ***
High Hazard	PMF	0.50 PMF
Significant Hazard	0.50 PMF	100-year storm
Low Hazard	100-year storm	50-year storm

*Size and hazard potential classifications shall be proposed and justified by the operator and shall be subject to approval by the director. Present and projected development in the inundation zone downstream from the structure shall be used in determining the classification.

**The complete definitions of hazard potential are those contained in 4VAC50-20-40.

***The establishment of rigid design flood criteria or standards is not intended. Safety must be evaluated in the light of peculiarities and local conditions for each impounding structure and in recognition of the many factors involved, some of which may not be precisely known. Such can only be done by competent, experienced engineering judgment, which the values in the table are intended to add to, not replace.

Reductions in the SDF may be evaluated by use of incremental damage analysis described in 4VAC50-20-52. Note that future development downstream may increase the required SDF.

2. Impounding structures shall be constructed, operated, and maintained such that they perform in accordance with their design and purpose throughout their life.

a. Impoundments shall be designed and constructed by or under the direction of a qualified professional engineer licensed in Virginia and experienced in the design and construction of impoundments.

b. The designs shall meet the requirements of this section and use current prudent engineering practices.

c. The plans and specifications for an impoundment shall consist of a detailed engineering design report that includes engineering drawings and specifications, with the following as a minimum:

(1) The name of the mine; the name of the owner; classification of the impounding structure as set forth in this regulation; designated access to the impoundment and the location with respect to highways, roads, streams and existing impounding structures and impoundments that

would affect or be affected by the proposed impounding structure.

(2) Cross sections, profiles, logs of test borings, laboratory and in situ test data, drawings of principal and emergency spillways and other additional drawings in sufficient detail to indicate clearly the extent and complexity of the work to be performed.

(3) The technical provisions as may be required to describe the methods of the construction and construction quality control for the project.

(4) Special provisions as may be required to describe technical provisions needed to ensure that the impounding structure is constructed according to the approved plans and specifications.

d. Components of the impounding structure, the impoundment, the outlet works, drain system and appurtenances shall be durable in keeping with the design and planned life of the impounding structure.

e. All new impounding structures regardless of their hazard potential classification shall include a device to permit draining of the impoundment within a reasonable period of time, and at a minimum shall be able to lower the pool level six vertical inches per day, as determined by the owner's professional engineer, subject to approval by the director.

f. Impoundments meeting the size requirements and hazard potential of high, significant, or low shall have a minimum static safety factor of 1.5 for a normal pool with steady seepage saturation conditions and a seismic safety factor of 1.2.

g. Impoundments shall be inspected and maintained to ensure that all structures function to design specifications.

h. Impoundments shall be constructed, maintained and inspected to ensure protection of adjacent properties and preservation of public safety and shall meet proper design and engineering standards under Chapter ~~18.1~~ 13 (~~§ 45.1-225.1~~ § 45.2-1300 et seq.) of Title ~~45.1~~ 45.2 of the Code of Virginia. Impoundments shall be inspected at least daily by a qualified person, designated by the licensed operator, who can provide prompt notice of any potentially hazardous or emergency situation as required under ~~§ 45.1-225.2~~ § 45.2-1302 of the Code of Virginia. Records of the inspections shall be kept and certified by the operator or his agent.

i. The operator will prepare an emergency action plan (EAP) that includes the following information:

(1) A notification chart of persons or organizations to be notified, the person or persons responsible for notification, and the priority in which notifications are issued. Notifications shall include at a minimum the division, the local government authority responsible for emergency response, and the Virginia Department of Emergency Management.

(2) A discussion of the procedures used for timely and reliable detection, evacuation, and classification of emergency situations considered to be relevant to the structure and its setting.

(3) Designation of responsibilities for EAP related tasks. Also, the EAP shall designate the responsible party for making a decision that an emergency situation no longer exists at the impounding structure. Finally, the EAP shall include the responsible party and the procedures for notifying to the extent possible any known local occupants, owners, or lessees of downstream properties potentially impacted by a failure of the impounding structure.

(4) A section describing actions to be taken in preparation for impoundment emergencies, both before and during the development of emergency conditions.

(5) Dam break inundation maps. Each sheet of such maps for high and significant potential hazard classification structures shall be prepared and sealed by a professional engineer. Where possible, inundation mapping in the EAP should be provided on sheets no larger than 11 inches by 17 inches to facilitate copying for emergency response.

(6) Appendices containing information that supports and supplements the material used in the development of the EAP, including plans for training, exercising, and updating the EAP.

(7) A section that identifies all parties with assigned responsibilities in the EAP and signed certification by all of those parties that a copy of the EAP has been received.

(8) Times periods for review or revision acceptable to the director.

3. Impoundments shall be closed and abandoned in a manner that ensures continued stability and compatibility with the post-mining land use.

4. The following are acceptable as design procedures and references:

a. The design procedures, manuals and criteria used by the United States Army Corps of Engineers;

b. The design procedures, manuals and criteria used by the United States Department of Agriculture, Natural Resources Conservation Service;

c. The design procedures, manuals and criteria used by the United States Department of Interior, Bureau of Reclamation;

d. The design procedures, manuals and criteria used by the United States Department of Commerce, National Weather Service;

e. The design procedures, manuals and criteria used by the United States Federal Energy Regulatory Commission;

f. Federal Guidelines for Dam Safety: Emergency Action Planning for Dam Owners, United States Department of

Homeland Security, Federal Emergency Management Agency, October 1998, Reprinted January 2004; FEMA 64 or as revised;

g. Federal Guidelines for Dam Safety: Selecting and Accommodating Inflow Design Floods for Dams, United States Department of Homeland Security, Federal Emergency Management Agency, October 1998, Reprinted April 2004; FEMA 94 or as revised; or

h. Other design procedures, manuals and criteria that are accepted as current, sound engineering practices, as approved by the director prior to the design of the impounding structure.

B. Impoundments that do not meet or exceed the size criteria of subsection A of this section shall meet the following criteria:

1. Be designed and constructed using current, prudent engineering practice to safely perform the intended function.

2. Be constructed with slopes no steeper than two-horizontal-to-one-vertical in predominantly clay soils or three-horizontal-to-one-vertical in predominantly sandy soils.

3. Safely pass the runoff from a 50-year storm event for temporary (life of mine) structures and a 100-year storm event for permanent (to remain after mining is completed) structures.

4. Be closed and abandoned to ensure continued stability and compatibility with the post-mining use.

5. Be inspected and maintained to ensure proper functioning.

6. Provide adequate protection for adjacent property owners and ensure public safety.

C. Impoundments with impounding capability created solely by excavation shall comply with the following criteria:

1. Be designed and constructed using prudent engineering practice to safely perform the intended function.

2. Be constructed with slopes no steeper than two-horizontal-to-one-vertical in predominantly clay soils or three-horizontal-to-one-vertical in predominantly sandy soils.

3. Be designed and constructed with outlet facilities capable of:

a. Protecting public safety;

b. Maintaining water levels to meet the intended use; and

c. Being compatible with regional hydrologic practices.

4. Be closed and abandoned to ensure continued stability and compatibility with the post-mining use.

5. Be inspected and maintained to ensure proper functioning.

6. Provide adequate protection for adjacent property owners and ensure public safety.

4VAC25-31-570. Formal review.

Orders of the director, which are final agency actions for which no further informal resolution is available, shall be appropriately identified and may be appealed in accordance with ~~§ 45.1-194~~ § 45.2-1226 of the Code of Virginia.

4VAC25-35-5. Definitions.

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

"Commencing work" means after employment but before beginning job duties.

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

"Division" means the Division of Mineral Mining of the Department of ~~Mines, Minerals and~~ Energy.

"MSHA" means the federal Mine Safety and Health Administration.

4VAC25-35-30. Reciprocity requirements.

Reciprocity shall be available for certified persons in other states as provided for in ~~§ 45.1-161.292:24~~ § 45.2-1118 of the Code of Virginia. Applicants for reciprocity must submit proof of current certification, examination grades, and documentation of equivalent work experience for review and approval by the department.

4VAC25-35-110. Mineral mine inspector.

In addition to the requirements set forth in ~~§ 45.1-161.292:11~~ § 45.2-1109 of the Code of Virginia, mine inspector applicants shall demonstrate knowledge and competence in those areas specified in § ~~45.1-161.292:12~~ § 45.2-1110 of the Code of Virginia through the examination process. A certificate will not be issued until an applicant is employed by the department. Applicants who already possess a valid coal mine inspector certification pursuant to 4VAC25-20-180 or 4VAC25-20-185 shall be deemed to have met the requirements of this section.

4VAC25-35-120. General mineral miner.

A. As set forth in ~~§ 45.1-161.292:28~~ § 45.2-1122 of the Code of Virginia, miners commencing work after January 1, 1997, shall have a general mineral miner certification. Persons excluded from the general mineral miner certification are those involved in delivery, office work, maintenance, service and construction work, other than the extraction and processing of minerals, who are contracted by the mine operator. Hazard training as required by 30 CFR Part 46 or 30 CFR Part 48 shall be provided to these persons.

B. Applicants shall complete certification training in first aid and mineral mining regulations and law, which is conducted by a training instructor approved by the division, a certified MSHA instructor, or a certified mine foreman. Training shall

include the following topics, subtopics and practical applications:

1. First aid training shall convey knowledge of first aid practices including identification of trauma symptoms, recognition and treatment of external and internal bleeding, shock, fractures, and exposure to extreme heat or cold. Training shall include a demonstration of skills or passing an examination, as evidenced by the instructor certification submitted in a form acceptable to the division.

2. Law and regulation training shall convey highlights of the mineral mine safety laws of Virginia and the safety and health regulations of Virginia. Specifically, information shall be provided on miner responsibilities and accountability, certification requirements, violations, penalties, appeals and reporting violations to the division. Training shall include a demonstration of skills or passing an examination, as evidenced by the instructor certification submitted in a form acceptable to the division.

C. The trainer will certify to the department that the training and demonstrations required by ~~§ 45.1-161.292:28~~ § 45.2-1122 B of the Code of Virginia and this section have occurred.

D. Applicants who hold a valid first aid certificate as noted in 4VAC25-35-10 shall be considered to have met the first aid requirements.

E. Applicants who have completed training may commence work and shall be considered provisionally certified for up to 60 days from the date the instructor completes the training.

F. The instructor shall submit verification of certification in a form acceptable to the division and the $10 fee for each applicant who completes the training, together with a class roster of all persons who complete the training, within 30 days of the training date.

G. The mine operator shall maintain the following records for those miners required to obtain a general mineral miner certification and those who qualify for exemption, starting January 1, 1997:

1. The employee name, address, and phone number.

2. The job title, employment date and general mineral miner number if applicable.

3. The date training was completed and the instructor providing it for nonexempt employees.

4. If the employee is exempt from the requirements, the date they began working in the mineral mining industry in Virginia.

H. Applicants who already possess a valid general coal miner surface certification pursuant to 4VAC25-20 shall be deemed to have met the requirements of this section.

4VAC25-40-10. Definitions.

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

"Abandoned mine" means a mine in which all work has stopped on the mine premises and where an office with a responsible person in charge is no longer maintained at the mine.

"Abandoned workings" means deserted mine areas in which further work is not intended.

"Acceptable" means tested and found to be appropriate for a specific purpose by a nationally recognized agency.

"ACGIH" means the American Conference of Governmental Industrial Hygienists.

"Angle of repose" means the maximum slope or angle at which material remains stable.

"Auxiliary fan" means a fan used to deliver air to a working place off the main airstream, generally used with ventilation tubing.

"Barricaded" means physically obstructed to hinder or prevent the passage of persons or vehicles.

"Blast area" means the area of the mine in which concussion or flying material can reasonably be expected to cause injury during detonation.

"Blast site" means the 50-foot perimeter around boreholes being loaded, or 30 feet if demarcated by a barricade, and the 180° free-face area for a distance of at least four times the average depth of the boreholes being loaded.

"Bridle" means a cable or chain used to support a work platform in a raised position with more than three connection points.

"Burden" means the distance in feet between rows of boreholes or between the open face and boreholes.

"Company official" means a member of the company supervisory or technical staff.

"Competent person" means a person having abilities and experience that fully qualify him to perform the duty to which he is assigned.

"Confined space" means an enclosed area that is large enough for an employee to enter fully and perform his assigned work but is not designed for continuous occupancy by the employee and has a limited or restricted means of entry or exit. These spaces may include storage bins, hoppers, silos, tanks, vaults, and other similar areas.

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

"Director" means the Director of the Division of Mineral Mining.

"Distribution box" means an apparatus with an enclosure through which an electric circuit is carried to one or more cables from a single incoming feedline, each cable circuit being connected through individual overcurrent protective devices.

"Division" means the Division of Mineral Mining.

"Escapeway" means a passageway by which persons may leave if the ordinary exit is obstructed.

"Face" or "bank" means that part of any mine where excavating is progressing or was last done.

"Flash point" means the minimum temperature at which sufficient vapor is released to form a flammable vapor-air mixture.

"Free-face" means the face area of a quarry bench to be blasted.

"Flyrock" means any uncontrolled material generated by the effect of a blast that was hazardous to persons, or to property not owned or controlled by the operator.

"Heavy duty mobile equipment" means any equipment used for loading, hauling, or grading and not normally intended for highway use.

"Hoist" means a power-driven windlass or drum used for raising ore, rock, or other material from a mine, and for lowering or raising persons and material.

"Lay" means the distance parallel to the axis of the rope in which a strand makes one complete turn about the axis of the rope.

"Loaded" means containing explosives, blasting agents, or detonators.

"Main fan" means a fan that controls the entire airflow of the mine or the airflow of one of the major air circuits.

"Major electrical installation" means an assemblage of stationary electrical equipment for the generation, transmission, distribution, or conversion of electrical power.

"Mine opening" means any opening or entrance from the surface into a mine.

"Mine vehicle" means any vehicle on the mine site that is utilized by the mine operator or contractors performing excavation, maintenance, or construction at the mine.

"Misfire" means the partial or complete failure of a blast to detonate as planned.

"MSHA" means the Mine Safety and Health Administration.

"Occupational injury" means any injury to a miner which occurs at a mine for which medical treatment is administered, or which results in death or loss of consciousness, inability to perform all job duties on any day after an injury, temporary assignment to other duties, or transfer to another job as specified in the 30 CFR Part 50.2.

"Overburden" means material of any nature, consolidated or unconsolidated, that overlies a deposit of useful materials or ores that are to be mined.

"Potable" means fit for human consumption and, where required by the Code of Virginia, approved by the Virginia Department of Health.

"Powder chest" means a substantial, nonconductive portable container equipped with a lid and used at blasting sites for explosives other than blasting agents.

"Primer" means a cartridge or package of explosives which contains a detonator or detonating cord.

"Refuse" means mineral processing waste, tailings, silts, sediments, or slimes.

"Rollover protection" means a framework, safety canopy or similar protection for the operator when equipment overturns and which is acceptable for use on that particular type of equipment.

"Safety fuse" means a train of powder enclosed in cotton, jute yarn, and water-proofing compounds, which burns at a uniform rate, used for firing a cap containing the detonating compound which in turn sets off the explosive charge.

"Safety hazard" means any condition, function, or circumstance which may reasonably be expected to cause or assist an accident.

"Scaled distance (Ds)" means the actual distance (D) in feet divided by the square root of the maximum explosive weight (W) in pounds that is detonated per delay period for delay intervals of eight milliseconds or greater; or the total weight of explosive in pounds that is detonated within an interval less than eight milliseconds.

"Scaling" means removal of insecure material from a face or highwall.

"Shaft" means a vertical or inclined shaft, slope, incline, or winze.

"Stemming" means that inert material placed in a borehole after the explosive charge for the purpose of confining the explosion gases in the borehole or that inert material used to separate the explosive charges (decks) in decked holes.

"Substantial construction" means construction of such strength, material, and workmanship that the object will withstand all reasonable shock, wear, and usage to which it will be subjected.

"Suitable" means that which fits and has the qualities or qualifications to meet a given purpose, occasion, condition, function, or circumstance.

"Switch" means a device used to complete or disconnect an electrical circuit.

"Travelway" means a passage, walk or way regularly used and designated for persons to go from one place to another.

"Wet drilling" means the continuous application of water through the control hole of hollow drill steel to the bottom of the drill hole.

4VAC25-40-25. Purpose and authority.

The purpose of this chapter is to provide for the protection of persons and property on and around mineral mines. The chapter works with the Virginia Mineral Mine Safety Act (~~§ 45.1-161.292:1~~ § 45.2-939 et seq.) of the Code of Virginia (as shown in Mineral Mine Safety Laws of Virginia, 2005 edition). Refer to the Act for other definitions and requirements related to this chapter.

4VAC25-40-270. Refuse piles, water and silt retaining dams.

A. Refuse piles, water and silt retaining dams that meet the size criteria of ~~§ 45.1-225.2~~ § 45.2-1302 of the Code of Virginia shall be designed, constructed, maintained, inspected and abandoned in accordance with ~~§§ 45.1-225.2 through 45.1-225.5~~ Chapter 13 (§ 45.2-1300 et seq.) of Title 45.2 of the Code of Virginia.

B. Water and silt retaining dams that do not meet the size criteria of ~~§ 45.1-225.1~~ § 45.2-1301 of the Code of Virginia shall be designed, constructed and abandoned in accordance with the Minerals Other Than Coal Surface Mining Law (~~§ 45.1-180~~ § 45.2-1200 et seq. of the Code of Virginia).

C. Refuse shall be placed only in locations approved by the director.

4VAC25-40-300. Closure of roads or openings.

Upon abandonment of a mine, the operator shall effectively close or fence all roads, mine openings, and surface excavations where hazardous conditions exist and warning signs shall be posted. Upon temporary cessation of mining activities as provided for in ~~§ 45.1-181~~ § 45.2-1205 of the Code of Virginia, the operator shall effectively close or barricade access roads and hazardous areas.

4VAC25-40-5760. Application for mining near gas or oil wells.

A. Application may be made at any time to the director by the operator for an approval to conduct mining operations within 200 feet of any permitted gas or oil well, or gas or oil well being drilled, on forms furnished by the director and containing such information as the director may require.

B. The application shall be accompanied by a map or maps as specified in Chapter ~~16~~ 12 (~~§ 45.1-180~~ § 45.2-1200 et seq.) of Title ~~45.1~~ 45.2 of the Code of Virginia showing all mining operations or workings projected within 200 feet of the well.

C. Notice of the application shall be sent by certified mail to the well operator and the gas and oil inspector. The notice shall inform the well operator of the right to object to the proposed mining activity. Objections must be filed with the director within 15 days after notice is received by the objecting person.

D. The director may, prior to considering the application, make or cause to be made any inspections or surveys which he deems necessary, and may, if no objection is filed by the well operator or the gas and oil inspector within 15 days after the notice is received, grant the request of the operator to conduct the mining operations as projected, or with such modifications as he may deem necessary.

E. If the well operator or gas and oil inspector files objections, a hearing will be held under the same procedures as set forth in ~~§ 9-6.14:11~~ § 2.2-4019 of the Code of Virginia.

F. If the applicant for an approval to mine within 200 feet of a gas or oil well submits proof in writing that none of the persons required to be notified under this section has any objection to the projected mining activity, then the director may waive the notice requirement under this section and grant the request of the operator to conduct the projected mining activity, provided all other conditions have been met.

4VAC25-70-10. General requirements.

A. ~~Section 45.1-161.191~~ Section 45.2-811 of the Code of Virginia requires that telephone service or an equivalent two-way communication system be provided between the top and each landing of main shafts and slopes in the mines.

B. Corrective actions shall be taken when a disruption or failure of the required communication system occurs to any section or part of an underground mine where preparation for mining is being made or mining is in progress. Work to restore communications shall begin immediately.

C. Any disruption in communication which is not restored within one hour shall be recorded by the mine foreman in the on-shift report. The record shall reflect the corrective actions taken and time the communication was restored.

D. Whenever a representative of the miners, or a miner where there is no such representative, has reason to believe that conditions are such that continuing to work on a section without communication would constitute an imminent danger to safety or health, such miner or representative shall notify the Chief of the Division of Mines or mine inspector of his concern. Upon receipt of such notification, the Chief shall cause an inspection to be made as soon as possible. If the inspection determines that such danger exists, the workers, excluding those needed to correct the problem, shall be withdrawn to a place that has communication with the surface.

4VAC25-90-10. Definitions.

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

"Chief" means the Chief of the Division of Mines of the Department of ~~Mines, Minerals and~~ Energy.

"Division" means the Division of Mines of the Department of ~~Mines, Minerals and~~ Energy.

"MSHA" means the Mine Safety and Health Administration.

"TLV" or "Threshold Limit Value" means the airborne concentration of a substance that represents conditions under which it is believed that nearly all workers may be repeatedly exposed day after day without adverse effect as recommended by the American Conference of Government Industrial Hygienists.

4VAC25-90-70. Air quality.

A. During on-shift examinations required by ~~§ 45.1-161.209~~ § 45.2-827 of the Code of Virginia, a mine foreman authorized by the operator shall determine the concentration of carbon monoxide (CO) and nitrogen dioxide (NO_2).

1. In the return of each working section where diesel equipment is used inby the loading point at a location which represents the contribution of all diesel equipment on such section.

2. At a point inby the last piece of diesel equipment on a longwall or shortwall when mining equipment is being installed or removed. This examination shall be made at a time which represents the contribution of all diesel equipment used for this activity including the diesel equipment used to transport longwall or shortwall equipment to and from the section.

3. In any other area designated by the chief where diesel equipment is operated in a manner which can result in significant concentrations of diesel exhaust emissions.

4. The concentrations of carbon monoxide (CO) and nitrogen dioxide (NO_2) shall not exceed the following threshold limit values:

Threshhold Limit Values (TLV)	
Carbon Monoxide (CO)	25 ppm
Nitrogen Dioxide (NO_2)	3 ppm

B. Samples of CO and NO_2 shall be collected and analyzed:

1. By appropriate instrumentation that has been maintained and calibrated in accordance with the manufacturer's recommendations;

2. In a manner that makes the results available immediately to the person collecting the samples; and

3. During periods that are representative of conditions during normal operations.

C. The results of these tests shall be:

1. Recorded in a secure book that is not susceptible to alteration, or recorded electronically in a computer system that is secure and not subject to alteration; and

2. Retained at a surface location at the mine for at least one year and made available for inspection by interested persons.

4VAC25-101-10. Definitions.

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

"Accurate map or plat" means a map or plat drawn of a scale of between one inch equals 100 feet (1:1,200) and one inch equals 400 feet (1:4,800) with the scale so stated on the map or plat and certified by a licensed professional engineer or licensed land surveyor.

"Approved" means a device, apparatus, equipment, condition, method, course or practice approved in writing by the chief. Approvals by federal agencies such as the Mine Safety and Health Administration (MSHA), or the Office of Surface Mining (OSM), shall also be considered "approved" for the purposes of this chapter.

"Bridge plug" means an obstruction intentionally placed in a vertical ventilation hole at a specified depth.

"Building" means a structure regularly occupied in whole or in part as a habitation for human beings, or where people are accustomed to live, work, or assemble.

"Casing" means all pipe set in wells or vertical ventilation holes except conductor pipe and tubing.

"Cement" means hydraulic cement properly mixed with water.

"Chief" means the Chief of the Division of Mines of the Department of ~~Mines, Minerals and~~ Energy, or his authorized agent.

"Coalbed methane gas" means occluded natural gas produced from coalbeds and rock strata associated therewith.

"Coalbed methane gas well" means a well capable of producing coalbed methane gas.

"Coal-protection string" means a casing designed to protect a coal seam by excluding all fluids and gas or gas pressure from the seam, except such as may be found in the coal seam itself.

"Coal seam" means any stratum of coal 20 inches or more in thickness, unless a stratum of less thickness is being commercially worked, or can in the judgment of the department foreseeably be commercially worked and will require protection if wells are drilled through it.

"Directional survey" means a well survey that measures the degree of deviation of a hole from true vertical and direction of points in the hole from the vertical.

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

"Division" means the Division of Mines of the Department of ~~Mines, Minerals and~~ Energy.

"Form prescribed by the chief" means a form issued by the division, or an equivalent facsimile, for use in meeting the requirements of the Code of Virginia or this chapter.

"Gas" or "natural gas" means all natural gas whether hydrocarbon or nonhydrocarbon or any combination or mixture thereof, including hydrocarbons, hydrogen sulfide, helium, carbon dioxide, nitrogen, hydrogen, casing head gas, and all other fluids not defined as oil.

"Gas well operator" means any person who has been designated to operate or does operate a gas well.

"Gas and Oil Inspector" means the Director of the Division of Gas and Oil of the Department of ~~Mines, Minerals and~~ Energy.

"Gas well" means any well that produces or appears capable of producing a ratio of 6,000 cubic feet (6 Mcf) of gas or more to each barrel of oil, on the basis of a gas-oil ratio test.

"Gob well" means a coalbed methane gas well which is capable of producing coalbed methane gas from the de-stressed zone associated with any full-seam extraction of coal that extends above and below the mined-out coal seam.

"Groundwater" means all water under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, which has the potential for being used for domestic, industrial, commercial or agricultural use or otherwise affects the public safety.

"Highway" means any public street, public alley, or public road.

"Inclination survey" means a survey taken inside a vertical ventilation hole that measures the degree of deviation of the point of the survey from the vertical.

"Intermediate string" means a string of casing that prevents caving, shuts off connate water in strata below the water-protection string, and protects strata from exposure to lower zone pressures.

"Log" means the written record progressively describing all strata, water, or gas encountered in drilling, depth and thickness of each bed or seam of coal drilled through, volume of gas, pressures, rate of fill-up, fresh and salt water-bearing horizons and depths, cavings strata, casing records and such other information as is usually recorded in the normal procedure of drilling. The term shall also include electrical survey records or electrical survey logs.

"Mcf" means, when used with reference to natural gas, 1,000 cubic feet of gas at a pressure base of 14.73 pounds per square inch gauge and a temperature base of 60°F.

"Minable coal seam" means a coal seam being mined commercially, or that, in the judgment of the chief, can reasonably be expected to be mined, and which, when mined, will require protection if holes are drilled through it.

"Mining" means the activity of producing coal from any coal mine.

"Mud" means a mixture of materials which creates a weighted fluid to be circulated downhole during over-balance drilling operations for the purpose of lubricating and cooling the bit, removing cuttings, and controlling formation fluids, oil, gas or gas pressure.

"Owner" means the person or persons listed as owner of record by the Clerk of the Circuit Court of the county in which the property is located.

"Pending" means an application for a vertical ventilation hole or gas well permit that has been submitted to the department, but where the decision to issue or refuse to issue the permit has not been made.

"Permanent point" means an established physical point of reference on the land surface, based on the applicant's coordinate system, used for a map or plat submitted with a permit application.

"Permitted" means a vertical ventilation hole or gas well that has been approved by the department.

"Person" means individual, corporation, partnership, association, company, business, trust, joint venture, unit of government, or other legal entity.

"Pillar" means a solid block of coal or ore or other material left unmined to support the overlying strata in a mine.

"Pipeline" means any pipe buried or on the surface used or to be used to transport gas.

"Plug" means the sealing of, or a device or material used for the sealing of, a vertical ventilation hole or casing to prevent the migration of formation fluids or gas from one stratum to another.

"Railroad" means any steam, electric or other powered transportation system operating on a track which carries passengers for hire, or over which loaded or empty equipment is transported.

"State plane coordinate system" means the Virginia Coordinate System of 1927 or the Virginia Coordinate System of 1983 as defined in ~~Chapter 17 (§ 55-287 et seq.) of Title 55~~ § 1-600 of the Code of Virginia.

"String of pipe" or "string" means the total footage of pipe of uniform size set in a vertical ventilation hole. The term

embraces conductor pipe, casing, and tubing. When the casing consists of segments of different size, each segment constitutes a separate string. A string may serve more than one purpose.

"Tubing" means the small diameter string set after the vertical ventilation hole has been drilled from the surface to the total depth and through which a substance is produced or injected.

"Vertical ventilation hole" means any hole drilled from the surface to the coal seam used primarily for the safety purpose of removing gas from the underlying coal seam and the adjacent strata, thus, removing the gas that would normally be in the mine ventilation system.

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

"Well" means any shaft or hole sunk, drilled, bored or dug into the earth or into underground strata for the extraction, injection or placement of any gaseous or liquid substance, or any shaft or hole sunk or used in conjunction with such extraction, injection or placement. The term shall not include any shaft or hole sunk, drilled, bored or dug into the earth for the sole purpose of pumping or extracting therefrom potable, fresh or usable water for household, domestic, industrial, agricultural, or public use and shall not include water boreholes, vertical ventilation holes where methane is vented or flared rather than produced and saved, subsurface boreholes drilled from the mine face of an underground coal mine, any other boreholes necessary or convenient for the extraction of coal or drilled pursuant to a uranium exploratory program carried out pursuant to the laws of this Commonwealth, or any coal or non-fuel mineral corehole or borehole for the purpose of exploration.

4VAC25-101-50. Venting methane; bleeder system.

A. Nothing in this chapter shall prevent the operator of a permitted coalbed methane gas well from venting methane from the well in accordance with the requirements of the Virginia Gas and Oil Act, Chapter ~~22.1~~ 16 (~~§ 45.1-361.1~~ § 45.2-1600 et seq.) of Title ~~45.1~~ 45.2 of the Code of Virginia and the Virginia Gas and Oil Regulation, 4VAC25-150-10 et seq.

B. The mine bleeder system, when operated in conjunction with vertical ventilation holes or coalbed methane gas wells, shall be operated such that changes in the operation of the vertical ventilation holes or coalbed methane wells shall not create hazardous conditions for the miners working underground. If the operation of a vertical ventilation hole or coalbed methane gas well affects any mine's ventilation, the mine shall be adequately ventilated in accordance with the mine's bleeder plan approved under ~~§ 45.1-161.220~~ § 45.2-837 of the Coal Mine Safety Act. Any changes or adjustments to such VVH's or coalbed methane gas wells shall be recorded as required by the mine's approved bleeder plan.

4VAC25-101-150. Mining within 500 feet of a vertical ventilation hole or gas well.

A. Before removing any coal or other mineral, or extending any mine workings or operations within 500 horizontal feet of any permitted or pending vertical ventilation hole or gas well, the mine operator shall give notice by certified mail to the vertical ventilation hole operator and the chief or, in the case of a gas well, the mine operator shall give notice as provided for in §§ ~~45.1-161.121~~ 45.2-707 A and ~~45.1-161.292~~ 45.2-939 A of the Coal Mine Safety Act.

B. The mine operator shall send to the vertical ventilation hole operator and the chief an accurate map or plat. The map shall show the location of the hole and projected mine workings within 500 horizontal feet of the ventilation hole and shall be shown in accordance with the state plane coordinate system.

C. Once notice and the map have been provided, the mine operator may proceed with mining operations as shown on the map. However, the mine operator shall not remove any coal or other mineral, or conduct any mining operations nearer than 200 horizontal feet, as determined by survey, to any permitted or pending vertical ventilation hole or gas well without the approval of the chief.

D. This provision shall not apply to mining operations in the seam which the vertical ventilation hole or gas well is intended to ventilate if safe mining procedures have been incorporated in the approved bleeder plan as provided in 4VAC25-101-190, unless the casing extends through that seam or if the vertical ventilation hole, gas well, or pipeline is located outside the coal seam outcrop.

4VAC25-101-160. Mining within 200 feet of a vertical ventilation hole, gas well or pipeline.

A. A mine operator shall submit a plan to the chief for approval to conduct mining operations within 200 feet (horizontally or vertically) of any permitted or pending vertical ventilation hole or gas well or to conduct surface mining operations within 200 feet of pipelines.

B. The plan shall comply with requirements developed by the chief. It shall be accompanied by an accurate map or plat showing the location of the hole, well, or pipeline, mine workings within 500 feet of the hole, well, or pipeline, projected mine workings within 200 horizontal feet of the vertical ventilation hole, gas well, or pipeline in accordance with the state plane coordinate system.

C. The chief may, prior to considering the plan, make or cause to be made any inspections or surveys which he deems necessary.

D. Notice of intent, including a copy of the plan, shall be sent by certified mail to the operator of the vertical ventilation hole or pipeline, which may be affected by the proposed mining operations. Gas well operators, which may be affected by the proposed mining operations, shall be given notice as required

in §§ ~~45.1-161.121.~~45.2-707 C and ~~45.1-161.292.~~ 45.2-939 B of the Coal Mine Safety Act. The notice shall inform the operator of the right to object to the proposed mining activity. Objections shall be filed with the chief within 10 days of the date that the notice is received. If the operator files an objection, the chief shall schedule a hearing in accordance with the provisions in 4VAC25-101-70.

E. If the mine operator submits proof in writing that the operator of the vertical ventilation hole, gas well, or pipeline does not object to the projected mining activity, then the chief may waive the notice requirement and issue a permit, provided all other conditions for permit issuance have been met.

F. The chief may, if the operator of the vertical ventilation hole, or gas well, or pipeline does not file an objection within the specified period, approve the plan for the mining operations as projected, or with such modifications as the chief may deem necessary.

G. This section shall not apply to mining operations in the seam that the vertical ventilation hole or gas well is intended to ventilate, if safe mining procedures have been incorporated in the approved bleeder plan as provided in 4VAC25-101-190, unless the casing extends through the seam or if the vertical ventilation hole, gas well, or pipeline is located outside the coal seam outcrop.

4VAC25-101-190. Mining seams impacted by vertical ventilation holes and coalbed methane wells intended to degas the seams being mined.

Mining through vertical ventilation holes, coalbed methane wells, or gas wells intended to degas the seam being mined shall comply with safe mining procedures which have been incorporated in the approved Bleeder Plan required by ~~§ 45.1-161.220~~ § 45.2-837 of the Coal Mine Safety Act.

4VAC25-101-200. Plugging of vertical ventilation holes.

A. Permit requirements; variances.

1. Plugging operations shall not commence until a detailed plugging plan has been submitted to and approved by the chief. A permit modification is required if the vertical ventilation hole was not previously permitted for plugging.

2. Any person may file an application with the chief to re-plug a previously plugged vertical ventilation hole in any manner permissible under provisions of this section to facilitate the safe mining-through of the vertical ventilation hole at a later date.

3. The chief may, upon application by the permittee, approve a variance to the prescribed plugging methods for the following reasons if it is determined that the alternate plan meets the requirements of §§ ~~45.1-161.121~~ 45.2-707 and ~~45.1-161.292~~ 45.2-939 of the Coal Mine Safety Act:

a. The coal owner, operator, or lessee of record requests a special plugging program to facilitate mine safety or to obtain approval from another governmental agency for the safe mining-through of a vertical ventilation hole. The application for a variance must include documentation of the request from the coal owner or operator.

b. The permittee has obtained written authorization from the coal owner or operator for alternate plugging of the coal-bearing section. The application for a variance must include documentation of approval by the coal owner or operator.

c. Downhole conditions such as junk in the hole, stuck or collapsed casing, caving or other adverse conditions which would prevent proper execution of the prescribed plugging methods.

d. A permittee presents an alternate plugging plan, which may differ in method from that prescribed herein, but which will achieve the desired result.

B. Plugging in open hole. When a vertical ventilation hole or section of a vertical ventilation hole without casing is to be plugged or plugged back, it shall be sealed and filled as prescribed in this section.

1. At each coal seam, a cement plug shall be placed from not less than 50 feet below the base of the coal to not less than 50 feet above the top of the coal. Whenever two or more coal seams are not widely separated, they may be treated as a single seam and plugged accordingly.

2. If a source of groundwater capable of having a beneficial use is exposed in open hole below surface (water-protection) casing, a cement plug at least 100 feet in length shall be placed below the base of the lowest such groundwater zone.

3. A cement plug of minimum length of 100 feet shall be placed across the bottom of the surface (water-protection) casing. The plug shall be placed so as to have approximately equal lengths in open hole and inside casing. If the vertical ventilation hole is without surface casing, a continuous cement plug shall be placed at least 50 feet below the base of the lowest known aquifer or 300 feet depth, whichever is deeper, to the surface.

4. All intervals below and between plugs shall be filled with drilling mud, bentonite gel, or other appropriately weighted materials approved by the chief.

C. Plugging in cased hole. When a cased hole or section of a cased hole is to be plugged or plugged back, it shall be sealed and filled as prescribed in this section.

1. All perforated intervals shall be either squeeze-cemented or otherwise isolated from the hole by suitable plugs placed across or immediately above the perforated interval. Cement plugs placed across perforations shall extend to at least 50 feet above the top perforations. A cement plug shall be placed to at least 50 feet above squeezed perforations. Cement plugs placed entirely above perforations shall be at least 100 feet in length. At least 20 feet of cement shall be

placed on top of bridge plugs, cement retainers, or other tools left in the hole.

2. At each minable coal seam which is behind a properly installed and cemented coal-protection casing, a cement plug shall be placed from not less than 50 feet below the base of the coal to not less than 50 feet above the top of the coal. Whenever two or more coal seams are not widely separated, they may be treated as a single seam and plugged accordingly.

3. If casing is not to be pulled, and there is uncemented annulus behind the pipe, plugging shall be as follows:

a. Each gas or water-bearing stratum present behind the pipe in an uncemented annulus must be isolated by perforating the casing at each zone and squeezing cement up into the zone, or circulating cement up the annulus such that a cement fill up of not less than 100 feet is achieved. When squeezing or circulating the annulus, a cement plug of at least 50 feet shall be placed inside the casing above the perforations.

b. If there is uncemented annulus between an inner casing and the coal-protection string, the casing shall be perforated to allow cement to be circulated over the prescribed interval, and a plug of equal length shall be placed inside the inner casing.

c. If a fresh water aquifer is exposed to the hole in an uncemented annulus, it shall be isolated by perforating the casing at least 100 feet below the aquifer and squeezing cement into the annulus or circulating it up the annulus so that a fill-up of not less than 100 feet is achieved. When squeezing or circulating cement, a cement plug of at least 100 feet shall be placed inside the casing above the perforation.

d. At a point no less than 50 feet below the bottom of the surface (water-protection) string, the casing shall be perforated and cement circulated up the annulus to a minimum fill-up of 100 feet. A plug of equal length shall be placed inside the casing.

e. From a point not less than 50 feet below the surface, a cement plug shall be installed which reaches the surface. If any uncemented annuli are present at the surface, the voids should be filled and sealed to the greatest extent possible by introducing cement from the surface.

f. All intervals below and between plugs shall be filled with drilling mud, bentonite gel, or other appropriately weighted materials approved by the chief.

4. If casing is to be pulled, plugging shall be as follows:

a. All perforated intervals shall be isolated as described in subdivision 1 of this subsection.

b. Casing stubs shall be isolated by placing a plug across or above the cut-off point. Cement plugs shall be at least 100 feet in length and shall be placed so as to have approximately equal length inside and above the remnant casing. Permanent bridge plugs may be placed above the stub and shall be capped by at least 20 feet of cement.

D. Plugging operations involving uncemented water-protection casing or coal-protection casing.

1. If the annulus of the largest casing present across a minable coal-bearing section is not cemented across that section, then one of the two procedures listed below must be followed:

a. The casing must be perforated at least 50 feet below the lowest coal seam, and cement circulated in the annulus to the surface (if water-protection casing is absent or not properly placed and cemented to surface), or to at least 100 feet above the highest coal (if the casing is to be partially pulled to facilitate plugging operations in the fresh water zone). Plugging shall proceed according to cased hole requirements; or

b. The casing shall be pulled from the hole, and plugging shall proceed according to open hole requirements.

2. If the annulus of the largest casing present across the fresh-water-bearing section is not cemented across that section, then one of two procedures listed below must be followed:

a. The casing shall be perforated below the lowest known fresh-water zone or at a minimum depth of 300 feet. Cement shall be circulated in the annulus to the surface. Plugging shall proceed according to cased hole requirements; or

b. The casing shall be pulled from the hole, and a continuous cement plug shall be placed from below the base of the lowest known fresh-water aquifer exposed to the hole or 300-foot depth, whichever is deeper, to the surface.

E. Unfillable cavities. When an unfillable cavity, such as a cavern, mine void, blast stimulation zone, or gob completion is encountered, the section shall be plugged as follows:

1. If the stratum with the unfillable cavities is the lowest stratum in the hole, a plug shall be placed at the nearest suitable point not less than 20 feet above the stratum. Cement plugs shall be at least 100 feet long, and at least 20 feet of cement shall be placed on top of bridge plugs.

2. If the stratum with unfillable cavities is above the lowest stratum, a plug shall be placed below the stratum and shall extend to within 20 feet of its base. A plug shall also be placed above the stratum as described in subdivision 1 of this subsection.

4VAC25-110-10. Definitions.

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

"Actual distance" means the distance in feet from the blast location to the nearest dwelling house, public building, school, church, or commercial or institutional building neither owned nor leased by the person conducting the blast.

"DMLR" means the Division of Mined Land ~~Reclamation~~ Repurposing of the Department of Energy.

"Fly rock" means uncontrolled material generated by the blast traveling along the ground and shall not be cast from the blasting vicinity more than half the distance to the nearest dwelling or other occupied structure and in no case beyond the Division of Mined Land ~~Reclamation~~ Repurposing (DMLR) permit boundary.

"Inhabited building" means a building regularly occupied in whole or in part as a habitation for human beings, or any church, schoolhouse, railroad station, store, or other structure where people are accustomed to assemble, except any building or structure occupied in connection with the manufacture, transportation, storage or use of explosives.

"Mudcapping," also known as bulldozing, adobe blasting or dobying, means a method of blasting by placing a quantity of explosives in contact with a rock, boulder, or other object without confining the explosives in a drill hole.

"Person" means and includes individuals, firms, partnerships, associations, corporations, receivers, or any officer of the Commonwealth, or any agent or officer of the above-mentioned classes employing any person in this Commonwealth.

"Stemming" means that inert material placed in a borehole after the explosive charge for the purpose of confining the explosion gases in the borehole or that inert material used to separate the explosive charges (decks) in decked holes.

4VAC25-110-210. Blasting safety.

A. When operating within 1,000 horizontal feet of a highway, traffic must be stopped at a safe distance and the blasting area shall be posted with warning signs.

B. Where a blasting operation is conducted in the vicinity of an active deep mine, the blaster shall observe all procedures necessary to secure the health and safety of the deep mine workers. The operator of the affected deep mine shall be notified of planned blasting activities to coordinate necessary precautions for underground workers.

C. When blasting operations, other than those conducted at a fixed site as a part of any industry or business operated at such site, are to be conducted within 200 feet of a pipe line or high voltage transmission line, the blaster or person in charge of the blasting operations shall take due precautionary measures for the protection of the line, and shall notify the owner of the line or his agent at least 48 hours in advance that such blasting operations are intended.

D. When an operator applies for a mine license, he shall indicate on the application the actual distance to the nearest inhabited building.

E. Before a blast is fired, a loud warning signal, audible within a range of ½ mile, shall be given by the blaster in charge, who has made certain that all surplus explosives are in a safe place and all employees, vehicles, and equipment are at a safe distance or under sufficient cover.

F. Fly rock as defined in 4VAC25-110-10 shall not be allowed.

G. Blasting operations shall be conducted during daylight hours (sunrise to sunset) unless authorized by the Chief or his authorized representative.

H. Misfires, hangfires, etc., shall be handled in accordance with ~~§ 45.1-161.285~~ § 45.2-932 of the Code of Virginia.

I. Mudcapping in blasting operations shall be permitted only where the driller would be in a hazardous position in attempting to drill the rock or material to be blasted.

4VAC25-125-10. Definitions.

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

"Bin" means a container for storage of bulk material.

"Bunker" means a vessel for the bulk storage of material; the lowermost portion is usually constructed in the form of a hopper.

"Chief" means the Chief of the Division of Mines of the Department of ~~Mines, Minerals and~~ Energy.

"Division" means the Division of Mines of the Department of ~~Mines, Minerals and~~ Energy.

"Hopper" means a vessel not primarily intended for storage into which materials are fed; usually constructed in the form of an inverted pyramid or cone terminating in an opening through which the material is discharged.

"Safety line" means a component consisting of a flexible line for connection to an anchorage at one end to hang vertically (vertical lifeline), or for connection to anchorages at both ends to stretch horizontally (horizontal lifeline), and which serves as a means for connecting other components of a personal fall arrest system to the anchorage.

"Silo" means a tall structure, usually cylindrical and of reinforced concrete construction, in which bulk material is stored and discharged through feeders that draw materials from the bottom.

"Stockpile" means any accumulation of material formed to create a reserve for loading or other purposes.

4VAC25-130-700.1. Scope.

These regulations, consisting of Parts 700 through 882, establishes the procedures and requirements through which the Department of ~~Mines, Minerals, and~~ Energy and its Division of Mined Land ~~Reclamation~~ Repurposing will implement the Virginia Coal Surface Mining Control and Reclamation Act of 1979 (Chapter ~~19~~ 10 (~~§ 45.1-226~~ § 45.2-1000 et seq.) of Title ~~45.1~~ 45.2 of the Code of Virginia) and the Federal Surface Mining Control and Reclamation Act of 1977, (P.L. 95-87, 91 Stat. 445 (30 USC §§ 1201 et seq.)), pursuant to the Virginia permanent regulatory program, as approved by the United States Secretary of the Interior.

This Chapter is divided into nine Subchapters.

(a) Subchapter VA contains introductory information intended to serve as a guide to the rest of the Chapter and to the regulatory requirements and definitions generally applicable to the programs and persons covered by the Act.

(b) Subchapter VD identifies the procedures that apply to surface coal mining and reclamation operations conducted on Federal lands rather than State or private lands and incorporates by reference the applicable requirements of the State regulatory program: Subchapters VG, VJ, VK, AND VL.

(c) Subchapter VF implements the requirements of the Act for--

(i) Designating lands which are unsuitable for all or certain types of surface coal mining operations;

(ii) Terminating designation no longer found to be appropriate; and

(iii) Prohibiting surface coal mining and reclamation operations on those lands or areas where the Act states that surface coal mining operations should not be permitted or should be permitted only after specified determinations are made.

(d) Subchapter VG governs applications for and decisions on permits for surface coal mining and reclamation operations within the Commonwealth. It also governs coal exploration and permit application and decisions on permits for special categories of coal mining in the Commonwealth. Regulations implementing the experimental practices provision of the Act are also included in Subchapter VG.

(e) Subchapter VJ sets forth requirements for performance bonds and public liability insurance for surface mining, underground mining and coal exploration permits.

(f) Subchapter VK sets forth the environmental and other performance standards which apply to coal exploration and to surface coal mining and reclamation operations, as well as to special mining situations involved with steep slope mining, mountaintop removal mining, auger mining and prime farmlands.

(g) Subchapter VL sets forth the inspection, enforcement, and civil penalty provisions.

(h) Subchapter VM sets forth the requirements for the training, examination, and certification of blasters.

(i) Subchapter VR sets forth the regulations for the Abandoned Mine Land Program.

4VAC25-130-700.2. Authority and citation to federal law.

These regulations are promulgated pursuant to Chapter ~~19,~~ 10 (§ 45.2-1000 et seq.) of Title ~~45.1~~ 45.2 of the Code of Virginia (1950) as amended. In order for these regulations to receive approval by the United States Secretary of the Interior as part of the Commonwealth's permanent regulatory program, the Federal Surface Mining Control and Reclamation Act requires that these regulations be consistent with (as effective as) applicable regulations issued by the Secretary, contained in 30 CFR Chapter VII. The numbering system used for the Virginia regulations corresponds to the numbering system used for the applicable Federal regulations in 30 CFR Chapter VII, except that the numbering for the Virginia regulations contains the prefix "4VAC25-130-xxx.xxx." All references to Sections, Parts, or Subchapters are made to this chapter, unless otherwise noted.

4VAC25-130-700.3. Effective date.

(a) The regulations promulgated pursuant to Chapter ~~19~~ 10 (~~§ 45.1-226~~ § 45.2-1000 et seq.) of Title ~~45.1~~ 45.2 of the Code of Virginia became effective on December 15, 1981, the date on which the Secretary of the Interior approved the Commonwealth's permanent regulatory program.

(b) The regulations in this chapter shall become effective when approved by the Secretary of the Interior, except, for existing operations permitted pursuant to Chapter 19, Title 45.1-

(1) All provisions except for those related to the contents of permit applications of Subchapter VG and the performance standards of Subchapter VK shall apply.

(2) The content of permit application requirements and the performance standards of the regulations approved on December 15, 1981, shall be complied with.

(3) All provisions of this chapter shall apply when the existing permit is significantly revised or renewed.

4VAC25-130-700.5. Definitions.

As used throughout this chapter, the following terms have the specified meanings except where otherwise indicated.

"Abatement plan" means an individual technique or combination of techniques, the implementation of which is designed to result in reduction of the baseline pollution load. Abatement techniques include but are not limited to: addition of alkaline material, special plans for managing toxic and acid forming material, regrading, revegetation, and daylighting.

"Acid drainage" means water with a pH of less than 6.0 and in which total acidity exceeds total alkalinity, discharged from an active, inactive, or abandoned surface coal mining and reclamation operation or from an area affected by surface coal mining and reclamation operations.

"Acid-forming materials" means earth materials that contain sulfide minerals or other materials which, if exposed to air, water, or weathering processes, form acid that may create acid drainage or leachate.

"Act" means the Virginia Coal Surface Mining Control and Reclamation Act of 1979 as amended (Chapter ~~19~~ 10 (~~§ 45.1-226~~ § 45.2-1000 et seq.) of Title ~~45.1~~ 45.2 of the Code of Virginia).

"Actual improvement" means the reduction of the baseline pollution load resulting from the implementation of the approved abatement plan: except that a reduction of the baseline pollution load achieved by water treatment may not be considered as actual improvement.

"Adjacent area" means the area outside the permit area where a resource or resources, determined according to the context in which adjacent area is used, are or reasonably could be expected to be adversely impacted by proposed mining operations, including probable impacts from underground workings.

"Administratively complete application" means an application for permit approval, or approval for coal exploration where required, which the division determines to contain information addressing each application requirement of the regulatory program and to contain all information necessary to initiate processing and public review.

"Adverse physical impact" means, with respect to a highwall created or impacted by remining, conditions such as sloughing of material, subsidence, instability, or increased erosion of highwalls, which occur or can reasonably be expected to occur as a result of remining and which pose threats to property, public health, safety, or the environment.

"Affected area" means any land or water surface area which is used to facilitate, or is physically altered by, surface coal mining and reclamation operations. The affected area includes the disturbed area; any area upon which surface coal mining and reclamation operations are conducted; any adjacent lands, the use of which is incidental to surface coal mining and reclamation operations; all areas covered by new or existing roads used to gain access to, or for hauling coal to or from, surface coal mining and reclamation operations, except as provided in this definition; any area covered by surface excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, shipping areas; any areas upon which are sited structures, facilities, or other property or material on the surface resulting from, or incident to, surface coal mining and reclamation operations; and the area located above underground workings. The affected area shall include every road used for purposes of access to, or for hauling coal to or from, surface coal mining and reclamation operations, unless the road is a public road.

"Agricultural use" means the use of any tract of land for the production of animal or vegetable life. The uses include, but are not limited to, the pasturing, grazing, and watering of livestock, and the cropping, cultivation, and harvesting of plants.

"Anthracite" means coal classified as anthracite in ASTM Standard D 388-77. Coal classifications are published by the American Society of Testing and Materials under the title, "Standard Specification for Classification of Coals by Rank," ASTM D 388-77, on pages 220 through 224. Table 1 which classifies the coals by rank is presented on page 223. This publication is hereby incorporated by reference.

"Applicant" means any person seeking a permit, permit revision, renewal, and transfer, assignment, or sale of permit rights from the division to conduct surface coal mining and reclamation operations or, where required, seeking approval for coal exploration.

"Applicant violator system" or "AVS" means an automated information system of applicant, permittee, operator, violation, and related data the federal Office of Surface Mining Reclamation and Enforcement (OSM) maintains and the division utilizes in the permit review process.

"Application" means the documents and other information filed with the division under this chapter for the issuance of permits; revisions; renewals; and transfer, assignment, or sale of permit rights for surface coal mining and reclamation operations or, where required, for coal exploration.

"Approximate original contour" means that surface configuration achieved by backfilling and grading of the mined areas so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls, spoil piles and coal refuse piles eliminated. Permanent water impoundments may be permitted where the division has determined that they comply with 4VAC25-130-816.49, 4VAC25-130-816.56, and 4VAC25-130-816.133 or 4VAC25-130-817.49, 4VAC25-130-817.56, and 4VAC25-130-817.133.

"Aquifer" means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities for a specific use.

"Auger mining" means a method of mining coal at a cliff or highwall by drilling or cutting holes into an exposed coal seam from the highwall and transporting the coal along the auger bit to the surface.

"Authorized officer" means any person authorized to take official action on behalf of a federal agency that has administrative jurisdiction over federal lands.

"Baseline pollution load" means the characterization of the pollution material being discharged from or on the pollution abatement area, described in terms of mass discharge for each parameter, including seasonal variations and variations in response to precipitation events. The division will establish in each authorization the specific parameters it deems relevant for the baseline pollution load.

"Best professional judgment" means the highest quality technical opinion forming the basis for the terms and conditions of the treatment level required after consideration of all reasonably available and pertinent data. The treatment levels shall be established by the division under §§ 301 and 402 of the federal Water Pollution Control Act (33 USC §§ 1311 and 1342).

"Best technology" means measures and practices which are designed to abate or ameliorate to the maximum extent possible pollutional discharges from or on the pollution abatement area. These measures include engineering, geochemical or other applicable practices.

"Best technology currently available" means equipment, devices, systems, methods, or techniques which will:

(a) Prevent, to the extent possible, additional contributions of suspended solids to stream flow or runoff outside the permit area, but in no event result in contribution of suspended solids in excess of requirements set by the applicable state or federal laws;

(b) Minimize, to the extent possible, disturbances and adverse impacts on fish, wildlife, and related environmental values, and achieve enhancement of those resources where practicable. The term includes equipment, devices, systems, terms, methods, or techniques which are currently available anywhere as determined by the division even if they are not in routine use. The term includes, but is not limited to, construction practices, siting requirements, vegetative selection and planting requirements, animal stocking requirements, scheduling of activities and design of sedimentation ponds in accordance with Parts 816 and 817 of this chapter. Within the constraints of the permanent program, the division shall have the discretion to determine the best technology currently available on a case-by-case basis, as authorized by the Act and this chapter.

"Cemetery" means any area of land where human bodies are interred.

"Certification" when used in regards to construction certifications by qualified registered professional engineers, is not considered to be a warranty or guarantee.

"Coal" means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM Standard D 388-77, referred to and incorporated by reference in the definition of "anthracite."

"Coal exploration" means the field gathering of:

(a) Surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal of an area; or

(b) The gathering of environmental data to establish the conditions of an area before beginning surface coal mining and reclamation operations under the requirements of this chapter.

"Coal lease" means a federal coal lease or license issued by the Bureau of Land Management pursuant to the Mineral Leasing Act and the federal Acquired Lands Leasing Act of 1947 (30 USC § 351 et seq.).

"Coal mine waste" means coal processing waste and underground development waste.

"Coal mining operation" means, for the purposes of Part 705 of this chapter—Financial Interests of State Employees—the business of developing, producing, preparing or loading bituminous coal, subbituminous coal, anthracite, or lignite, or of reclaiming the areas upon which such activities occur.

"Coal preparation" or "coal processing" means chemical or physical processing and the cleaning, concentrating, or other processing or preparation of coal.

"Coal preparation plant" means a facility where coal is subjected to chemical or physical processing or the cleaning, concentrating, or other processing or preparation. It includes facilities associated with coal preparation activities, including but not limited to the following: loading facilities; storage and stockpile facilities; sheds, shops, and other buildings; water-treatment and water storage facilities; settling basins and impoundments; and coal processing and other waste disposal areas.

"Coal processing waste" means earth materials which are separated and wasted from the product coal during cleaning, concentrating, or other processing or preparation of coal.

"Cognovit note" means an extraordinary note which authorizes an attorney to confess judgement against the person or persons signing it. It is written authority of a debtor and a direction by him for entry of a judgement against him if the obligation set forth in the note is not paid when due. Such judgement may be taken by any person holding the note, which cuts off every defense which makers of the note may otherwise have and it likewise cuts off all rights of appeal from any judgement taken on it. The note shall, at a minimum:

(a) Contain the date of execution.

(b) Be payable to the "Treasurer of Virginia."

(c) Be due and payable in the event of bond forfeiture of the permit.

(d) Be payable in a sum certain of money.

(e) Be signed by the makers.

"Collateral bond" means an indemnity agreement in a sum certain executed by the permittee and deposited with the division supported by one or more of the following:

(a) The deposit of cash in one or more federally insured accounts, payable only to the division upon demand;

(b) Negotiable bonds of the United States, the Commonwealth of Virginia, or a political subdivision thereof, endorsed to the order of, and placed in the possession of the division; the bond will only be acceptable if the issue is rated "A" or better by Moody's Investor Service, Inc., or Standard and Poor's, Inc.;

(c) Certificates of deposit issued by Virginia banks payable only to the division and placed in its possession. No security in default as to principal or interest shall be acceptable as collateral; or

(d) An irrevocable letter of credit of any bank organized or authorized to transact business in the United States, payable only to the department at sight prepared in accordance with the Uniform Customs and Practices for Documentary Credits (1993 revision) International Chamber of Commerce (Publication No. 500).

"Combustible material" means organic material that is capable of burning, either by fire or through oxidation, accompanied by the evolution of heat and a significant temperature rise.

"Community or institutional building" means any structure, other than a public building or an occupied dwelling, which is used primarily for meetings, gatherings or functions of local civic organizations or other community groups; functions as an educational, cultural, historic, religious, scientific, correctional, mental health or physical health care facility; or is used for public services, including, but not limited to, water supply, power generation or sewage treatment.

"Compaction" means increasing the density of a material by reducing the voids between the particles and is generally accomplished by controlled placement and mechanical effort such as from repeated application of wheel, track, or roller loads from heavy equipment.

"Complete and accurate application" means an application for permit approval or approval for coal exploration where required which the division determines to contain all information required under the Act and this chapter.

"Contamination" means, in reference to ground water or surface water supplies receiving ground water, any impairment of water quality which makes the water unsuitable for a specific use.

"Control" or "controller" when used in 4VAC25-130-773, 4VAC25-130-774, or 4VAC25-130-778 means:

(a) A permittee of a surface coal mining operation;

(b) An operator of a surface coal mining operation; or

(c) Any person who has the ability to determine the manner in which a surface coal mining operation is conducted.

"Cooperative agreement" means a cooperative agreement entered into in accordance with § 523(c) of the federal Act and 30 CFR Part 745.

"Cumulative impact area" means the area, including the permit area, within which impacts resulting from the proposed operation may interact with the impacts of all anticipated mining on surface and ground water systems. Anticipated mining shall include, at a minimum, the entire projected lives through bond release of:

(a) The proposed operation;

(b) All existing operations;

(c) Any operation for which a permit application has been submitted to the division; and

(d) All operations required to meet diligent development requirements for leased federal coal for which there is actual mine development information available.

"Department" means the Virginia Department of ~~Mines, Minerals and~~ Energy ~~(DMME) of Virginia~~.

"Diminution" means, in reference to ground or surface water supplies receiving ground water, any impairment of water quantity which makes the water unsuitable for a specific use.

"Direct financial interest" means ownership or part ownership by an employee of lands, stocks, bonds, debentures, warrants, partnership shares, or other holdings and also means any other arrangement where the employee may benefit from his or her holding in or salary from coal mining operations. Direct financial interests include employment, pensions, creditor, real property and other financial relationships.

"Director" means the Director of the Department of ~~Mines, Minerals, and~~ Energy or his representative.

"Disturbed area" means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, coal processing waste, underground development waste, or noncoal waste is placed by surface coal mining operations. Those areas are classified as disturbed until reclamation is complete and the performance bond or other assurance of performance required by Subchapter VJ is released.

"Diversion" means a channel, embankment, or other manmade structure constructed to divert water from one area to another.

"Division" means the Division of Mined Land ~~Reclamation~~ Repurposing of the Department of ~~Mines, Minerals, and~~ Energy.

"Downslope" means the land surface between the projected outcrop of the lowest coal bed being mined along each highwall and a valley floor.

"Drinking, domestic or residential water supply" means water received from a well or spring and any appurtenant delivery system that provides water for direct human consumption or household use. Wells and springs that serve only agricultural, commercial or industrial enterprises are not included, except to the extent the water supply is for direct human consumption or human sanitation or domestic use.

"Embankment" means an artificial deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water, support roads or railways, or for other similar purposes.

"Employee" means (a) any person employed by the department or other state or local government agency who performs any function or duty under the Act, and (b) consultants who perform any function or duty under the Act, if they perform decision-making functions for the department under the authority of the Act or regulations promulgated under the Act.

"Ephemeral stream" means a stream that flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice, and that has a channel bottom that is always above the local water table.

"Escrow account" means an account in a federally insured financial institution.

"Excess spoil" means spoil material disposed of in a location other than the mined-out area; provided that spoil material used to achieve the approximate original contour or to blend the mined-out area with the surrounding terrain in accordance with 4VAC25-130-816.102(d) and 4VAC25-130-817.102(d) in nonsteep slope areas shall not be considered excess spoil.

"Existing structure" means a structure or facility used in connection with or to facilitate surface coal mining and reclamation operations for which construction begins prior to the approval of the state program or a federal land program, whichever occurs first.

"Extraction of coal as an incidental part" means, for the purposes of Part 707 of this chapter, the extraction of coal which is necessary to enable the construction to be accomplished. For purposes of Part 707, only that coal extracted from within the right-of-way, in the case of a road, railroad, utility line or other such construction, or within the boundaries of the area directly affected by other types of government-financed construction, may be considered incidental to that construction. Extraction of coal outside the right-of-way or boundary of the area directly affected by the construction shall be subject to the requirements of the Act and this chapter.

"Federal Act" means the federal Surface Mining Control and Reclamation Act of 1977, as amended (Pub. L. 95-87).

"Federal land management agency" means a federal agency having administrative jurisdiction over the surface of federal lands that are subject to this chapter.

"Federal lands" means any land, including mineral interests, owned by the United States, without regard to how the United States acquired ownership of the lands or which agency manages the lands. It does not include Indian lands.

"Federal lands program" means a program established by the secretary pursuant to § 523 of the federal Act to regulate surface coal mining and reclamation operations on federal lands.

"Federal lease bond" means the bond or equivalent security required by 43 CFR Part 3400 to assure compliance with the terms and conditions of a federal coal lease.

"Federal lessee protection bond" means a bond payable to the United States or the state, whichever is applicable, for use and benefit of a permittee or lessee of the surface lands to secure payment of any damages to crops or tangible improvements on federal lands, pursuant to § 715 of the federal Act.

"Federal program" means a program established by the secretary pursuant to § 504 of the federal Act to regulate coal exploration and surface coal mining and reclamation operations on nonfederal and non-Indian lands within the state in accordance with the federal Act and 30 CFR Chapter VII.

"First water producing zone" means the first water zone encountered which can be monitored in a manner which indicates the effects of a surface mining operation on usable ground water.

"Fragile lands" means areas containing natural, ecologic, scientific or aesthetic resources that could be significantly damaged by surface coal mining operations. Examples of fragile lands include valuable habitats for fish or wildlife, critical habitats for endangered or threatened species of animals or plants, uncommon geologic formations, paleontological sites, National Natural Landmarks, areas where mining may result in flooding, environmental corridors containing a concentration of ecologic and aesthetic features and areas of recreational value due to high environmental quality.

"Fugitive dust" means that particulate matter which becomes airborne due to the forces of wind or surface coal mining and reclamation operations or both. During surface coal mining and

reclamation operations it may include emissions from haul roads; wind erosion of exposed surfaces, storage piles, and spoil piles; reclamation operations; and other activities in which material is either removed, stored, transported, or redistributed. Fugitive dust does not include particulate matter emitted from a duct or stack.

"Fund," as used in Subchapter VR, means the Abandoned Mine Reclamation Fund established pursuant to ~~§ 45.1-261~~ § 45.2-1032 of the Act.

"General area" means, with respect to hydrology, the topographic and ground water basin surrounding a permit area and adjacent areas to include one or more watersheds containing perennial streams or ground water zones which possess useable and/or managed zones or flows, to allow an assessment of the probable cumulative impacts on the hydrologic regime.

"Government-financed construction" means construction funded 50% or more by funds appropriated from a government financing agency's budget or obtained from general revenue bonds. Funding at less than 50% may qualify if the construction is undertaken as an approved reclamation project under Title IV of the federal Act. Construction funded through government financing agency guarantees, insurance, loans, funds obtained through industrial revenue bonds or their equivalent, or in-kind payments does not qualify as government-financed construction.

"Government financing agency" means any federal, state, regional, county, city or town unit of government, or a department, bureau, agency or office of a governmental unit or any combination of two or more governmental units or agencies, which, directly or through another unit of government, finances construction.

"Gravity discharge" means, with respect to underground coal mining activities, mine drainage that flows freely in an open channel downgradient. Mine drainage that occurs as a result of flooding a mine to the level of the discharge is not gravity discharge.

"Ground cover" means the area of ground covered by the combined aerial parts of vegetation and the litter that is produced naturally onsite, expressed as a percentage of the total area of ground.

"Ground water" means subterranean water which exists within a totally saturated zone, stratum or group of strata.

"Growing season" means the period of year when climatic conditions are favorable for plant growth, common to a place or area. The period between April 15 and October 15 is the normal growing season.

"Half-shrub" means a perennial plant with a woody base whose annually produced stems die back each year.

"Head-of-hollow fill" means a fill structure consisting of any material, except organic material, placed in the uppermost reaches of a hollow where side slopes of the existing hollow, measured at the steepest point, are greater than 20 degrees or the average slope of the profile of the hollow from the toe of the fill to the top of the fill is greater than 10 degrees. In head-of-hollow fills, the top surface of the fill, when completed, is at approximately the same elevation as the adjacent ridge line, and no significant area of natural drainage occurs above the fill, draining into the fill area.

"Higher or better uses" means postmining land uses that have a higher value or benefit, either economic or noneconomic, to the landowner or the community than the premining land uses.

"Highwall" means the face of exposed overburden and coal in an open cut of a surface coal mining activity or for entry to underground mining activities.

"Highwall remnant" means that portion of highwall that remains after backfilling and grading of a remining permit area.

"Historically used for cropland" means (1) lands that have been used for cropland for any five years or more out of the 10 years immediately preceding the acquisition, including purchase, lease, or option, of the land for the purpose of conducting or allowing through resale, lease, or option the conduct of surface coal mining and reclamation operations; (2) lands that the division determines, on the basis of additional cropland history of the surrounding lands and the lands under consideration, that the permit area is clearly cropland but falls outside the specific five-years-in-10 criterion, in which case the regulations for prime farmland may be applied to include more years of cropland history only to increase the prime farmland acreage to be preserved; or (3) lands that would likely have been used as cropland for any five out of the last 10 years, immediately preceding such acquisition but for the same fact of ownership or control of the land unrelated to the productivity of the land.

"Historic lands" means areas containing historic, cultural, or scientific resources. Examples of historic lands include archaeological sites, properties listed on or eligible for listing on the State or National Register of Historic Places, National Historic Landmarks, properties having religious or cultural significance to native Americans or religious groups, and properties for which historic designation is pending.

"Hydrologic balance" means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the dynamic relationships among precipitation, runoff, evaporation, and changes in ground and surface water storage.

"Hydrologic regime" means the entire state of water movement in a given area. It is a function of the climate and includes the phenomena by which water first occurs as

atmospheric water vapor, passes into a liquid or solid form, falls as precipitation, moves along or into the ground surface, and returns to the atmosphere as vapor by means of evaporation and transportation.

"Imminent danger to the health and safety of the public" means the existence of any condition or practice, or any violation of a permit or other requirements of the Act in a surface coal mining and reclamation operation, which could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would avoid exposure to the danger during the time necessary for abatement.

"Impounding structure" means a dam, embankment or other structure used to impound water, slurry, or other liquid or semi-liquid material.

"Impoundments" mean all water, sediment, slurry or other liquid or semi-liquid holding structures and depressions, either naturally formed or artificially built.

"Indemnity agreement" means an agreement between two persons in which one person agrees to pay the other person for a loss or damage. The persons involved can be individual people, or groups of people, or legal organizations, such as partnerships, corporations or government agencies, or any combination of these.

"Indirect financial interest" means the same financial relationships as for direct ownership, but where the employee reaps the benefits of such interests, including interests held by the employee's spouse, minor child and other relatives, including in-laws, residing in the employee's home. The employee will not be deemed to have an indirect financial interest if there is no relationship between the employee's functions or duties and the coal mining operation in which the spouse, minor children or other resident relatives hold a financial interest.

"In situ processes" means activities conducted on the surface or underground in connection with in-place distillation, retorting, leaching, or other chemical or physical processing of coal. The term includes, but is not limited to, in situ gasification, in situ leaching, slurry mining, solution mining, borehole mining, and fluid recovery mining.

"Intermittent stream" means:

(a) A stream or section of a stream that drains a watershed of at least one square mile, or

(b) A stream or section of a stream that is below the local water table for at least some part of the year, and obtains its flow from both surface runoff and ground water discharge.

"Irreparable damage to the environment" means any damage to the environment, in violation of the Act, or this chapter, that cannot be corrected by the permittee.

"Knowing" or "knowingly" means that a person who authorized, ordered, or carried out an act or omission knew or had reason to know that the act or omission would result in either a violation or failure to abate or correct a violation.

"Land use" means specific uses or management-related activities, rather than the vegetation or cover of the land. Land uses may be identified in combination when joint or seasonal use occur and may include land used for support facilities that are an integral part of the use. Changes of land use from one of the following categories to another shall be considered as a change to an alternative land use which is subject to approval by the division.

(a) "Cropland." Land used for production of crops which can be grown for harvest alone or in a rotation with grasses and legumes, that include row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar crops.

(b) "Pastureland" or land occasionally cut for hay. Land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed.

(c) "Grazingland." Lands used for grasslands and forest lands where the indigenous vegetation is actively managed for grazing, browsing, or occasional hay production.

(d) "Forestry." Land used or managed for long-term production of wood, wood fiber, or wood derived products.

(e) "Residential." Land used for single and/or multiple family housing, mobile home parks, or other residential lodgings.

(f) "Industrial/Commercial." Land used for:

(1) Extraction or transformation of materials for fabrication of products, wholesaling of products, or long-term storage of products. This includes all heavy and light manufacturing facilities.

(2) Retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments.

(g) "Recreation." Land used for public or private leisure-time activities, including developed recreation facilities such as parks, camps, amusement areas, as well as undeveloped areas for recreation such as hiking and canoeing.

(h) "Fish and wildlife habitat." Land dedicated wholly or partially to the production, protection, or management of species of fish or wildlife.

(i) "Developed water resources." Land used for storing water for beneficial uses, such as stockponds, irrigation, fire protection, flood control, and water supply.

(j) "Undeveloped land or no current use or land management." Land that is undeveloped or, if previously developed, land that has been allowed to return naturally to an undeveloped state or has been allowed to return to forest through natural succession.

"Lands eligible for remining" means those lands that would otherwise be eligible for expenditures under § 404 or under § 402(g)(4) of the federal Act.

"Leachate" means water percolating from a surface coal mining operation which contains dissolved and suspended matter.

"Leased federal coal" means coal leased by the United States pursuant to 43 CFR Part 3400, except mineral interests in coal on Indian lands.

"Lease terms, conditions and stipulations" means all of the standard provisions of a federal coal lease, including provisions relating to lease duration, fees, rentals, royalties, lease bond, production and recordkeeping requirements, and lessee rights of assignment, extension, renewal, termination and expiration, and site-specific requirements included in federal coal leases in addition to other terms and conditions which relate to protection of the environment and of human, natural and mineral resources.

"Material damage" in the context of 4VAC25-130-784.20 and 4VAC25-130-817.121 means:

(a) Any functional impairment of surface lands, features, structures, or facilities;

(b) Any physical change that has a significant adverse impact on the affected land's capability to support any current or reasonably foreseeable uses or causes significant loss in production or income; or

(c) Any significant change in the condition, appearance, or utility of any structure or facility from its presubsidence condition.

"Mineral Leasing Act" or "MLA" means the Mineral Leasing Act of 1920, as amended, 30 USC § 181 et seq.

"Mining plan" means the plan, for mining leased federal coal, required by the Mineral Leasing Act.

"Mining supervisor" means the Area Mining Supervisor, Conservation Division, U.S. Geological Survey, or District Mining Supervisor or other subordinate acting under their direction.

"Moist bulk density" means the weight of soil (oven dry) per unit volume. Volume is measured when the soil is at field moisture capacity (1/3 bar moisture tension). Weight is determined after drying the soil at 105°C.

"MSHA" means the United States Mine Safety and Health Administration.

"Mulch" means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, and provide micro-climatic conditions suitable for germination and growth.

"Natural hazard lands" means geographic areas in which natural conditions exist which pose or as a result of surface coal mining operations, may pose a threat to the health, safety or welfare of people, property or the environment, including areas subject to landslides, cave-ins, severe wind or soil erosion, frequent flooding, and areas of unstable geology.

"Net worth" means total assets less total liabilities. Total liabilities include, but are not limited to, funds pledged or otherwise obligated to the Commonwealth of Virginia, or to any other person at any time during the permit term. Total liabilities also include, but are not limited to, contingent liabilities that might materially affect the Commonwealth's ability to collect the amount of bond required in the event of bond forfeiture.

"Noncommercial building" means any building other than an occupied residential dwelling that at the time subsidence occurs is used on a regular or temporary basis as a public building or community or institutional building as those terms are defined in this section. Any building used only for commercial agricultural, industrial, retail or other commercial enterprises is excluded.

"Noxious plants" means living plants which are declared to be noxious weeds or noxious plants pursuant to ~~the Virginia Noxious Weed Law,~~ Chapter ~~17.2~~ 8 (~~§ 3.1-296.11~~ § 3.2-800 et seq.) of Title ~~3.1~~ 3.2 of the Code of Virginia.

"Occupied dwelling" means any building that is currently being used on a regular or temporary basis for human habitation.

"Occupied residential dwelling and structures related thereto" means, for purposes of 4VAC25-130-784.20 and 4VAC25-130-817.121, any building or other structures that, at the time the subsidence occurs, is used either temporarily, occasionally, seasonally or permanently for human habitation. This term also includes any building, structure, or facility installed on, above or below, or a combination thereof, the land surface if that building structure or facility is adjunct to or used in connection with an occupied residential dwelling. Examples of such structures include, but are not limited to, garages; storage sheds and barns; greenhouses and related buildings; utilities and cables; fences and other enclosures; retaining walls; paved or improved patios, walks and driveways; septic sewage treatment facilities; and lot drainage and lawn and garden irrigation systems. Any structure used only for commercial agriculture, industrial, retail or other commercial purposes is excluded.

"Office" or "OSM" means the Office of Surface Mining Reclamation and Enforcement established under Title II of the federal Act.

"Operator" means any person engaged in coal mining who removes or intends to remove more than 250 tons of coal from the earth or from coal refuse piles by mining within 12 consecutive calendar months in any one location.

"Other treatment facilities" means any facilities for chemical treatments, such as flocculation or neutralization, or mechanical structures, such as clarifiers or precipitators, that have a point source discharge and that are utilized:

(a) To prevent additional contribution of dissolved or suspended solids to streamflow or runoff outside the permit area; or

(b) To comply with all applicable state and federal water quality laws and regulations.

"Outslope" means the face of the spoil or embankment sloping downward from the highest elevation to the toe.

"Overburden" means material of any nature, consolidated or unconsolidated, that overlies a coal deposit, excluding topsoil.

"Own," "owner," or "ownership" as used in 4VAC25-130-773, 4VAC25-140-774, or 4VAC25-140-778 (except when used in the context of ownership of real property) means being a sole proprietor or owning of record in excess of 50% of the voting securities or other instruments of ownership of an entity.

"Perennial stream" means a stream or part of a stream that flows continuously during all of the calendar year as a result of ground-water discharge or surface runoff. The term does not include "intermittent stream" or "ephemeral stream."

"Performance bond" means a surety bond, collateral bond, or a combination thereof, by which a permittee assures faithful performance of all the requirements of the Act, this chapter, and the requirements of the permit and reclamation plan.

"Performing any function or duty under this Act" means decision or action, which if performed or not performed by an employee, affects the programs under the Act.

"Permanent diversion" means a diversion which is approved by the division and, if required, by other state and federal agencies for retention as part of the postmining land use.

"Permanent impoundment" means an impoundment which is approved by the division and, if required, by other state and federal agencies for retention as part of the postmining land use.

"Permit" means a permit to conduct surface coal mining and reclamation operations issued by the division pursuant to the Act and this chapter or by the secretary pursuant to a federal program. For the purposes of the federal lands program, permit means a permit issued by the division under a cooperative agreement or by the OSM where there is no cooperative agreement.

"Permit application package" means a proposal to conduct surface coal mining and reclamation operations on federal lands, including an application for a permit, permit revision or permit renewal, all the information required by the federal Act, 30 CFR Subchapter D, the Act and this chapter, any applicable cooperative agreement and all other applicable laws and regulations including, with respect to leased federal coal, the Mineral Leasing Act and its implementing regulations.

"Permit area" means the area of land indicated on the approved map submitted by the permittee with his application, required to be covered by the permittee's performance bond under Subchapter VJ and which shall include the area of land upon which the permittee proposes to conduct surface coal mining and reclamation operations under the permit. The permit area shall include all disturbed areas except that areas adequately bonded under another permit issued pursuant to this chapter may be excluded from the permit area.

"Permittee" means a person holding or required by the Act or this chapter to hold a permit to conduct coal exploration (more than 250 tons) or surface coal mining and reclamation operations issued (a) by the division, (b) by the director of the OSM pursuant to a federal lands program, or (c) by the OSM and the division, where a cooperative agreement pursuant to § 45.1-230 B of the Act has been executed.

"Person" means an individual, Indian tribe when conducting surface coal mining and reclamation operations on non-Indian lands, partnership, association, society, joint venture, joint stock company, firm, company, corporation, cooperative or other business organization and any agent, unit, or instrumentality of federal, state or local government including any publicly owned utility or publicly owned corporation of federal, state or local government.

"Person having an interest which is or may be adversely affected" or "person with a valid legal interest" shall include any person:

(a) Who uses any resources of economic, recreational, aesthetic, or environmental value that is, or may be, in fact adversely affected by coal exploration or surface coal mining and reclamation operations or any related action of the division; or

(b) Whose property is, or may be, in fact adversely affected by coal exploration or surface coal mining and reclamation operations or any related action of the division.

The term "adversely affected" is further defined as meaning perceptibly harmed. "Aesthetics" means the consideration of that which is widely regarded to be a visibly beautiful element of a community or area.

"Piezometer" means a vertical pipe that is established in material, which is closed at the bottom, perforated from the upper limits of the material to the lower limits of the material, and which permits static water level measurements and water sampling.

"Pollution abatement area" means the part of the permit area which is causing or contributing to the baseline pollution load, which shall include adjacent and nearby areas that must be affected to bring about significant improvement of the baseline pollution load, and which may include the immediate location of the discharges.

"Pool Bond fund" means the Coal Surface Mining Reclamation Fund established pursuant to ~~§ 45.1-270.1~~ § 45.2-1043 of the Act.

"Precipitation event" means a quantity of water resulting from drizzle, rain, snow, sleet, or hail in a limited period of time. It may be expressed in terms of recurrence interval. "Precipitation event" also includes that quantity of water coming from snow cover as snow melt in a limited period of time.

"Previously mined area" means land affected by surface coal mining operations prior to August 3, 1977, that has not been reclaimed to the standards of this chapter.

"Prime farmland" means those lands which are defined by the Secretary of Agriculture in 7 CFR Part 657 (Federal Register Vol. 4, No. 21) and which have historically been used for cropland.

"Principal shareholder" means any person who is the record or beneficial owner of 10% or more of any class of voting stock in a corporation.

"Professional geologist" means a person who is certified pursuant to Chapter ~~14~~ 22 (~~§ 54.1-1400~~ § 54.1-2200 et seq.) of Title 54.1 of the Code of Virginia.

"Prohibited financial interest" means any direct or indirect financial interest in any coal mining operation.

"Property to be mined" means both the surface property and mineral property within the permit area and the area covered by underground workings.

"Public building" means any structure that is owned or leased, and principally used, by a governmental agency for public business or meetings.

"Public office" means a facility under the direction and control of a governmental entity which is open to public access on a regular basis during reasonable business hours.

"Public park" means an area or portion of an area dedicated or designated by any federal, state, or local agency primarily for public recreational use, whether or not such use is limited to certain times or days, including any land leased, reserved, or held open to the public because of that use.

"Public road" means a road (i) that has been designated as a public road pursuant to the laws of the jurisdiction in which it is located; (ii) that is maintained with public funds, and is constructed, in a manner similar to other public roads of the same classification within the jurisdiction; and (iii) for which there is substantial (more than incidental) public use.

"Publicly owned park" means a public park that is owned by a federal, state or local governmental entity.

"Qualified laboratory" means a designated public agency, private firm, institution, or analytical laboratory which can prepare the required determination of probable hydrologic consequences or statement of results of test borings or core samplings or other services as specified at 4VAC25-130-795.9 under the Small Operator Assistance Program (4VAC25-130-795.1 et seq.) and which meets the standards of 4VAC25-130-795.10.

"Reasonably available spoil" means spoil and suitable coal mine waste material generated by the remining operation or other spoil or suitable coal mine waste material located in the permit area that is accessible and available for use and that when rehandled will not cause a hazard to public safety or significant damage to the environment.

"Recharge capacity" means the ability of the soils and underlying materials to allow precipitation and runoff to infiltrate and reach the zone of saturation.

"Reclamation" means those actions taken to restore mined land as required by this chapter to a postmining land use approved by the division.

"Recurrence interval" means the interval of time in which a precipitation event is expected to occur once, on the average. For example, the 10-year, 24-hour precipitation event would be that 24-hour precipitation event expected to occur on the average once in 10 years.

"Reference area" means a land unit maintained under appropriate management for the purpose of measuring vegetation ground cover, productivity and plant species diversity that are produced naturally or by crop production methods approved by the division. Reference areas must be representative of geology, soil, slope, and vegetation in the permit area.

"Refuse pile" means a surface deposit of coal mine waste that does not impound water, slurry, or other liquid or semi-liquid material.

"Regulatory program" means the Virginia Coal Surface Mining Control and Reclamation program (Chapter ~~19~~ 10 (~~§ 45.1-226~~ § 45.2-1000 et seq.) of Title ~~45.1~~ 45.2 of the Code of Virginia) and rules and regulations approved by the secretary.

"Remining" means conducting surface coal mining and reclamation operations which affect previously mined areas.

"Renewable resource lands" means areas which contribute significantly to the long-range productivity of water supply or of food or fiber products, such lands to include aquifers and aquifer recharge areas.

"Replacement of water supply" means, with respect to protected water supplies contaminated, diminished or interrupted by coal mining operations, provision of water supply on both a temporary and permanent basis equivalent to premining quantity and quality. Replacement includes provision of an equivalent water delivery system and payment of operation and maintenance costs in excess of customary and reasonable delivery costs for premining water supplies.

(a) Upon agreement by the permittee and the water supply owner, the obligation to pay such operation and maintenance costs may be satisfied by a one-time payment in an amount which covers the present worth of the increased annual operation and maintenance costs for a period agreed to by the permittee and the water supply owner.

(b) If the affected water supply was not needed for the land use in existence at the time of loss, contamination, or diminution, and if the supply is not needed to achieve the postmining land use, replacement requirements may be satisfied by demonstrating that a suitable alternative water source is available and could feasibly be developed. If the latter approach is selected, written concurrence must be obtained from the water supply owner.

"Road" means a surface right-of-way for purposes of travel by land vehicles used in coal exploration or surface coal mining and reclamation operations. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side areas, approaches, structures, ditches and surface. The term includes access and haul roads constructed, used, reconstructed, improved, or maintained for use in coal exploration or surface coal mining and reclamation operations, including use by coal hauling vehicles to and from transfer, processing, or storage areas. The term does not include ramps and routes of travel within the immediate mining area or within spoil or coal mine waste disposal areas.

"Safety factor" means the ratio of the available shear strength to the developed shear stress, or the ratio of the sum of the resisting forces to the sum of the loading or driving forces, as determined by accepted engineering practices.

"Secretary" means the Secretary of the Interior or the secretary's representative.

"Sedimentation pond" means an impoundment used to remove solids or other pollutants from water in order to meet water quality standards or effluent limitations before the water leaves the permit area.

"Self-bond," as provided by Part 801 of this chapter, means:

(a) For an underground mining operation, a cognovit note in a sum certain payable on demand to the Treasurer of Virginia, executed by the applicant and by each individual and business organization capable of influencing or controlling the investment or financial practices of the applicant by virtue of this authority as an officer or ownership of all or a significant part of the applicant, and supported by a certification that the applicant participating in the Pool Bond Fund has a net worth, total assets minus total liabilities equivalent to $1 million. Such certification shall be by an independent certified public accountant in the form of an unqualified opinion.

(b) For a surface mining operation or associated facility, an indemnity agreement in a sum certain payable on demand to the Treasurer of Virginia, executed by the applicant and by each individual and business organization capable of influencing or controlling the investment or financial practices of the applicant by virtue of this authority as an officer or ownership of all or a significant part of the applicant.

"Significant forest cover" means an existing plant community consisting predominantly of trees and other woody vegetation.

"Significant, imminent environmental harm to land, air, or water resources" means:

(a) An environmental harm is an adverse impact on land, air, or water resources which resources include, but are not limited to, plants and animal life.

(b) An environmental harm is imminent, if a condition, practice, or violation exists which:

(1) Is causing such harm; or

(2) May reasonably be expected to cause such harm at any time before the end of the reasonable abatement time that would be set under ~~§ 45.1-245 B~~ § 45.2-1020 of the Act.

(c) An environmental harm is significant if that harm is appreciable and not immediately reparable.

"Significant recreational, timber, economic, or other values incompatible with surface coal mining operations" means those values to be evaluated for their significance which could be damaged by, and are not capable of existing together with, surface coal mining operations because of the undesirable effects mining would have on those values, either on the area included in the permit application or on other affected areas. Those values to be evaluated for their importance include:

(a) Recreation, including hiking, boating, camping, skiing or other related outdoor activities;

(b) Timber management and silviculture;

(c) Agriculture, aquaculture or production of other natural, processed or manufactured products which enter commerce;

(d) Scenic, historic, archaeologic, aesthetic, fish, wildlife, plants or cultural interests.

"Siltation structure" means a sedimentation pond, a series of sedimentation ponds, or other treatment facility.

"Slope" means average inclination of a surface, measured from its horizontal, generally expressed as the ratio of a unit of

vertical distance to a given number of units of horizontal distance (e.g., 1v:5h). It may also be expressed as a percentage or in degrees.

"Soil horizons" means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The four master soil horizons are:

(a) "A horizon." The uppermost mineral layer, often called the surface soil. It is the part of the soil in which organic matter is most abundant, and leaching of soluble or suspended particles is typically the greatest;

(b) "E horizon." The layer commonly near the surface below an A horizon and above a B horizon. An E horizon is most commonly differentiated from an overlying A horizon by lighter color and generally has measurably less organic matter than the A horizon. An E horizon is most commonly differentiated from an underlying B horizon in the same sequum by color of higher value or lower chroma, by coarser texture, or by a combination of these properties;

(c) "B horizon." The layer that typically is immediately beneath the E horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A, E, or C horizons; and

(d) "C horizon." The deepest layer of the soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

"Soil survey" means a field and other investigation, resulting in a map showing the geographic distribution of different kinds of soils and an accompanying report that describes, classifies, and interprets such soils for use. Soil surveys must meet the standards of the National Cooperative Soil Survey as incorporated by reference in 4VAC25-130-785.17(c)(1).

"Spoil" means overburden that has been removed during surface coal mining operations.

"Stabilize" means to control movement of soil, spoil piles, or areas of disturbed earth by modifying the geometry of the mass, or by otherwise modifying physical or chemical properties, such as by providing a protective surface coating.

"Steep slope" means any slope of more than 20 degrees or such lesser slope as may be designated by the division after consideration of soil, climate, and other characteristics of a region or the state.

"Substantial legal and financial commitments in a surface coal mining operation" means significant investments, prior to January 4, 1977, have been made on the basis of a long-term coal contract in power plants, railroads, coal-handling, preparation, extraction or storage facilities and other capital-intensive activities. An example would be an existing mine, not actually producing coal, but in a substantial stage of development prior to production. Costs of acquiring the coal in place or the right to mine it without an existing mine, as described in the above example, alone are not sufficient to constitute substantial legal and financial commitments.

"Substantially disturb" means, for purposes of coal exploration, to significantly impact land or water resources by blasting; by removal of vegetation, topsoil, or overburden; by construction of roads or other access routes; by placement of excavated earth or waste material on the natural land surface or by other such activities; or to remove more than 250 tons of coal.

"Successor in interest" means any person who succeeds to rights granted under a permit, by transfer, assignment, or sale of those rights.

"Surface coal mining and reclamation operations" means surface coal mining operations and all activities necessary or incidental to the reclamation of such operations. This term includes the term "surface coal mining operations."

"Surface coal mining operations" means:

(a) Activities conducted on the surface of lands in connection with a surface coal mine or, subject to the requirements of ~~§ 45.1-243~~ § 45.2-1018 of the Act, surface operations and surface impacts incident to an underground coal mine, the products of which enter commerce or the operations of which directly or indirectly affect interstate commerce. Such activities include excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining; the use of explosives and blasting; in situ distillation or retorting; leaching or other chemical or physical processing; and the cleaning, concentrating, or other processing or preparation of coal. Such activities also include the loading of coal for interstate commerce at or near the mine site. Provided, these activities do not include the extraction of coal incidental to the extraction of other minerals, where coal does not exceed 16-2/3% of the tonnage of minerals removed for purposes of commercial use or sale, or coal exploration subject to ~~§ 45.1-233~~ § 45.2-1008 of the Act; and, provided further, that excavation for the purpose of obtaining coal includes extraction of coal from coal refuse piles; and

(b) The areas upon which the activities described in paragraph (a) of this definition occur or where such activities disturb the natural land surface. These areas shall also include any adjacent land the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of those activities and for haulage and excavation, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited

structures, facilities, or other property or material on the surface, resulting from or incident to those activities.

"Surface coal mining operations which exist on the date of enactment" means all surface coal mining operations which were being conducted on August 3, 1977.

"Surface mining activities" means those surface coal mining and reclamation operations incident to the extraction of coal from the earth by removing the materials over a coal seam, before recovering the coal, by auger coal mining, or by recovery of coal from a deposit that is not in its original geologic location.

"Surface operations and impacts incident to an underground coal mine" means all activities involved in or related to underground coal mining which are either conducted on the surface of the land, produce changes in the land surface or disturb the surface, air or water resources of the area, including all activities listed in ~~§ 45.1-229 L~~ § 45.2-1000 of the Act.

"Surety bond" means an indemnity agreement in a sum certain payable to the Commonwealth of Virginia, Director—Division of Mined Land ~~Reclamation,~~ Repurposing executed by the permittee as principal and which is supported by the performance guarantee of a corporation licensed to do business as a surety in Virginia.

"Suspended solids" or nonfilterable residue, expressed as milligrams per liter, means organic or inorganic materials carried or held in suspension in water which are retained by a standard glass fiber filter in the procedure outlined by the Environmental Protection Agency's regulations for waste water and analyses (40 CFR Part 136).

"Temporary diversion" means a diversion of a stream or overland flow which is used during coal exploration or surface coal mining and reclamation operations and not approved by the division to remain after reclamation as part of the approved postmining land use.

"Temporary impoundment" means an impoundment used during surface coal mining and reclamation operations, but not approved by the division to remain as part of the approved postmining land use.

"Ton" means 2000 pounds avoirdupois (.90718 metric ton).

"Topsoil" means the A and E soil horizon layers of the four master soil horizons.

"Toxic-forming materials" means earth materials, or wastes which, if acted upon by air, water, weathering or microbiological processes, are likely to produce chemical or physical conditions in soils or water that are detrimental to biota or uses of water.

"Toxic mine drainage" means water that is discharged from active or abandoned mines or other areas affected by coal exploration or surface coal mining and reclamation operations, which contains a substance that through chemical action or physical effects is likely to kill, injure, or impair plant and animal life commonly present in the area that might be exposed to it.

"Transfer, assignment, or sale of permit rights" means a change of a permittee.

"Unanticipated event or condition," as used in 4VAC25-130-773.15, means an event or condition related to prior mining activity which arises from a surface coal mining and reclamation operation on lands eligible for remining that was not contemplated by the applicable permit.

"Underground development waste" means waste-rock mixtures of coal, shale, claystone, siltstone, sandstone, limestone, or related materials that are excavated, moved, and disposed of from underground workings in connection with underground mining activities.

"Underground mining activities" means a combination of:

(a) Surface operations incident to underground extraction of coal or in situ processing, such as construction, use, maintenance, and reclamation of roads, aboveground repair areas, storage areas, processing areas, shipping areas, areas upon which are sited support facilities including hoist and ventilating ducts, areas utilized for the disposal and storage of wastes, and areas on which materials incident to underground mining operations are placed; and

(b) Underground operations such as underground construction, operations, and reclamation of shafts, adits, underground support facilities, in situ processing, and underground mining, hauling, storage, and blasting.

"Unwarranted failure to comply" means the failure of a permittee to prevent the occurrence of any violation of his permit or any requirement of the Act or this chapter due to indifference, lack of diligence, or lack of reasonable care, or failure to abate any violation of such permit, the Act, or this chapter due to indifference, lack of diligence, or lack of reasonable care.

"Usable ground water" or "ground water in use" means all ground water that is reasonably able to be used.

"Valid existing rights" means a set of circumstances under which a person may, subject to division approval, conduct surface coal mining operations on lands where ~~§ 45.1-252 D~~ § 45.2-1028 of the Act and 4VAC25-130-761.11 would otherwise prohibit such operations. The possession of valid existing rights only confers an exception from the prohibitions of ~~§ 45.1-252 D~~ § 45.2-1028 and 4VAC25-130-761.11. A person seeking to exercise valid existing rights must comply with all pertinent requirements of the Act and the regulations promulgated thereunder and would need to demonstrate:

(a) Except as provided in subdivision (c) of this definition, the legally binding conveyance, lease, deed, contract, or other document that vests the person or predecessor in

interest with the right to conduct the type of surface coal mining operations intended. The right must exist at the time the land came under the protection of 4VAC25-130-761.11;

(b) Compliance with one of the following:

(1) That all permits and other authorizations required to conduct surface coal mining operations had been obtained or a good faith attempt to obtain all necessary permits and authorizations had been made before the land came under the protection of ~~§ 45.1 252 D~~ § 45.2-1028 or 4VAC25-130-761.11.

(2) That the land needed for and immediately adjacent to a surface coal mining operation for which all permits and other authorizations required to conduct surface coal mining operations had been obtained or a good faith attempt made to obtain such permits and authorizations occurred before the land came under the protection of ~~§ 45.1 252 D~~ § 45.2-1028 or 4VAC25-130-761.11. The person must demonstrate that prohibiting the expansion of the operation onto that land would unfairly impact the viability of the operation as originally planned before the land came under the protection of ~~§ 45.1 252 D~~ § 45.2-1028 or 4VAC25-130-761.11. Except for operations in existence before August 3, 1977, or for which a good faith effort to obtain all necessary permits had been made before August 3, 1977, this standard does not apply to lands already under the protection of ~~§ 45.1 252 D~~ § 45.2-1028 or 4VAC25-130-761.11 when the division approved the permit for the original operation or when the good faith effort to obtain all necessary permits for the original operation was made. In evaluating whether a person meets this standard, the division may consider:

(i) The extent to which coal supply contracts or other legal and business commitments that occurred before the land came under the protection of ~~§ 45.1 252 D~~ § 45.2-1028 or 4VAC25-130-761.11 depend upon the use of the land for surface coal mining operations.

(ii) The extent to which plans used to obtain financing for the operation before the land came under the protection of ~~§ 45.1 252 D~~ § 45.2-1028 or 4VAC25-130-761.11 relied upon use of that land for surface coal mining operations.

(iii) The extent to which investments in the operation made before the land came under the protection of ~~§ 45.1 252 D~~ § 45.2-1028 or 4VAC25-130-761.11 relied upon the use of that land for surface coal mining operations.

(iv) Whether the land lies within the area identified on the life-of-mine map under 4VAC25-130-779.24 (c) that was submitted before the land came under the protection of ~~§ 45.1 252 D~~ § 45.2-1028 or 4VAC25-130-761.11;

(c) For haulroads, a person who claims valid existing rights to use or construct a road across the surface of lands protected by ~~§ 45.1 252 D~~ § 45.2-1028 or 4VAC25-130-761.11 must demonstrate that one or more of the following circumstances exist. The road:

(1) Existed when the land upon which it is located came under the protection of ~~§ 45.1 252 D~~ § 45.2-1028 or 4VAC25-130-761.11 and the person has the legal right to use the road for surface coal mining operations;

(2) Was under a properly recorded right of way or easement for a road in that location at the time the land came under the protection of ~~§ 45.1 252 D~~ § 45.2-1028 or 4VAC25-130-761.11 and under the document creating the right of way or easement, and under subsequent conveyances, the person has a legal right to use or construct a road across the right of way or easement for surface coal mining operations; or

(3) Was used or contained in a valid permit that existed when the land came under the protection of ~~§ 45.1 252 D~~ § 45.2-1028 or 4VAC25-130-761.11; and

(d) That an interpretation of the terms of the document relied upon to establish the valid existing rights shall be based either upon applicable Virginia statutory or case law concerning interpretation of documents conveying mineral rights or, where no applicable state law exists, upon the usage and custom at the time and place it came into existence.

"Valley fill" means a fill structure consisting of any material, other than organic material, that is placed in a valley where side slopes of the existing valley, measured at the steepest point, are greater than 20 degrees, or where the average slope of the profile of the valley from the toe of the fill to the top of the fill is greater than 10 degrees.

"Violation," when used in the context of the permit application information or permit eligibility requirements of §§ ~~45.1 235~~ 45.2-1010 and ~~45.1 238 C~~ 45.2-1013 of the Act and related regulations, means:

(a) A failure to comply with an applicable provision of a federal or state law or regulation pertaining to air or water environmental protection as evidenced by a written notification from a governmental entity to the responsible person; or

(b) A noncompliance for which the division has provided one or more of the following types of notice or OSM or a state regulatory authority has provided equivalent notice under corresponding provisions of a federal or state regulatory program:

(1) A notice of violation under 4VAC25-130-843.12;

(2) A cessation order under 4VAC25-130-843.11;

(3) A final order, bill, or demand letter pertaining to a delinquent civil penalty assessed under 4VAC25-130-845 or 4VAC25-130-846;

(4) A bill or demand letter pertaining to delinquent reclamation fees owed under 30 CFR Part 870; or

(5) A notice of bond forfeiture under 4VAC25-130-800.50 when:

(i) One or more violations upon which the forfeiture was based have not been abated or corrected; or

(ii) The amount forfeited and collected is insufficient for full reclamation under 4VAC25-130-800.50 or 4VAC-25-130-801.19, the division orders reimbursement for additional reclamation costs and the person has not complied with the reimbursement order.

"Violation, failure, or refusal," for purposes of 4VAC25-130-846, means:

(a) A failure to comply with a condition of an issued permit or the regulations implementing those sections; or

(b) A failure or refusal to comply with any order issued under 4VAC25-130-843 or any order incorporated in a final decision issued by the director, except an order incorporated in a decision issued under ~~§ 45.1-246~~ § 45.2-1021 of the Act.

"Violation notice" means any written notification from a governmental entity of a violation of law or regulation, whether by letter, memorandum, legal or administrative pleading, or other written communication.

"Water table" means the upper surface of a zone of saturation, where the body of ground water is not confined by an overlying impermeable zone.

"Willful" or "willfully" means that a person who authorized, ordered, or carried out an act or omission that resulted in either a violation or the failure to abate or correct a violation acted:

(a) Intentionally, voluntarily, or consciously; and

(b) With intentional disregard or plain indifference to legal requirements.

4VAC25-130-700.11. Applicability.

(a) Except as provided in Paragraph (b) of this section, this chapter applies to all coal exploration and surface coal mining and reclamation operations, except--

(1) The extraction of coal by a landowner for his own non-commercial use from land owned or leased by him. Non-commercial use does not include the extraction of coal by one unit of an integrated company or other business or non-profit entity which uses the coal in its own manufacturing or power plants;

(2) The extraction of 250 tons of coal or less by a person conducting a surface coal mining and reclamation operation. A person who intends to remove more than 250 tons is not exempted;

(3) The extraction of coal as an incidental part of Federal, State or local government-financed highway or other construction in accordance with Part 707;

(4) The extraction of coal incidental to the extraction of other minerals where coal does not exceed 16-2/3 percent of the total tonnage of coal and other minerals removed for purposes of commercial use or sale in accordance with Part 702.

(b) The division may on its own initiative and shall, within a reasonable time of a request from any person who intends to conduct surface coal mining operations, make a written determination whether the operation is exempt under this section. The division shall give reasonable notice of the request to interested persons. Prior to the time a determination is made, any person may submit, and the division shall consider, any written information relevant to the determination. A person requesting that an operation be declared exempt shall have the burden of establishing the exemption. If a written determination of exemption is reversed through subsequent administrative or judicial action, any person who, in good faith, has made a complete and accurate request for an exemption and relied upon the determination, shall not be cited for violations which occurred prior to the date of the reversal.

(c)(1) The division may terminate its jurisdiction under the regulatory program over the reclaimed site of a completed surface coal mining and reclamation operation, or increment thereof, when~~: (i) The division determines in writing that under the initial program, all requirements imposed under Chapter 17 (§ 45.1-198 et seq.) of Title 45.1 of the Code of Virginia have been successfully completed; or (ii) The~~ the division determines in writing that under the permanent program, all requirements imposed under Chapter ~~19~~ 10 (~~§ 45.1-226~~ § 45.2-1000 et seq.) of Title ~~45.1~~ 45.2 of the Code of Virginia have been successfully completed or, where a performance bond was required, the division has made a final decision in accordance with Part 800 or 801 of this chapter to release the performance bond fully.

(2) Following a termination under Paragraph (d)(1) of this section, the division shall reassert jurisdiction under this chapter over a site if it is demonstrated that the bond release or written determination referred to in Paragraph (d)(1) of this section was based upon fraud, collusion, or misrepresentation of a material fact.

4VAC25-130-700.14. Availability of records.

(a) Records required by the Act to be made available to the public shall be retained at the division office in Big Stone Gap.

(b) Requests for other documents or records in the possession of the division should be made in accordance with the Virginia Freedom of Information Act~~, Chapter 21, Title 2.1,~~ (§ 2.2-3700 et seq. of the Code of Virginia~~, (1950), as amended~~).

4VAC25-130-701.11. Applicability.

(a) Any person who conducts surface coal mining operations on non-Indian or non-Federal lands within the Commonwealth of Virginia shall have a permit issued pursuant to requirements of Chapter ~~19~~ 10 (~~§ 45.1-226~~ § 45.2-1000 et seq.) of Title ~~45.1~~ 45.2 of the Code of Virginia.

(b) Any person who conducts surface coal mining operations on Federal lands located within the Commonwealth of Virginia shall have a permit issued pursuant to Part 740.

(c) The requirements of Subchapter VK shall be effective and shall apply to each surface coal mining and reclamation operation for which the surface coal mining operation is required to obtain a permit under the Act, on the earliest date upon which the Act and this chapter require a permit to be obtained, except as provided in Paragraph (d) of this section.

(d)(1) Each structure used in connection with or to facilitate a coal exploration or surface coal mining and reclamation operation shall comply with the performance standards and the design requirements of Subchapter VK, except that--

(i) An existing structure which meets the performance standards of Subchapter VK but does not meet the design requirements of Subchapter VK may be exempted from meeting those design requirements by the division. The division may grant this exemption only as part of the permit application process after obtaining the information required by 4VAC25-130-780.12 or 4VAC25-130-784.12 and after making the findings required in 4VAC25-130-773.15.

(ii) If the performance standard of Subchapter B of 30 CFR Chapter VII is at least as stringent as the comparable performance standard of Subchapter VK, an existing structure which meets the performance standards of Subchapter B of 30 CFR Chapter VII may be exempted by the division from meeting the design requirements of Subchapter VK. The division may grant this exemption only as part of the permit application process after obtaining the information required by 4VAC25-130-780.12 or 4VAC25-30-784.12 and after making the findings required in 4VAC25-130-773.15.

(iii) An existing structure which meets a performance standard of Subchapter B of 30 CFR Chapter VII which is less stringent than the comparable performance standards of Subchapter VK or which does not meet a performance standard of Subchapter VK, for which there was no equivalent performance standards in Subchapter B of 30 CFR Chapter VII, shall be modified or reconstructed to meet the performance and design standards of Subchapter VK pursuant to a compliance plan approved by the division only as part of the permit application as required in 4VAC25-130-780.12 or 4VAC25-130-784.12 and according to the findings required by 4VAC25-130-773.15.

(iv) An existing structure which does not meet the performance standards of Subchapter B of 30 CFR Chapter VII and which the applicant proposes to use in connection with or to facilitate the coal exploration or surface coal mining and reclamation operation shall be modified or reconstructed to meet the performance and design standards of Subchapter VK prior to issuance of the permit.

(2) The exemptions provided in Paragraphs (d)(1)(i) and (d)(1)(ii) of this section shall not apply to -

(i) The requirements for existing and new coal mine waste disposal facilities; and

(ii) The requirements to restore the approximate original contour of the land.

(e)(1) Any person conducting coal exploration on non-Federal and non-Indian lands shall either file a notice of intention to explore or obtain approval of the division, as required by Part 772.

(2) Coal exploration performance standards in Part 815 shall apply to coal exploration on non-Federal and non-Indian lands which substantially disturbs the natural land surface.

4VAC25-130-702.11. Application requirements and procedures.

(a)(1) Any person who plans to commence or continue coal extraction after the effective date of this Part, in reliance on the incidental mining exemption shall file a complete application for exemption with the division for each mining area.

(2) A person may not commence coal extraction based upon the exemption until the division approves such application, except as provided in Paragraph (e)(3) of this section.

(b) Existing operations. Any person who has commenced coal extraction at a mining area in reliance upon the incidental mining exemption prior to the effective date of the incidental mining provisions in this chapter may continue mining operations for 60 days after such effective date. Coal extraction may not continue after such 60-day period unless that person files an administratively complete application for exemption with the division. If an administratively complete application is filed within 60 days, the person may continue extracting coal in reliance on the exemption beyond the 60-day period until the division makes an administrative decision on such application.

(c) Additional information. The division shall notify the applicant if the application for exemption is incomplete and may at any time require submittal of additional information.

(d) Public comment period. Following publication of the newspaper notice required by 4VAC25-130-702.12(g), the division shall provide a period of no less than 30 days during which time any person having an interest which is or may be adversely affected by a decision on the application may submit written comments or objections.

(e) Exemption determination.

(1) No later than 90 days after filing of an administratively complete application, the division shall make a written determination whether, and under what conditions, the

persons claiming the exemption are exempt under this Part, and shall notify the applicant and persons submitting comments on the application of the determination and the basis for the determination.

(2) The determination of exemption shall be based upon information contained in the application and any other information available to the division at that time.

(3) If the division fails to provide an applicant with the determination as specified in Paragraph (e)(1) of the section, an applicant who has not begun may commence coal extraction pending a determination on the application unless the division issues an interim finding, together with reasons therefor, that the applicant may not begin coal extraction.

(f) Administrative review.

(1) Any adversely affected person may request administrative review of a determination under Paragraph (e) of this section within 30 days of the notification of such determination in accordance with procedures established under ~~section 45.1-250~~ § 45.2-1026 of the Code of Virginia.

(2) A petition for administrative review filed under ~~section 45.1-250~~ § 45.2-1026 of the Code of Virginia shall not suspend the effect of a determination under Paragraph (e) of this section.

4VAC25-130-702.17. Revocation and enforcement.

(a) The division shall conduct an annual compliance review of the mining area, utilizing the annual report submitted pursuant to 4VAC25-130-702.18, an on-site inspection and any other information available to the division.

(b) If the division has reason to believe that a specific mining area was not exempt under the provision of this Part at the end of the previous reporting period, is not exempt, or will be unable to satisfy the exemption criteria at the end of the current reporting period, the division shall notify the operator that the exemption may be revoked and the reason(s) therefore. The exemption will be revoked unless the operator demonstrates to the division within 30 days that the mining area in question should continue to be exempt.

(c)(1) If the division finds that an operator has not demonstrated that activities conducted in the mining area qualify for the exemption, the division shall revoke the exemption and immediately notify the operator and intervenors. If a decision is made not to revoke an exemption, the division shall immediately notify the operator and intervenors.

(2) Any adversely affected person may request administrative review of a decision whether to revoke an exemption within 30 days of the notification of such decision in accordance with procedures established under ~~section 45.1-250~~ § 45.2-1026 of the Code of Virginia.

(3) A petition for administrative review filed under ~~section 45.1-250~~ § 45.2-1026 of the Code of Virginia shall not suspend the effect of a decision whether to revoke an exemption.

(d)(1) An operator mining in accordance with the terms of an approved exemption shall not be cited for violations of this chapter which occurred prior to the revocation of the exemption.

(2) An operator who does not conduct activities in accordance with the terms of an approved exemption and knows or should know such activities are not in accordance with the approved exemption shall be subject to direct enforcement action for violations of this chapter which occur during the period of such activities.

(3) Upon revocation of an exemption or denial of an exemption application, an operator shall stop conducting surface coal mining operations until a permit is obtained and shall comply with the reclamation standards of this chapter with regard to conditions, areas and activities existing at the time of revocation or denial.

4VAC25-130-705.24. Confidentiality and access to disclosure statements.

(a) The provisions of the ~~Privacy Protection Act of 1976~~ Virginia Freedom of Information Act (~~Chapter 26 (§ 2.1-377~~ § 2.2-3700 et seq.~~) of Title 2.1~~ of the Code of Virginia) shall apply to statements and information obtained pursuant to these regulations.

(b) All statements of employment and financial interest which are filed pursuant to these regulations, and the information shown thereon, shall be maintained only for the purposes of determining whether there are any direct or indirect financial interests in violation of ~~Section 45.1-231~~ § 45.2-1005 of the Act, and Section 517(g) of the Federal Act. No other use is authorized.

(c) Access to such statements and information shall be restricted to personnel of the Department and of the U.S. Department of the Interior, and State and Federal enforcement authorities (including the U.S. Justice Department) for the purposes for which the information was collected. Access among personnel of the Department shall be further restricted to only those persons specified by the Director as having regular access to the statements and information.

(d) All such statements and information shall be maintained separate and apart from personnel records and other records to which the public could have access.

(e) The filing and information system where such statements and information are stored shall be identified as restricted access and secured against unauthorized access. The Director shall designate a custodian for records maintained in the Division's Office in Big Stone Gap, and another custodian for records maintained in the Department's Offices in Richmond.

The duties of these custodians shall be to maintain restricted access and security for their respective records.

(f) Whenever any employee ceases to occupy a listed position which requires the filing of a statement of employment and financial interest, all such statements then on file from such employee shall be returned to the employee and all information systems purged of the data provided by such statements upon request of the employee. In addition, the custodian of the records where such statements are maintained shall periodically update the records by purging them of statements and information pertaining to employees who no longer occupy listed positions.

4VAC25-130-740.15. Bonds on federal lands.

(a) Federal lease bonds.

(1) Each holder of a Federal coal lease that is covered by a Federal lease bond required under 43 CFR 3474 may apply to the authorized officer of the Federal agency that has administrative jurisdiction over the Federal lands for release of liability for that portion of the Federal lease bond that covers reclamation requirements.

(2) The authorized officer may release the liability for that portion of the Federal lease bond that covers reclamation requirements if:

(i) The lessee has secured a suitable performance bond covering the permit area under this Part;

(ii) There are no pending actions or unresolved claims against existing bonds; and

(iii) The authorized officer has received concurrence from the OSM and the Bureau of Land Management.

(b) Performance bonds. The performance bonds required for operations on Federal lands shall be made payable to the United States and the Commonwealth of Virginia: Director-Division of Mined Land ~~Reclamation~~ Repurposing.

(c) Federal lessee protection bonds.

(1) Where leased Federal coal is to be mined and the surface of the land is subject to a lease or permit issued by the United States for purposes other than surface coal mining, the applicant for a mining permit, if unable to obtain the written consent of the permittee or lessee of the surface to enter and commence surface coal mining operations, shall submit to the division with the application evidence of execution of a bond or undertaking which meets the requirements of this section. The Federal lessee protection bond is in addition to the performance bond required by Subchapter VJ. This section does not apply to permits or licenses for the use of the surface that do not convey to the permittee or licensee the right of transfer, sale or consent to other uses.

(2) The bond shall be payable to the United States for the use and benefit of the permittee or lessee of the surface lands involved.

(3) The bond shall secure payment to the surface estate for any damage which the surface coal mining and reclamation operation causes to the crops or tangible improvements of the permittee or lessee of the surface lands.

(4) The amount of the bond shall be determined either by the applicant and the Federal lessee or permittee, or if an agreement cannot be reached, as determined in an action brought against the person conducting surface coal mining and reclamation operations or upon the bond in a court of competent jurisdiction.

(d) Release of bonds.

(1) A Federal lease bond may be released by the OSM upon satisfactory compliance with all applicable requirements of 43 CFR 3480-3487 and 43 CFR 3400 and after the release is approved by the Bureau of Land Management.

(2) A Federal lessee protection bond shall be released by the OSM upon the written consent of the permittee or lessee.

(3) Where surface coal mining and reclamation operations are subject to an approved mining plan, a performance bond shall be released by the division after the release is approved by the OSM.

4VAC25-130-761.1. Scope.

This Part establishes the procedures and standards to be followed in determining whether a proposed surface coal mining and reclamation operation can be authorized in light of the prohibitions and limitations in ~~Section 45.1 252~~ § 45.2-1028 of the Act for those types of operations on certain Federal, public and private lands in the Commonwealth.

4VAC25-130-761.3. Authority.

The Director is authorized by ~~Section 45.1 252~~ § 45.2-1028 of the Act to prohibit or limit surface coal mining operations on or near certain private, Federal, and other public lands, subject to valid existing rights and except for those operations which existed on August 3, 1977.

4VAC25-130-761.12. Procedures.

(a) Upon receipt of a complete application for a surface coal mining and reclamation operation permit, the division shall review the application to determine whether surface coal mining operations are limited or prohibited under 4VAC25-130-761.11 on the lands which would be disturbed by the proposed operations.

(b)(1) Where the proposed operation would be located on any lands listed in 4VAC25-130-761.11(a), (f), or (g), the division shall reject the application if the applicant has no valid existing rights for the area, or if the operation did not exist on August 3, 1977.

(2) If the division is unable to determine whether the proposed operation is located within the boundaries of any of the lands in 4VAC25-130-761.11(a) or closer than the

limits provided in 4VAC25-130-761.11(f) and (g), the division shall transmit a copy of the relevant portions of the permit application to the appropriate Federal, State, or local government agency for a determination or clarification of the relevant boundaries or distances, with a notice to the appropriate agency that it has 30 days from receipt of the request in which to respond. The National Park Service or the U.S. Fish and Wildlife Service shall be notified of any request for a determination of valid existing rights pertaining to areas within the boundaries of areas under their jurisdiction and shall have 30 days from receipt of the notification in which to respond. The division, upon written request by the appropriate agency, shall grant an extension to the 30-day period of an additional 30 days. If no response is received within the 30-day period or within the extended period granted, the division may make the necessary determination based on the information it has available.

(c) Where the proposed operation would include Federal lands within the boundaries of any national forest, and the applicant seeks a determination that mining is permissible under 30 CFR 761.11(b), the applicant shall submit a permit application to the Director of the OSM for processing under 30 CFR Subchapter D. Before acting on the permit application, the Director of the OSM shall ensure that the Secretary's determination has been received and the findings required by Section 522(e)(2) of the Federal Act have been made.

(d) Where the mining operation is proposed to be conducted within 100 feet, measured horizontally, of the outside right-of-way line of any public road (except as provided in 4VAC25-130-761.11(d)(2)) or where the applicant proposes to relocate or close any public road, the division or public road authority designated by the Director shall--

(1) Require the applicant to obtain necessary approvals of the authority with jurisdiction over the public road;

(2) Provide an opportunity for a public hearing in the locality of the proposed mining operation for the purpose of determining whether the interests of the public and affected landowners will be protected;

(3) If a public hearing is requested in writing, provide advance notice of the public hearing, to be published in a newspaper of general circulation in the affected locale at least 2 weeks prior to the hearing; and

(4) Make a written finding based upon information received at the public hearing within 30 days after completion of the hearing, or after any public comment period ends if no hearing is held, as to whether the interests of the public and affected landowners will be protected from the proposed mining operation. No mining shall be allowed within 100 feet of the outside right-of-way line of a road, nor may a road be relocated or closed, unless the division or public road authority determines that the interests of the public and affected landowners will be protected.

(e)(1) Where the proposed surface coal mining operations would be conducted within 300 feet, measured horizontally, of any occupied dwelling, the permit applicant shall submit with the application a written waiver by lease, deed, or other conveyance from the owner of the dwelling, clarifying that the owner and signator had the legal right to deny mining and knowingly waived that right. The waiver shall act as consent to such operations within a closer distance of the dwelling as specified.

(2) Where the applicant for a permit after August 3, 1977, had obtained a valid waiver prior to August 3, 1977, from the owner of an occupied dwelling to mine within 300 feet of such dwelling, a new waiver shall not be required.

(3)(i) Where the applicant for a permit after August 3, 1977, had obtained a valid waiver from the owner of an occupied dwelling, that waiver shall remain effective against all persons acquiring any interest in the dwelling, whether by purchase, gift, as a creditor, or in any other way, who had actual or constructive knowledge of the existing waiver at the time of acquisition of the interest.

(ii) All persons acquiring any interest, whether by purchase, gift, as a creditor or in any other way, in a dwelling, after a valid waiver has been obtained under this Paragraph (e), shall be considered to have constructive knowledge of the waiver if the waiver has been properly recorded in the Clerk's Office of the Circuit Court of the county or city in which the dwelling is located, or if the mining has proceeded to within the 300-foot limit prior to the date of acquisition.

(f)(1) Where the division determines that the proposed surface coal mining operation will adversely affect any publicly owned park or any place included in the National Register of Historic Places, the division shall transmit to the Federal, State, or local agency with jurisdiction over the publicly owned park or publicly owned National Register place a copy of applicable parts of the permit application, together with a request for that agency's approval or disapproval of the operation, and a notice to that agency that it has 30 days from receipt of the request within which to respond and that failure to interpose a timely objection will constitute approval. The division, upon written request by the appropriate agency, may grant an extension to the 30-day period of an additional 30 days. Failure to interpose an objection within 30 days or the extended period granted shall constitute an approval of the proposed permit application.

(2) A permit for the operation shall not be issued unless jointly approved by all affected agencies;

(g) If the division determines that the proposed surface coal mining operation is not prohibited under ~~Section 45.1 252~~ § 45.2-1028 of the Act and this Part, the Director may nevertheless, pursuant to appropriate petitions, designate such lands as unsuitable for all or certain types of surface coal mining operations pursuant to Part 762 or 764.

(h) A determination by the division that a person holds or does not hold valid existing rights or that surface coal mining operations did or did not exist on the date of enactment shall be subject to administrative and judicial review under 4VAC25-130-775.11 and 4VAC25-130-775.13.

4VAC25-130-761.16. Submission and processing of requests for valid existing rights determinations.

A. Basic framework for valid existing rights determinations. 30 CFR 761.16(a) identifies the agency responsible for making a valid existing rights determination and the definition that it must use based upon which subsection of 30 CFR 761.11 or 4VAC25-130-761.11 applies and whether the request includes federal lands.

B. A request for a valid existing rights determination must be submitted to the division if a person intends to conduct surface coal mining operations on the basis of valid existing rights under 4VAC25-130-761.11 or wishes to confirm the right to do so. The request may be submitted before the person prepares and submits an application for a permit or boundary revision for the land.

1. The person must provide a property rights demonstration under the definition of valid existing rights if the request relies upon the good faith/all permits or the needed for and adjacent standard set forth in 4VAC25-130.700.5. For the land subject to the request, the demonstration must include:

a. A legal description of the land;

b. Complete documentation of the character and extent of the person's current interests in the surface and mineral estates of the land;

c. A complete chain of title for the surface and mineral estates of the land;

d. A description of the nature and effect of each titles instrument that forms the basis of the request, including any provision pertaining to the type or method of mining or mining-related surface disturbances and facilities;

e. A description of the type and extent of surface coal mining operations that the person claims the right to conduct, including the method of mining, any mining-related surface activities and facilities, and an explanation of how those operations would be consistent with Virginia property law;

f. Complete documentation of the nature and ownership, as of the date that the land came under the protection of ~~§ 45.1-252~~ § 45.2-1028 of the Code of Virginia or 4VAC25-130-761.11, of all property rights for the surface and mineral estates;

g. Names and addresses of the current owners of the surface and mineral estates of the land;

h. If the coal interests have been severed from other property interests, documentation that the person has notified and provided reasonable opportunity for the owners of other property interests in the land to comment on the validity of the person's property rights claims; and

i. Any comments that the person receives in response to the notification provider under subdivision 1 h of this subsection.

2. If the request relies upon the good faith/all permits standard in subdivision (b)(1) of the valid existing rights definition in 4VAC25-130-700.5, the person must also submit the following information about permits, licenses, and authorizations for surface coal mining operations on the land subject to the request that the person or predecessor in interest obtained, submitted, or made:

a. Approval and issuance dates and identification numbers for any permits, licenses, and authorizations obtained before the land came under the protection of ~~§ 45.1-252~~ § 45.2-1028 of the Code of Virginia or 4VAC25-130-761.11.

b. Application dates and identification numbers for any permits, licenses, and authorizations submitted before the land came under the protection of ~~§ 45.1-252~~ § 45.2-1028 of the Code of Virginia or 4VAC25-130-761.11.

c. An explanation of any other good faith effort made to obtain the necessary permits, licenses, and authorizations as of the date that the land came under the protection of ~~§ 45.1-252~~ § 45.2-1028 of the Code of Virginia or 4VAC25-130-761.11

3. If the request relies upon the needed for and adjacent standard in subdivision (b)(2) of the valid existing rights definition in 4VAC25-130-700.5, the person must explain how and why the land is needed for and immediately adjacent to the operation upon which the request is based, including a demonstration that prohibiting expansion of the operation onto that land would unfairly impact the viability of the operation as originally planned before the land came under the protection of ~~§ 45.1-252~~ § 45.2-1028 of the Code of Virginia or 4VAC25-130-761.11

4. If the request relies upon one of the standards for roads in subdivision (c) of the valid existing rights definition in 4VAC25-130-700.5, the person must submit satisfactory documentation that:

a. The road existed when the land upon which it is located came under the protection of ~~§ 45.1-252~~ § 45.2-1028 of the Code of Virginia or 4VAC25-130-761.11 and the person has a legal right to use the road for surface coal mining operations;

b. A properly recorded right of way or easement for a road in that location existed when the land came under the protection of ~~§ 45.1-252~~ § 45.2-1028 of the Code of Virginia or 4VAC25-130-761.11 and under the document creating the right of way or easement and under any subsequent conveyances, the person has a legal right to use

or construct a road across that right of way or easement to conduct surface coal mining operations; or

c. A valid permit for use or construction of a road in that location for surface coal mining operations existed when the land came under the protection of ~~§ 45.1-252~~ § 45.2-1028 of the Code of Virginia or 4VAC25-130-761.11.

C. Initial review of request.

1. The division must conduct an initial review to determine whether the request includes all applicable components of the submission requirements of subsection B of this section. The review pertains only to the completeness of the request, not the legal or technical adequacy of the materials submitted.

2. If the request does not include all applicable components of the submission requirements of subsection B of this section, the division must notify the person and establish a reasonable time for submission of the missing information. Should the person not provide the information requested by the division under this subdivision within the time specified or as subsequently extended, the division must issue a determination under subdivision E 4 of this section that the person has not demonstrated valid existing rights.

3. When the request includes all applicable components of the submission requirements of subsection B of this section, the division must implement the notice and comment requirements of subsection D of this section.

D. 1. When the division determines that the request satisfies the completeness requirements of subsection C of this section, it shall publish a notice in a newspaper of general circulation in the county in which the land is located inviting public comment on the merits of the request. OSM will publish a similar notice in the Federal Register if the request involves federal lands within an area listed in 4VAC25-130-761.11 (a) or (b). The public notice must include:

a. The location of the land to which the request pertains.

b. A description of the type of surface coal mining operations planned.

c. A reference to and brief description of the applicable standard or standards under the definition of valid existing rights in 4VAC25-130-700.5.

(1) If the request relies upon the good faith/all permits or the needed for and adjacent standard set forth in the valid existing rights definition in 4VAC25-130-700.5, the notice must include a description of the property rights that the person claims and the basis for the claim.

(2) If the request relies upon the road standard set forth in subdivision (c) (1) of the valid existing rights definition in 4VAC25-130-700.5, the notice must include a description of the basis for the claim that the road existed when the land came under the protection of ~~§ 45.1-252~~ § 45.2-1028 of the Code of Virginia or 4VAC25-130-761.11. In addition, the notice must include a description of the basis for the claim that the person has a legal right to use that road for surface coal mining operations.

(3) If the request relies upon the standard in subdivision (c) (2) of the valid existing rights definition in 4VAC25-130-700.5, the notice must include a description of the basis for the claim that a properly recorded right of way or easement for a road in that location existed when the land came under the protection of ~~§ 45.1-252~~ § 45.2-1028 of the Code of Virginia or 4VAC25-130-761.11. In addition, the notice must include a description of the basis for the claim that, under the document creating the right of way or easement, and under any subsequent conveyances, the person has a legal right to use or construct a road across the right of way or easement to conduct surface coal mining operations.

d. If the request relies upon one or more of the standards in subdivisions (b) and (c) (1) and (c) (2) of the valid existing rights definition in 4VAC25-130-700.5, a statement that the division will not make a decision on the merits of the request if, by the close of the comment period under the notice or the notice required by subdivision 3 of this subsection, a person with a legal interest in the land initiates appropriate legal action in the proper venue to resolve any differences concerning the validity or interpretation of the deed, lease, easement, or other documents that form the basis of the valid existing rights claim.

e. A description of the procedures the division will follow in processing the request.

f. The closing date of the public comment period, which shall be a minimum of 30 days after the notice's publication date.

g. A statement that interested persons may request, in writing, from the division a 30-day extension of the public comment period. The extension request shall set forth with reasonable specificity the reasons the commenter needs the additional time to submit comments.

h. Include the division office's address where a copy of the valid existing rights request is available for public inspection and where comments and requests for extension of the comment period should be sent.

2. The division must promptly provide a copy of the notice required under subdivision 1 of this subsection to:

a. All reasonably locatable owners of surface and mineral estates in the land included in the valid existing rights request.

b. The owner of the feature causing the land to come under the protection of 4VAC25-130-761.11, and when applicable, the agencies with primary jurisdiction over the feature with respect to the values causing the land to come under the protection of 4VAC25-130-761.11.

3. The notice required under subdivision 2 of this subsection must provide a 30-day comment period and specify that an additional 30 days may be granted for good cause shown at the discretion of the division or agency responsible for the valid existing rights determination.

E.1. The division or agency responsible for making the valid existing rights determination must review the materials submitted under subsection B of this section, comments received under subsection D of this section, and any other relevant, reasonably available information to determine whether the record is sufficiently complete and adequate to support a decision on the merits of the request. If not, the division must notify the person in writing explaining the inadequacy of the record and requesting submittal within a specified reasonable time of any additional information that the division deems necessary to remedy the inadequacy.

2. Once the record is complete and adequate, the division must make a determination as to whether valid existing rights have been demonstrated. The division's decision must explain how the person has or has not satisfied all applicable elements of the valid existing rights definition under 4VAC25-130-700.5, contain findings of fact and conclusions, and specify the reasons for the conclusions.

3. When the request relies upon one or more of the standards in subdivisions (b) and (c) (1) and (2) of the valid existing rights definition in 4VAC25-130-700.5, the division:

a. Must issue a determination that the person has not demonstrated valid existing rights if the property rights claim is the subject of pending litigation in a court or administrative body with the jurisdiction over the property rights in question. The division will make the determination without prejudice, meaning that the person may refile the request once the property rights dispute is finally adjudicated. This applies only to situations in which legal action has been initiated as of the closing date of the comment period under subdivisions D 1 and 3 of this section.

b. If the record indicates disagreement of the accuracy of the person's property rights claim, but the disagreement is not the subject of pending litigation in a court or administrative agency of competent jurisdiction, must evaluate the merits of the information in the record and determine whether the person has demonstrated that the requisite property rights exist under subdivision (a), (c) (1) or (c) (2) of the valid existing rights definition in 4VAC25-130-700.5, as appropriate. The division must then proceed with the decision process under subdivision 2 of this subsection.

4. The division must issue a determination that the person has not demonstrated valid existing rights if the person does not submit information that the division requests under subdivision C 2 of this section or subdivision 1 of this subsection within the time specified or as subsequently extended. The division will make the determination without prejudice, meaning the person may refile a revised request at any time.

5. After making a valid existing rights determination, the division shall:

a. Provide a copy of the determination with an explanation of appeal rights and procedures to the person seeking the determination, owner or owners of the land to which the determination applies, owner of the feature causing the land to come under the protection of 4VAC25-130-761.11, and, when applicable, the agency with primary jurisdiction over the feature with respect to the values that caused the land to come under the protection of 4VAC25-130-761.11.

b. Publish notice of the determination in a newspaper of general circulation in the county in which the land is located. The federal Office of Surface Mining Reclamation and Enforcement (OSMRE) will publish the determination, together with an explanation of appeal rights and procedures in the Federal Register if the request includes federal lands within an area listed in 4VAC25-130-761.11 (a) or (b).

F. The division's valid existing rights determination shall be subject to administrative and judicial review under 4VAC25-130-775.11 and 4VAC25-130-775.13.

G. The division must make a copy of the valid existing rights determination request available to the public as provided by 4VAC25-130-773.13 (d) and the records associated with that request, and any subsequent determination under subsection E of this section, available to the public in accordance with 4VAC25-130-840.14.

4VAC25-130-762.14. Exploration on land designated as unsuitable for surface coal mining operations.

Designation of any area as unsuitable for all or certain types of surface coal mining operations pursuant to ~~Section 45.1-252~~ § 45.2-1028 of the Act and this Subchapter does not prohibit coal exploration operations in the area, if conducted in accordance with the Act, this chapter, and other applicable requirements. Exploration operations on any lands designated unsuitable for surface coal mining operations must be approved by the division under Part 772 to ensure that exploration does not interfere with any value for which the area has been designated unsuitable for surface coal mining operations.

4VAC25-130-764.13. Petitions.

(a) Right to petition. Any person having an interest which is or may be adversely affected has the right to petition the Director to have an area designated as unsuitable for surface coal mining operations, or to have an existing designation terminated. For the purpose of this action, a person having an interest which is or may be adversely affected must

demonstrate how he meets an "injury in fact" test by describing the injury to his specific affected interests and demonstrate how he is among the injured.

(b) Designation. A complete petition for designation shall include:

(1) The petitioner's name, address, telephone number, and notarized signature;

(2) A statement of whether the petitioner is an individual, an association, sole proprietorship, partnership, corporation, or other entity. If the petitioner is an entity other than an individual, the petition shall contain the names and addresses of the principals, officers, and the resident agent of the petitioner;

(3) Identification of the petitioned area, including its location and size, and a U.S. Geological Survey topographic map clearly outlining the perimeter of the petitioned area;

(4) An identification of the petitioner's interest which is or may be adversely affected by surface coal mining operations, including a statement demonstrating how the petitioner satisfies the requirements of Paragraph (a) of this section;

(5) The owners and lessees, if known, of the surface and mineral property of the area covered by the petition;

(6) A description of how mining of the area has affected or may adversely affect people, land, air, water, or other resources, including the petitioner's interests; and

(7) Allegations of fact and supporting evidence, covering all lands in the petition area, which tend to establish that the area is unsuitable for surface coal mining operations, pursuant to specific criteria of ~~Subsections of Section 45.1-252~~ § 45.2-1028 of the Act, assuming that contemporary mining practices required under the Act would be followed if the area were to be mined. Each of the allegations of fact should be specific as to the mining operation, if known, and the portion(s) of the petitioned area and petitioner's interests to which the allegation applies and be supported by evidence that tends to establish the validity of the allegations for the mining operation or portion of the petitioned areas.

(8) The Director or the division may request that the petitioner provide other supplementary information which is readily available.

(c) Termination. A complete petition for termination shall include--

(1) The petitioner's name, address, telephone number, and notarized signature;

(2) Statement of whether the petitioner is an individual, an association, sole proprietorship, corporation, or other entity. If the petitioner is an entity other than an individual, the petition shall contain the names and addresses of the principals, officers, directors, and resident agent of the petitioner;

(3) Identification of the petitioned area, including its location and size and a U.S. Geological Survey topographic map clearly outlining the perimeter of the petitioned area to which the termination petition applies;

(4) An identification of the petitioner's interest which is or may be adversely affected by the designation that the area is unsuitable for surface coal mining operations including a statement demonstrating how the petitioner satisfies the requirements of Paragraph (a) of this section;

(5) The owners and lessees, if known, of the surface and mineral property of the area covered by the petition;

(6) Allegations of fact covering all lands for which the termination is proposed. Each of the allegations of fact shall be specific as to the mining operation, if any, and to portions of the petitioned area and the petitioner's interests to which the allegation applies. The allegations shall be supported by evidence, not contained in the record of the designation proceeding, that tends to establish the validity of the allegations for the mining operation or portion of the petitioned area, assuming that contemporary mining practices required under the Act would be followed were the area to be mined. For areas previously and unsuccessfully proposed for termination, significant new allegations of facts and supporting evidence must be presented in the petition. Allegations and supporting evidence should also be specific to the basis for which the designation was made and tend to establish that the designation should be terminated on the following bases:

(i) Nature or abundance of the protected resource or condition or other basis of the designation if the designation was based on criteria found in 4VAC25-130-762.11(b);

(ii) Reclamation now being technologically and economically feasible if the designation was based on the criteria found in 4VAC25-130-762.11(a); or

(iii) Resources or conditions not being affected by surface coal mining operations, or in the case of land use plans, not being incompatible with surface coal mining operations during and after mining, if the designation was based on criteria found in 4VAC25-130-762.11(b).

(7) The Director or the division may request that the petitioner provide other supplementary information which is readily available.

4VAC25-130-764.19. Decision.

(a) In reaching his decision, the Director shall use:

(1) The information contained in the data base and inventory system as required by 4VAC25-130-764.21;

(2) Information provided by other governmental agencies;

(3) The detailed statement when it is prepared under 4VAC25-130-764.17(e); and

(4) Any other relevant information submitted during the comment period.

(b) A final written decision shall be issued by the Director, including a statement of reasons, within 60 days of completion of the public hearing, or, if no public hearing is held, then within 12 months after receipt of the complete petition. The Director shall simultaneously send the decision by certified mail to the petitioner and intervenors and by regular mail to all other persons involved in the proceeding.

(c) The decision of the Director with respect to a petition, or the failure of the Director to act within the time limits set forth in this section, shall be subject to judicial review by a court of competent jurisdiction in accordance with ~~Section 45.1-251~~ § 45.2-1027 of the Act and 4VAC25-130-775.13. All relevant portions of the data base, inventory system, and public comments received during the public comment period set by the Director shall be considered and included in the record of the administrative proceeding.

4VAC25-130-773.13. Public participation in permit processing.

(a) Filing and public notice.

(1) Upon submission of an administratively complete application, an applicant for a permit, significant revision of a permit under 4VAC25-130-774.13, or renewal of a permit under 4VAC25-130-774.15, shall place an advertisement in a local newspaper of general circulation in the locality of the proposed surface coal mining and reclamation operation at least once a week for four consecutive weeks. A copy of the advertisement as it will appear in the newspaper shall be submitted to the division. The advertisement shall contain, at a minimum, the following:

(i) The name and business address of the applicant.

(ii) A map or description which clearly shows or describes the precise location and boundaries of the proposed permit area and is sufficient to enable local residents to readily identify the proposed permit area. It may include towns, bodies of water, local landmarks, and any other information which would identify the location. The name of the U.S. Geological Survey 7.5 minute quadrangle map(s) which contains the area shown or described shall be stated; and if a map is used, it shall indicate the north direction.

(iii) The location where a copy of the application is available for public inspection.

(iv) The name and address of the division office where written comments, objections, or requests for informal conferences on the application may be submitted under Paragraphs (b) and (c) of this section.

(v) If an applicant seeks a permit to mine within 100 feet of the outside right-of-way of a public road or to relocate or close a public road, except where public notice and hearing have previously been provided for this particular part of the road in accordance with 4VAC25-130-761.12(d); a concise statement describing the public road, the particular part to be relocated or closed, and the approximate timing and duration of the relocation or closing.

(vi) If the application includes a request for an experimental practice under 4VAC25-130-785.13, a statement indicating that an experimental practice is requested and identifying the regulatory provisions for which a variance is requested.

(2) The applicant shall make an application for a permit, significant revision under 4VAC25-130-774.13, or renewal of a permit under 4VAC25-130-774.15, available for the public to inspect and copy by filing a full copy of the application with the Clerk of the Circuit Court of the city or county where the mining is proposed to occur, or an accessible public office approved by the division. This copy of the application need not include confidential information exempt from disclosure under Paragraph (d) of this section. The application required by this Paragraph shall be filed by the first date of newspaper advertisement of the application. The applicant shall file any changes to the application with the public office at the same time the change is submitted to the division.

(3) Upon receipt of an administratively complete application for a permit, a significant revision to a permit under 4VAC25-130-774.13, or a renewal of a permit under 4VAC25-130-774.15, the division shall issue written notification indicating the applicant's intention to mine the described tract of land, the application number or other identifier, the location where the copy of the application may be inspected, and the location where comments on the application may be submitted. The notification shall be sent to--

(i) Local governmental agencies with jurisdiction over or an interest in the area of the proposed surface coal mining and reclamation operation, including but not limited to planning agencies, sewage and water treatment authorities, water companies; and

(ii) All Federal or State governmental agencies with authority to issue permits and licenses applicable to the proposed surface coal mining and reclamation operation and which are part of the permit coordinating process developed in accordance with 4VAC25-130-773.12; or those agencies with an interest in the proposed operation, including the U.S. Department of Agriculture, Natural Resources Conservation Service district office, the local U.S. Army Corps of Engineers district engineer, the National Park Service, State and Federal fish and wildlife agencies, and the historic preservation officer.

(b) Comments and objections on permit application.

(1) Within 30 days after notification, written comments or objections on an application for a permit, significant revision to a permit under 4VAC25-130-774.13, or renewal of a permit under 4VAC25-130-774.15, may be submitted to the division by public entities notified under Paragraph (a)(3) of this section with respect to the effects of the proposed mining operations on the environment within their areas of responsibility.

(2) Written objections to an application for a permit, significant revision to a permit under 4VAC25-130-774.13, or renewal of a permit under 4VAC25-130-774.15, may be submitted to the division by any person having an interest which is or may be adversely affected by the decision on the application, or by an officer or head of any Federal, State, or local government agency or authority, within 30 days after the last publication of the newspaper notice required by Paragraph (a) of this section.

(3) The division shall upon receipt of such written comments or objections--

(i) Transmit a copy of the comments or objections to the applicant; and

(ii) File a copy for public inspection at the same public office where the application is filed.

(c) Informal conferences.

(1) Any person having an interest which is or may be adversely affected by the decision on the application, or an officer or a head of a Federal, State, or local government agency, may request in writing that the division hold an informal conference on the application for a permit, significant revision to a permit under 4VAC25-130-774.13, or renewal of a permit under 4VAC25-130-774.15. The request shall--

(i) Briefly summarize the issues to be raised by the requestor at the conference;

(ii) State whether the requestor desires to have the conference conducted in the locality of the proposed operation; and

(iii) Be filed with the division no later than 30 days after the last publication of the newspaper advertisement required under Paragraph (a) of this section.

(2) Except as provided in Paragraph (c)(3) of this section, if an informal conference is requested in accordance with Paragraph (c)(1) of this section, the division shall hold an informal conference within a reasonable time following the receipt of the request. The informal conference shall be conducted as follows:

(i) If requested under Paragraph (c)(1)(ii) of this section, it shall be held in the locality of the proposed surface coal mining and reclamation operation.

(ii) The date, time, and location of the informal conference shall be sent to the applicant and other parties to the conference and advertised by the division in a newspaper of general circulation in the locality of the proposed surface coal mining and reclamation operation at least 2 weeks before the scheduled conference.

(iii) If requested in writing by a conference requestor at a reasonable time before the conference, the division may arrange with the applicant to grant parties to the conference access to the proposed permit area and, to the extent that the applicant has the right to grant access to it, to the adjacent area prior to the date of the conference for the purpose of gathering information relevant to the conference.

(iv) The conference shall be conducted by a representative of the division, who may accept oral or written statements and any other relevant information from any party to the conference. An electronic or stenographic record shall be made of the conference, unless waived by all the parties. The record shall be maintained and shall be accessible to the parties of the conference until final release of the applicant's performance bond or other equivalent guarantee pursuant to Subchapter VJ.

(3) If all parties requesting the informal conference withdraw their request before the conference is held, the informal conference may be canceled.

(4) Informal conferences held in accordance with this section may be used by the division as the public hearing required under 4VAC25-130-761.12(d) on proposed relocation or closing of public roads.

(d) Public availability of permit applications.

(1) General availability. Except as provided in Paragraphs (d)(2) or (d)(3) of this section, all applications for permits; revisions; renewals; and transfers, assignments or sales of permit rights on file with the Division shall be available, at reasonable times, for public inspection and copying.

(2) Limited availability. Except as provided in Paragraph (d)(3)(i) of this section, information pertaining to coal seams, test borings, core samplings, or soil samples in an application shall be made available to any person with an interest which is or may be adversely affected. Information subject to this Paragraph shall be made available to the public when such information is required to be on public file pursuant to State law.

(3) Confidentiality. The division shall provide procedures, including notice and opportunity to be heard for persons both seeking and opposing disclosure, to ensure confidentiality of qualified confidential information, which shall be clearly identified by the applicant and submitted separately from the remainder of the application. Confidential information is limited to--

(i) Information that pertains only to the analysis of the chemical and physical properties of the coal to be mined, except information on components of such coal which are potentially toxic in the environment;

(ii) Information required under ~~Section 45.1 236~~ § 45.2-1011 of the Act that is not on public file pursuant to State law and that the applicant has requested in writing to be held confidential;

(iii) Information on the nature and location of archeological resources on public land and Indian land as required under the Archeological Resources Protection Act of 1979 (Pub. L. 96-95, 93 Stat. 721, 16 USC § 470).

4VAC25-130-773.15. Review of permit applications.

(a) General.

(1) The division shall review the application for a permit, revision, or renewal; written comments and objections submitted; information from the AVS; and records of any informal conference or hearing held on the application and issue a written decision, within a reasonable time, either granting, requiring modification of, or denying the application. If an informal conference is held under 4VAC25-130-773.13(c), the decision shall be made within 60 days of the close of the conference.

(2) The applicant for a permit or revision of a permit shall have the burden of establishing that the application is in compliance with all the requirements of the regulatory program.

(3) The division shall review the information submitted under 4VAC25-130-778.13 and 4VAC25-130-778.14 regarding the applicant's or operator's permit histories, business structure, and ownership and control relationships.

(4) If the applicant or operator does not have any previous mining experience, the division may conduct additional reviews to determine if someone else with surface coal mining experience controls or will control the mining operation.

(b) Review of violations.

(1) Based on available information concerning federal and state failure-to-abate cessation orders, unabated federal and state imminent harm cessation orders, delinquent civil penalties issued pursuant to § 518 of the federal Act and ~~§ 45.1 246~~ § 45.2-1021 of the Code of Virginia, bond forfeitures where violations upon which the forfeitures were based have not been corrected, delinquent abandoned mine reclamation fees, and unabated violations of federal and state laws, rules, and regulations pertaining to air or water environmental protection incurred in connection with any surface coal mining operation, the division shall not issue the permit if any surface coal mining and reclamation operation directly owned or controlled by either the applicant or operator is currently in violation of the federal Act, this chapter, or any other law, rule or regulation referred to in this subdivision; or if a surface coal mining and reclamation operation indirectly owned or controlled by the applicant or operator has an unabated or uncorrected violation and the applicant's or operator's control was established or the violation was cited after November 2, 1988. In the absence of a failure-to-abate cessation order, the division may presume that a notice of violation issued pursuant to 4VAC25-130-843.12 or under a federal or state program has been or is being corrected to the satisfaction of the agency with jurisdiction over the violation, except where evidence to the contrary is set forth in the permit application or the AVS, or where the notice of violation is issued for nonpayment of abandoned mine reclamation fees or civil penalties. If a current violation exists, the division shall require the applicant or operator, before the issuance of the permit, to either

(i) Submit to the division proof that the current violation has been or is in the process of being corrected to the satisfaction of the agency that has jurisdiction over the violation; or

(ii) Establish for the division that the applicant, or operator, has filed and is presently pursuing, in good faith, a direct administrative or judicial appeal to contest the validity of the current violation. If the initial judicial review authority under 4VAC25-130-775.13 affirms the violation, then the applicant shall within 30 days of the judicial action submit the proof required under subdivision (b)(1)(i) of this section.

(2) Any permit that is issued on the basis of proof submitted under subdivision (b)(1)(i) of this section that a violation is in the process of being corrected, or pending the outcome of an appeal described in subdivision (b)(1)(ii) of this section, shall be conditionally issued.

(3) If the division makes a finding that the applicant or the operator specified in the application, controls or has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations of the Act of such nature and duration, and with resulting irreparable damage to the environment as to indicate an intent not to comply with the Act, no permit shall be issued. Before such a finding becomes final, the applicant or operator shall be afforded an opportunity for an adjudicatory hearing on the determination as provided for in 4VAC25-130-775.11.

(4) (i) Subsequent to October 24, 1992, the prohibitions of subsection (b) of this section regarding the issuance of a new permit shall not apply to any violation that:

(A) Occurs after that date;

(B) Is unabated; and

(C) Results from an unanticipated event or condition that arises from a surface coal mining and reclamation operation on lands that are eligible for remining under a

permit held by the person making application for the new permit.

(ii) For permits issued under 4VAC25-130-785.25 an event or condition shall be presumed to be unanticipated for the purposes of this subdivision if it:

(A) Arose after permit issuance;

(B) Was related to prior mining; and

(C) Was not identified in the permit.

(c) Written findings for permit application approval. No permit application or application for a significant revision of a permit shall be approved unless the application affirmatively demonstrates and the division finds, in writing, on the basis of information set forth in the application or from information otherwise available that is documented in the approval, the following:

(1) The application is complete and accurate and the applicant has complied with all requirements of the Act and this chapter.

(2) The applicant has demonstrated that reclamation as required by the Act and this chapter can be accomplished under the reclamation plan contained in the permit application.

(3) The proposed permit area is:

(i) Not within an area under study or administrative proceedings under a petition, filed pursuant to Part 764 of this chapter and 30 CFR Part 769, to have an area designated as unsuitable for surface coal mining operations, unless the applicant demonstrates that before January 4, 1977, he has made substantial legal and financial commitments in relation to the operation covered by the permit application; or

(ii) Not within an area designated as unsuitable for mining pursuant to Parts 762 and 764 of this chapter, or subject to the prohibitions or limitations of 4VAC25-130-761.11 and 4VAC25-130-761.12.

(4) For mining operations where the private mineral property to be mined has been severed from the private surface property, the applicant has submitted to the division the documentation required under 4VAC25-130-778.15(b).

(5) The division has made an assessment of the probable cumulative impacts of all anticipated coal mining on the hydrologic balance in the cumulative impact area and has determined that the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area.

(6) The applicant has demonstrated that any existing structure will comply with 4VAC25-130-701.11(d) and 4VAC25-130-773.16, and the applicable performance standards of the initial regulatory program or Subchapter VK.

(7) The applicant has paid all reclamation fees, civil penalty assessments, Pool Bond Fund fees, and anniversary fees, from previous and existing operations as required by this chapter.

(8) The applicant has satisfied the applicable requirements of Part 785 of this chapter.

(9) The applicant has, if applicable, satisfied the requirements for approval of a long-term, intensive agricultural postmining land use, in accordance with the requirements of 4VAC25-130-816.111(d) or 4VAC25-130-817.111(d).

(10) The operation would not affect the continued existence of endangered or threatened species or result in destruction or adverse modification of their critical habitats, as determined under the Endangered Species Act of 1973 (16 USC § 1531 et seq.).

(11) The division has taken into account the effect of the proposed permitting action on properties listed on and eligible for listing on the National Register of Historic Places. This finding may be supported in part by inclusion of appropriate permit conditions or changes in the operation plan protecting historic resources, or a documented decision that the division has determined that no additional protection measures are necessary.

(12) For a proposed remining operation where the applicant intends to reclaim in accordance with the requirements of 4VAC25-130-816.106 or 4VAC25-130-817.106, the site of the operation is a previously mined area as defined in 4VAC25-130-700.5.

(13) The applicant or the permittee specified in the application, has not owned or controlled a surface mining and reclamation operation for which the permit has been revoked and/or the bond forfeited pursuant to the Code of Virginia or any federal law, rule or regulation, or any law, rule or regulation enacted pursuant to federal or state law pertaining to air or water environmental protection and surface coal mining activities in any other state unless reinstated. Applicable Virginia reinstatement requirements may be found in 4VAC25-130-800.52.

(14) For permits to be issued under 4VAC25-130-785.25 the permit application must contain:

(i) Lands eligible for remining;

(ii) An identification of the potential environmental and safety problems related to prior mining activity which could reasonably be anticipated to occur at the site; and

(iii) Mitigation plans to sufficiently address these potential environmental and safety problems so that reclamation as required by the applicable requirements of this chapter can be accomplished.

(d) Performance bond submittal. If the division decides to approve the application, it shall require that the applicant file

the performance bond or provide other equivalent guarantee before the permit is issued, in accordance with the provisions of Subchapter VJ.

(e) Final compliance review. After an application is approved, but before the permit is issued, the division shall reconsider its decision to approve the application, based on the compliance review required by subdivision (b)(1) of this section in light of any new information submitted under 4VAC25-130-778.13 (j) or 4VAC25-130-778.14 (d).

4VAC25-130-774.12. Post-permit issuance requirements.

A. For purposes of future permit eligibility determinations and enforcement actions, the division will utilize the AVS to retrieve and enter appropriate data regarding ownership, control, and violation information. The division shall enter into the AVS:

Information	Within 30 days after
(1) Permit records	the permit is issued or subsequent changes made
(2) Unabated or uncorrected violations	the abatement or correction period for a violation expires
(3) Unpaid final civil penalties, charges, taxes, or fees	the required due payment date
(4) Changes in violation status	abatement, correction or termination of a violation or a final decision from an administrative or judicial review proceeding

B. In the event the permittee is issued enforcement action under 4VAC25-130-843.11 and fails to timely comply with the order's remedial measures, the division shall instruct the permittee to provide or update all the information required by 4VAC25-130-778.13. However, the permittee would not be required to submit this information if a court of competent jurisdiction has granted a stay of the cessation order and the stay remains in effect.

C. The permittee shall notify the division within 60 days of any addition, departure, or change in position of any person identified under 4VAC25-130-778.13. The permittee shall provide the date of such addition, departure, or change of such person.

D. Should the division discover that the permittee or a person listed in an ownership or control relationship with the permittee owns or controls an operation with an unabated or uncorrected violation, it will determine whether enforcement action is appropriate under 4VAC25-130-843 and 4VAC25-130-846 or other applicable provisions. The division may issue a preliminary finding of permit ineligibility under ~~§ 45.1-238 (c)~~ § 45.2-1013 of the Act if it finds that the person had control relationships and violations that would have made the person ineligible for a permit under 4VAC25-130-773.15. The finding shall be in accordance with 4VAC25-130-773.20 (c) (3).

E. If a determination of permit ineligibility is rendered by the division, the person would have 30 days from service of the written finding to submit any information that would tend to demonstrate the person's lack of ownership or control of the surface coal mining operation. The division would issue a final determination regarding the permit eligibility within 30 days of receiving any information from the person or from the expiration date that the person could submit the information under this subsection. A person aggrieved by the division's eligibility finding would have the right to request review under 4VAC25-130-775.

4VAC25-130-775.11. Administrative review.

(a) General. Any applicant, or any person with an interest which is or may be adversely affected by the final administrative decision and who has participated in the administrative hearings as an objector may appeal as provided in subsection (b) of this section if—

(1) The applicant or person is aggrieved by the director or his designee's final order under 4VAC25-130-775.11; or

(2) Either the division or the director failed to act within time limits specified in 4VAC25-130-775.11.

(b) Judicial review. The final order of the division pursuant to subsection (a) of 4VAC25-130-775.11 shall be subject to judicial review as provided by the Virginia Administrative Process Act and the rules of the Supreme Court of Virginia as promulgated thereto. The availability of such review shall not be construed to limit the operation of the rights established in Section 520 of the Federal Act.

(c) All notices of appeal for judicial review of a hearing officer's final decision, or the final decision on review and reconsideration, shall be filed with the Director, Division of Mined Land ~~Reclamation~~ Repurposing, Department of ~~Mines, Minerals and~~ Energy, ~~Post Office Drawer 900,~~ 3405 Mountain Empire Road, Big Stone Gap, Virginia 24219.

4VAC25-130-775.13. Judicial review.

(a) General. Any applicant, or any person with an interest which is or may be adversely affected by the final administrative decision and who has participated in the administrative hearings as an objector may appeal as provided in subsection (b) of this section if—

(1) The applicant or person is aggrieved by the director or his designee's final order under 4VAC25-130-775.11; or

(2) Either the division or the director failed to act within time limits specified in 4VAC25-130-775.11.

(b) Judicial review. The final order of the division pursuant to subsection (a) of 4VAC25-130-775.11 shall be subject to

judicial review as provided by the Virginia Administrative Process Act and the rules of the Supreme Court of Virginia as promulgated thereto. The availability of such review shall not be construed to limit the operation of the rights established in Section 520 of the Federal Act.

(c) All notices of appeal for judicial review of a hearing officer's final decision, or the final decision on review and reconsideration, shall be filed with the Director, Division of Mined Land ~~Reclamation~~ Repurposing, Department of ~~Mines, Minerals and~~ Energy, ~~Post Office Drawer 900~~ 3405 Mountain Empire Road, Big Stone Gap, Virginia 24219.

4VAC25-130-780.18. Reclamation plan; general requirements.

(a) Each application shall contain a plan for reclamation of the lands within the proposed permit area, showing how the applicant will comply with ~~Section 45.1 242~~ § 45.2-1017 of the Act, Subchapter VK, and the environmental protection performance standards of the regulatory program. The plan shall include, at a minimum, all information required under 4VAC25-130-780.18 through 4VAC25-130-780.37.

(b) Each plan shall contain the following information for the proposed permit area:

(1) A detailed timetable for the completion of each major step in the reclamation plan;

(2) A detailed estimate of the cost of reclamation of the proposed operations required to be covered by a performance bond under Subchapter VJ with supporting calculations for the estimates;

(3) A plan for backfilling, soil stabilization, compacting, and grading, with contour maps or cross-sections that show the anticipated final surface configuration of the proposed permit area, in accordance with 4VAC25-130-816.102 through 4VAC25-130-816.107;

(4) A plan for removal, storage, and redistribution of topsoil, subsoil, and other material to meet the requirements of 4VAC25-130-816.22. A demonstration of the suitability of topsoil substitutes or supplements under 4VAC25-130-816.22(b) shall be based upon analysis of the thickness of soil horizons, total depth, texture, percent coarse fragments, pH, phosporous, potassium, and areal extent of the different kinds of soils. The division may require other chemical and physical analyses, and field-site trials, or greenhouse tests if determined to be necessary or desirable to demonstrate the suitability of the topsoil substitutes or supplements;

(5) A plan for revegetation as required in 4VAC25-130-816.111 through 4VAC25-130-816.116, including, but not limited to, descriptions of the--

(i) Schedule of revegetation;

(ii) Species and amounts per acre of seeds and seedlings to be used;

(iii) Methods to be used in planting and seeding;

(iv) Mulching techniques;

(v) Irrigation, if appropriate, and pest and disease control measures, if any;

(vi) Measures proposed to be used to determine the success of revegetation as required in 4VAC25-130-816.116; and

(vii) A soil testing plan for evaluation of the results of topsoil handling and reclamation procedures related to revegetation;

(6) A description of the measures to be used to maximize the use and conservation of the coal resource as required in 4VAC25-130-816.59;

(7) A description of measures to be employed to ensure that all debris, acid-forming and toxic-forming materials, and materials constituting a fire hazard are disposed of in accordance with 4VAC25-130-816.89 and 4VAC25-130-816.102 and a description of the contingency plans which have been developed to preclude sustained combustion of such materials;

(8) A description, including appropriate cross sections and maps, of the measures to be used to seal or manage mine openings, and to plug, case, or manage exploration holes, other bore holes, wells, and other openings with in the proposed permit area, in accordance with 4VAC25-130-816.13 through 4VAC25-130-816.15;

(9) A description of the measures to be used to stabilize all exposed surface areas to control erosion and air pollution attendant to erosion as required under 4VAC25-130-816.95; and

(10) A description of steps to be taken to comply with the requirements of the Clean Air Act (42 USC § 7401 et seq.), the Clean Water Act (33 USC § 1251 et seq.), and other applicable air and water quality laws and regulations and health and safety standards.

4VAC25-130-784.13. Reclamation plan; general requirements.

(a) Each application shall contain a plan for reclamation of the lands within the proposed permit area, showing how the applicant will comply with ~~Sections 45.1 242 and 45.1 243~~ §§ 45.2-1017 and 45.2-1018 of the Act, Subchapter VK, and the environmental protection performance standards of the regulatory program. The plan shall include, at a minimum, all information required under 4VAC25-130-784.13 through 4VAC25-130-784.29.

(b) Each plan shall contain the following information for the proposed permit area:

(1) A detailed timetable for the completion of each major step in the reclamation plan;

(2) A detailed estimate of the cost of the reclamation of the proposed operations required to be covered by a performance bond under Subchapter VJ, with supporting calculations for the estimates;

(3) A plan for backfilling, soil stabilization, compacting, and grading, with contour maps or cross sections that show the anticipated final surface configuration of the proposed permit area, in accordance with 4VAC25-130-817.102 through 4VAC25-130-817.107;

(4) A plan for removal, storage, and redistribution of topsoil, subsoil, and other material to meet the requirements of 4VAC25-130-817.22. A demonstration of the suitability of topsoil substitutes or supplements under 4VAC25-130-817.22(b) shall be based upon analysis of the thickness of soil horizons, total depth, texture, percent coarse fragments, pH, phosphorus, potassium, and areal extent of the different kinds of soils. The division may require other chemical and physical analyses, field-site trials, or greenhouse tests if determined to be necessary or desirable to demonstrate the suitability of the topsoil substitutes or supplements;

(5) A plan for revegetation as required in 4VAC25-130-817.111 through 4VAC25-130-817.116 including, but not limited to, descriptions of the--

(i) Schedule of revegetation;

(ii) Species and amounts per acre of seeds and seedlings to be used;

(iii) Methods to be used in planting and seeding;

(iv) Mulching techniques;

(v) Irrigation, if appropriate, and pest and disease control measures, if any;

(vi) Measures proposed to be used to determine the success of revegetation as required in 4VAC25-130-817.116; and

(vii) A soil testing plan for evaluation of the results of topsoil handling and reclamation procedures related to revegetation;

(6) A description of the measures to be used to maximize the use and conservation of the coal resource as required in 4VAC25-130-817.59;

(7) A description of measures to be employed to ensure that all debris, acid-forming and toxic-forming materials, and materials constituting a fire hazard are disposed of in accordance with 4VAC25-130-817.89 and 4VAC25-130-817.102 and a description of the contingency plans which have been developed to preclude sustained combustion of such materials;

(8) A description, including appropriate cross sections and maps, of the measures to be used to seal or manage mine openings, and to plug, case, or manage exploration holes, other bore holes, wells, and other openings with in the proposed permit area, in accordance with 4VAC25-130-817.13 through 4VAC25-130-817.15;

(9) A description of the measures to be used to stabilize all exposed surface areas to control erosion and air pollution attendant to erosion as required under 4VAC25-130-817.95; and

(10) A description of steps to be taken to comply with the requirements of the Clean Air Act (42 USC § 7401 et seq.), the Clean Water Act (33 USC § 1251 et seq.), and other applicable air and water quality laws and regulations and health and safety standards.

4VAC25-130-784.20. Subsidence control plan.

(a) Presubsidence survey. Each application must include:

(1) A map of the permit and adjacent areas at a scale of 1:12,000, or larger if determined necessary by the division, showing the location and type of structures and renewable resource lands that subsidence may materially damage or for which the value or reasonably foreseeable use may be diminished by subsidence, and showing the location and type of drinking, domestic, and residential water supplies that could be contaminated, diminished, or interrupted by subsidence.

(2) A narrative indicating whether subsidence, if it occurred, could cause material damage to or diminish the value or reasonably foreseeable use of such structures or renewable resource lands or could contaminate, diminish, or interrupt drinking, domestic, or residential water supplies.

(3) A survey of the quantity and quality of all drinking, domestic and residential water supplies within the permit area and adjacent area that could be contaminated, diminished or interrupted by subsidence. If the applicant cannot make this survey because the owner will not allow access to the site, the applicant will notify the owner in writing of the effect that denial of access will have pursuant to ~~§ 45.1-258 D~~ § 45.2-1030 of the Code of Virginia, as amended. The applicant must pay for any technical assessment or engineering evaluation used to determine the quantity and quality of drinking, domestic, or residential water supplies. The applicant must provide copies of the survey and any technical assessment or engineering evaluation to the property owner and the division.

(b) Subsidence control plan. If the survey conducted under subsection (a) of this section shows that no structures, or drinking, domestic, or residential water supplies, or renewable resource lands exist, or that no material damage or diminution in value or reasonably foreseeable use of such structures or lands, and no contamination, diminution or interruption of such water supplies would occur as a result of mine subsidence, and if the division agrees with this conclusion, no further information need be provided under this section. If the survey shows that structures, renewable resource lands, or water

supplies exist and that subsidence could cause material damage or diminution in value or reasonably foreseeable use, or contamination, diminution or interruption of protected water supplies, or if the division determines that damage, diminution, in value or foreseeable use, or contamination, diminution, or interruption could occur, the application must include a subsidence control plan that contains the following information:

(1) A description of the method of coal removal, such as longwall mining, room-and-pillar removal or hydraulic mining including the size, sequence and timing of the development of underground workings;

(2) A map of the underground workings that describes the location and extent of the areas in which planned subsidence mining methods will be used and that identifies all areas where the measures described in subdivisions (b) (4), (b) (5), and (b) (7) of this section will be taken to prevent or minimize subsidence and subsidence related damage; and, when applicable, to correct subsidence related material damage;

(3) A description of the physical conditions, such as depth of cover, seam thickness and lithology of overlaying strata, that affects the likelihood or extent of subsidence and subsidence related damage;

(4) A description of the monitoring, if any, needed to determine the commencement and degree of subsidence so that, when appropriate, other measures can be taken to prevent, reduce, or correct material damage in accordance with 4VAC25-130-817.121 (c).

(5) Except for those areas where planned subsidence is projected to be used, a detailed description of the subsidence control measures that will be taken to prevent or minimize subsidence and subsidence related damage, such as, but not limited to:

(i) Backstowing or backfilling of voids;

(ii) Leaving support pillars of coal;

(iii) Leaving areas in which no coal is removed, including a description of the overlying area to be protected by leaving coal in place; and

(iv) Taking measures on the surface to prevent or minimize material damage or diminution in value of the surface.

(6) A description of the anticipated effects of planned subsidence, if any.

(7) For those areas where planned subsidence is projected to be used, a description of methods to be employed to minimize damage from planned subsidence to noncommercial buildings and occupied residential dwellings and structures related thereto; or the written consent of the owner of the structure or facility that minimization measures not be taken; or, unless the anticipated damage would constitute a threat to health or safety, a demonstration that the costs of minimizing damage exceed the anticipated costs or repair.

(8) A description of the measures to be taken in accordance with 4VAC25-130-817.41 (j) and 4VAC25-130-817.121 (c) to replace adversely affected protected water supplies or to mitigate or remedy any subsidence related material damage to the land and protected structures.

(9) Other information specified by the division as necessary to demonstrate that the operation will be conducted in accordance with 4VAC25-130-817.121.

4VAC25-130-789.1. Petition for award of costs and expenses under ~~Section 45.1-249E~~ § 45.2-1025 of the Act.

(a) Any person may file a petition for award of costs and expenses including attorneys' fees reasonably incurred as a result of that person's participation in any administrative proceeding under the Act which results in--

(1) A final order being issued by a Hearing Officer, or

(2) A final order being issued by the Director or division.

(b) The petition for an award of costs and expenses including attorneys' fees must be filed with the Hearing Officer who issued the final order, or if the final order was issued by the Director or division, with the Director or division, within 30 days of receipt of such order. Failure to make a timely filing of the petition may constitute a waiver of the right to such an award.

(c) A petition, filed under this section, shall include the name of the person from whom costs and expenses are sought and the following shall be submitted in support of the petition--

(1) An affidavit setting forth in detail all costs and expenses including attorneys' fees reasonably incurred for, or in connection with, the person's participation in the proceeding;

(2) Receipts or other evidence of such costs and expenses; and

(3) Where attorneys' fees are claimed, evidence concerning the hours expended on the case, the customary commercial rate of payment for such services in the area, and the experience, reputation and ability of the individual or individuals performing the services. The person or agency to whom the petition is filed may consult with the division's legal counsel regarding claimed attorneys' fees.

(d) Any person served with a copy of the petition shall have 30 days from service of the petition within which to file an answer to such petition.

(e) Appropriate costs and expenses including attorneys' fees may be awarded--

(1) To any person from the permittee, if the person initiates any administrative proceedings reviewing enforcement

actions, upon a finding that a violation of the Act, regulations or permit has occurred, or that an imminent hazard existed, or to any person who participates in an enforcement proceeding where such a finding is made if the Hearing Officer or Director or division determines that the person made a substantial contribution to the full and fair determination of the issues;

(2) To a permittee or permit applicant from any person where the permittee or permit applicant demonstrates that the person initiated an administrative proceeding under the Act or participated in such a proceeding in bad faith for the purpose of harassing or embarrassing the permittee or permit applicant.

(f) An award under these sections may include--

(1) All costs and expenses, including attorneys' fees and expert witness fees, reasonably incurred as a result of initiation and/or participation in a proceeding under the Act; and

(2) All costs and expenses, including attorneys' fees and expert witness fees, reasonably incurred in seeking the award.

(g) Any person aggrieved by a decision concerning the award of costs and expenses in an administrative proceeding under the Act may appeal such award to the division within 30 days, unless the Director or division has made the initial decision concerning such an award. Awards by the Director or division are final for the purposes of judicial review.

(h) For the purposes of this section, "person" shall include the Commonwealth, its agents, officers, or employees, and "permit applicant" shall include applicants for permit revisions, renewals, and transfer, assignment or sale of permit rights.

4VAC25-130-790.1. Purpose.

Section ~~45.1-246.1~~ 45.2-1022 of the Act authorizes the commencement of civil actions by persons having an interest which is or may be adversely affected, in order to compel compliance with provisions of the Act. The purpose of this Part is to prescribe procedures governing the giving of notices required by Subsections (B) and (C) of ~~section 45.1-246.1~~ § 45.2-1022 as a prerequisite to the commencement of such actions.

4VAC25-130-790.11. Service of notice.

(a) Notice to the Director. Service of notice given to the Director of an alleged violation or of an alleged failure of the Director to ~~per form~~ perform any act or duty under the Act which is not discretionary with the Director shall be accomplished by registered or certified mail addressed to the Director, Department of ~~Mines, Minerals, and~~ Energy, ~~202 North Ninth Street~~ 1100 Bank Street, 8th Floor, Richmond, Virginia 23219. A copy of such notice shall be mailed to the Director, Division of Mined Land ~~Reclamation~~ Repurposing, ~~P.O. Drawer 900~~ 3405 Mountain Empire Road, Big Stone Gap, Virginia 24219.

(b) Notice to the Secretary of the Interior. Service of notice given to the Secretary of the Interior shall be accomplished by registered or certified mail addressed to the United States Secretary of the Interior, Office of the Secretary, Main Interior Building, Washington, D. C. 20240.

(c) Notice to alleged violator. Service of notice given to an alleged violator of the provisions of the Act or of any regulation in this chapter or of any permit or order issued pursuant thereto, shall be accomplished by registered or certified mail addressed to, or personal service upon, the permittee or managing agent of the coal surface mining operation alleged to be in violation. Where the alleged violator is a corporation, a copy of the notice will be sent by certified or registered mail to the registered agent of such corporation. Where the alleged violator is a government instrumentality or agency, the notice shall be sent by certified or registered mail to the head of such government instrumentality or agency.

(d) Notice served in accordance with the provisions of this Part shall be deemed given on the postmark date, if served by mail, or on the date of receipt, if personally served.

4VAC25-130-795.1. Scope and purpose.

This Part comprises the Small Operator Assistance Program (SOAP) and establishes the procedures for providing assistance to eligible operators by the division. It is an elective means for the division to satisfy the requirements of ~~§ 45.1-235 C~~ § 45.2-1010 of the Act. The purpose of the program is to provide for eligible operators a determination of probable hydrologic consequences and a statement of results of test borings or core samplings which are required components of the permit application under Subchapter VG.

4VAC25-130-800.16. General terms and conditions of bond.

(a) The performance bond shall be in an amount determined by the division as provided in 4VAC25-130-800.14 or Part 801.

(b) The performance bond shall be payable to the Commonwealth of Virginia, Director-Division of Mined Land ~~Reclamation~~ Repurposing.

(c) The performance bond shall be conditioned upon faithful performance of all the requirements of the Act, this chapter, and the approved permit, including completion of the reclamation plan.

(d) The duration of the bond shall be for the time period provided in 4VAC25-130-800.13.

(e)(1) The bond shall provide a mechanism for a bank or surety company to give prompt notice to the division and the permittee of any action filed alleging the insolvency or bankruptcy of the surety company, the bank, or the permittee,

or alleging any violations which would result in suspension or revocation of the surety or bank charter or license to do business.

(2) Upon the incapacity of a bank or surety company by reason of bankruptcy, insolvency, or suspension or revocation of a charter or license, the permittee shall be deemed to be without bond coverage and shall promptly notify the division. The division, upon notification received through procedures of Paragraph (e)(1) of this section or from the permittee, shall, in writing, notify the permittee who is without bond coverage and specify a reasonable period, not to exceed 90 days, to replace bond coverage. If an adequate bond is not posted by the end of the period allowed, the permittee shall cease coal extraction and shall comply with the provisions of 4VAC25-130-816.132 or 4VAC25-130-817.132 and shall immediately begin to conduct reclamation operations in accordance with the reclamation plan. Mining operations shall not resume until the division has determined that an acceptable bond has been posted.

4VAC25-130-800.21. Collateral bonds.

(a) Collateral bonds, except for letters of credit, shall be subject to the following conditions: The division shall—

(1) Keep custody of collateral deposited by the applicant until authorized for release or replacement as provided in this Subchapter.

(2) Value collateral at its current market value, not at face value.

(3) Require that certificates of deposit be made payable to or assigned to the Commonwealth of Virginia, Director-Division of Mined Land ~~Reclamation~~ Repurposing, both in writing and upon the records of the bank issuing the certificates. The division shall require the banks issuing these certificates to waive all rights of setoff or liens against those certificates and that such certificates be automatically renewable.

(4) Not accept an individual certificate of deposit in an amount in excess of $100,000 or the maximum insurable amount as determined by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

(5) Require the applicant to deposit the certificates of deposit in a sufficient amount to assure that the division will be able to liquidate the certificates prior to maturity, upon forfeiture, for the amount of the bond required by this Subchapter.

(6) Require the applicant to designate, with the bond submitted, the person to whom—

(i) The collateral will be endorsed and returned upon release or replacement as provided in this Subchapter; and

(ii) Any interest or dividends paid on the collateral shall be paid.

(b) Cash accounts shall be subject to the following conditions:

(1) The division may authorize the permittee to supplement the bond through the establishment of a cash account in one or more federally- insured or equivalently protected accounts made payable upon demand to the division. The total bond including the cash account shall not be less than the amount required under terms of performance bonds including any adjustments, less amounts released in accordance with 4VAC25-130-800.40 or 4VAC25-130-801.18.

(2) Any interest paid on a cash account shall be paid to the permittee.

(3) Certificates of deposit may be substituted for a cash account with the approval of the division.

(4) The division shall not accept an individual cash account in an amount in excess of $100,000 or the maximum insurable amount as determined by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

(c) Letters of credit shall be subject to the following conditions:

(1) The letter may be issued only by a bank organized or authorized to do business in the United States and must conform to the Uniform Customs and Practice for Documentary Credits (1993 Revision) International Chamber of Commerce (Publication No. 500);

(2) Letters of credit shall be irrevocable during their terms. A letter of credit used as security in areas requiring continuous bond coverage shall be forfeited and shall be collected by the division if not replaced by other suitable bond or letter of credit at least 30 days before its expiration date; and

(3) The letter of credit shall be payable to the department at sight, in part or in full, upon receipt from the division of a notice of forfeiture issued in accordance with 4VAC25-130-800.50.

(d) Persons with an interest in collateral posted as a bond, and who desire notification of actions pursuant to the bond, shall request the notification in writing to the division at the time collateral is offered.

4VAC25-130-800.40. Requirements to release performance bonds.

(a) Bond release application.

(1) The permittee may file an application with the division for the release of all or part of a performance bond. Applications may be filed only at times or during seasons authorized by the division in order to properly evaluate the

completed reclamation operations. The times or seasons appropriate for the evaluation of certain types of reclamation shall be identified in the mining and reclamation plan required in Subchapter VG.

(2) Within 30 days after an application for bond release has been filed with the division, the permittee shall submit proof of publication of the advertisement placed at least once a week for four successive weeks in a newspaper of general circulation in the locality of the surface coal mining operation. The advertisement shall be considered part of any bond release application and shall contain the applicant's name, the permit number, notification of the precise location of the land affected, the number of acres, the type and amount of the bond filed and the portion sought to be released, the type and appropriate dates of reclamation work performed, a description of the results achieved as they relate to the permittee's approved reclamation plan, and the name and address of the division to which written comments, objections, or requests for public hearings and informal conferences on the specific bond release may be submitted pursuant to 4VAC25-130-800.40(f) and (h). In addition, as part of any bond release application, the permittee shall submit copies of letters which he has sent to adjoining property owners, local governmental bodies, planning agencies, sewage and water treatment authorities, and water companies in the locality in which the surface coal mining and reclamation operation took place, notifying them of the intention to seek release from the bond.

(3) The permittee shall include in the application for bond release a notarized statement which certifies that all applicable reclamation activities have been accomplished in accordance with the requirements of the Act, the regulatory program, and the approved reclamation plan. Such certification shall be submitted for each application or phase of bond release.

(b) Inspection by the division.

(1) Upon receipt of the bond release application, the division shall, within 30 days, or as soon thereafter as weather conditions permit, conduct an inspection and evaluation of the reclamation work involved. The evaluation shall consider, among other factors, the degree of difficulty to complete any remaining reclamation, whether pollution of surface and subsurface water is occurring, the probability of future occurrence of such pollution, and the estimated cost of abating such pollution. The surface owner, agent, or lessee shall be given notice of such inspection and may participate with the division in making the bond release inspection. The division may arrange with the permittee to allow access to the permit area, upon request by any person with an interest in the bond release, for the purpose of gathering information relevant to the proceeding.

(2) Within 60 days from the filing of the bond release application, if no public hearing is held pursuant to paragraph (f) of this section, or, within 30 days after a public hearing has been held pursuant to paragraph (f) of this section, the division shall notify in writing the permittee, the surety or other persons with an interest in the bond collateral who have requested notification under 4VAC25-130-800.21(c), and the persons who either filed objections in writing or objectors who were a party to the hearing proceedings, if any, of its decision to release or not to release all or part of the performance bond.

(c) The division may release all or part of the bond for the entire permit area or a portion of the permit area if the division is satisfied that all reclamation or a phase of the reclamation covered by the bond or portion thereof has been accomplished in accordance with the following schedules for reclamation of Phases I, II and III:

(1) At the completion of Phase I, after the permittee completes the backfilling, regrading (which may include the replacement of topsoil) and drainage control of a bonded area in accordance with the approved reclamation plan, 60% of the bond or collateral for the applicable area.

(2) At the completion of Phase II, after revegetation has been established on the regraded mined lands in accordance with the approved reclamation plan, an additional amount of bond. When determining the amount of bond to be released after successful revegetation has been established, the division shall retain that amount of bond for the revegetated area which would be sufficient to cover the cost of reestablishing revegetation if completed by a third party and for the period specified for permittee responsibility in ~~§ 45.1-241~~ § 45.2-1016 of the Act for reestablishing revegetation. No part of the bond or deposit shall be released under this paragraph so long as the lands to which the release would be applicable are contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements set by ~~§ 45.1-242~~ § 45.2-1017 of the Act and by Subchapter VK or until soil productivity for prime farmlands has returned to the equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices as determined from the soil survey performed pursuant to ~~§ 45.1-238(D)~~ § 45.2-1013 of the Act and Part 823. Where a silt dam is to be retained as a permanent impoundment pursuant to Subchapter VK, the Phase II portion of the bond may be released under this paragraph so long as provisions for sound future maintenance by the permittee or the landowner have been made with the division.

(3) At the completion of Phase III, after the permittee has successfully completed all surface coal mining and reclamation activities, the release of the remaining portion of the bond, but not before the expiration of the period specified for permittee responsibility in 4VAC25-130-816.116 or 4VAC25-130-817.116. However, no bond shall be fully released under provisions of this section until

reclamation requirements of the Act and the permit are fully met.

(d) If the division disapproves the application for release of the bond or portion thereof, the division shall notify the permittee, the surety, and any person with an interest in collateral as provided for in 4VAC25-130-800.21(c), in writing, stating the reasons for disapproval and recommending corrective actions necessary to secure the release and allowing an opportunity for a public hearing.

(e) When any application for total or partial bond release is filed with the division, the division shall notify the town, city or other municipality nearest the operation and the county in which the surface coal mining operation is located by certified mail at least 30 days prior to the release of all or a portion of the bond.

(f) Any person with a valid legal interest which might be adversely affected by release of the bond, or the responsible officer or head of any federal, state, or local governmental agency which has jurisdiction by law or special expertise with respect to any environmental, social, or economic impact involved in the operation or which is authorized to develop and enforce environmental standards with respect to such operations, shall have the right to file written objections to the proposed release from bond with the division within 30 days after the last publication of the notice required by 4VAC25-130-800.40(a)(2). If written objections are filed and a hearing is requested, the division shall inform all the interested parties of the time and place of the hearing, and shall hold a public hearing within 30 days after receipt of the request for the hearing. The date, time and location of the public hearing shall be advertised by the division in a newspaper of general circulation in the locality for two consecutive weeks. The public hearing shall be held in the locality of the surface coal mining operation from which bond release is sought, at the location of the division office, or at the State Capital, at the option of the objector. The decision of the Hearing Officer shall be made within 30 days from the close of the hearing.

(g) For the purpose of the hearing under paragraph (f) of this section, the division shall have the authority to administer oaths, subpoena witnesses or written or printed material, compel the attendance of witnesses or the production of materials, and take evidence including, but not limited to, inspection of the land affected and other surface coal mining operations carried on by the applicant in the general vicinity. A verbatim record of each public hearing shall be made, and a transcript shall be made available on the motion of any party or by order of the division.

(h) Without prejudice to the right of an objector or the applicant, the division may hold an informal conference as provided in ~~§ 45.1-239~~ § 45.2-1014 of the Act to resolve such written objections. The division shall make a record of the informal conference unless waived by all parties, which shall be accessible to all parties. The division shall also furnish all parties of the informal conference with a written finding of the division based on the informal conference, and the reasons for said finding.

4VAC25-130-800.51. Administrative review of performance bond forfeiture.

(a) The permittee or surety, if applicable, may request, in writing, a hearing on the division's determination to forfeit the performance bond within 30 days of receipt of the written determination from the division.

(b) A request for hearing shall not operate as a stay of the bond forfeiture decision. Unless the division decides to withhold forfeiture as provided by 4VAC25-130-800.50 (a)(2), it shall take immediate steps to collect the necessary performance bond amounts so that it, or its contractor, may complete the reclamation plan and any other regulatory requirements in the most expeditious manner possible, pending administrative and/or judicial review.

(c)(1) The division shall commence the hearing within 30 days of the hearing request. The hearing shall be conducted in accordance with § 2.2-4020 of the Code of Virginia by a Hearings Officer appointed by the director.

(2) The burden of proof at such hearing shall be on the party seeking to reverse the decision of the division.

(3) For the purpose of such hearing, the hearings officer may administer oaths and affirmations, subpoena witnesses, written or printed materials, compel attendance of witnesses or production of those materials, compel discovery, and take evidence, including but not limited to site inspections of the land affected.

(4) The hearings officer shall cause an accurate verbatim record of the hearing to be made. The division may charge the reasonable cost of preparing such record to any party who requests a copy of the record.

(5) Ex parte contacts between representatives of the parties to the hearing and the hearings officer shall be prohibited.

(6) Within 30 days after the close of the record, the division shall issue and furnish the permittee, surety (if applicable) and each person who participated in the hearing with the written findings of fact, conclusion of law, and order of the hearings officer with respect to the appeal. The decision of the hearings officer shall be final as of the date of issuance, subject to the review and reconsideration by the director or his designee, provided in subsection (d) of this section.

(d) Within 14 days after the issuance of the hearings officer's decision under subdivision (c) (6) of this section, the permittee, surety (if applicable), or any person who participated in the hearing and has an interest which is or may be adversely affected by the decision, may appeal to the director or his designee for review of the record and reconsideration of the hearings officer's decision. The director or his designee may

also on his own motion, with notice to the parties, review the record and reconsider the hearings officer's decision within the same time period. No further evidence will be allowed in connection with such review and reconsideration, but the director or his designee may hear further arguments and may, after considering the record, remand the case for further hearing if he considers such action necessary to develop the facts. Within 30 days of the appeal or motion for review and reconsideration, the director or his designee shall complete his review of the hearings officer's decision and issue a final decision.

(e) All requests for hearing, or appeals for review and reconsideration made under this section; and all notices of appeal for judicial review of a hearing officer's final decision, or the final decision on review and reconsideration shall be filed with the Director, Division of Mined Land ~~Reclamation~~ Repurposing, Department of ~~Mines, Minerals and~~ Energy, ~~Post Office Drawer 900~~ 3405 Mountain Empire Road, Big Stone Gap, Virginia 24219.

4VAC25-130-800.52. Bond forfeiture reinstatement procedures.

(a) Any person who owns or controls or has owned or controlled any operation on which the bond has been forfeited or the permit revoked pursuant to this chapter or pursuant to ~~Chapters 15 [repealed], 17 (§ 45.1-198 et seq.) or 23 [repealed]~~ Chapter 10 (§ 45.2-1000 et seq.) of Title ~~45.1~~ 45.2 of the Code of Virginia and who has not previously been reinstated by the director may petition the director for reinstatement. Reinstatement, if granted, shall be under such terms and conditions as set forth by the director or his designee. The director or his designee in determining the terms and conditions shall consider the particular facts and circumstances existing in each individual case. Reinstatement shall not be available to applicants for reinstatement where the division finds that the applicant controls or has controlled surface coal mining and reclamation operations with a demonstrated pattern of willful violations of the Act of such nature and duration and with such resulting irreparable damage to the environment as to indicate an intent not to comply with the Act, in accordance with 4VAC25-130-773.15(b)(3). As a minimum, the applicant for reinstatement shall satisfy the following requirements:

(1) Abatement of any outstanding violations existing on each site on which the bond has been forfeited or the permit revoked;

(2) Payment of any outstanding civil penalties (both state and federal), Reclamation fund taxes, and any outstanding fees, including Federal Abandoned Mine Land Reclamation taxes;

(3) Reclaim each site on which the bond was forfeited according to the applicable law, regulations and standards governing the site at the time of bond forfeiture;

(4) Payment to the director of any money expended by the Commonwealth in excess of the forfeited bond amount to accomplish the reclamation of the sites; and

(5) Pay to the director a reinstatement fee of $5,000 assessed by the director on each site forfeited. These fees shall be used by the director to accomplish reclamation on other forfeited or abandoned surface coal mining operations.

(b) Reinstatement by the director shall be a prerequisite to the filing by the person (applicant for reinstatement) of any new permit application or renewal under this chapter or ~~Chapters 15 [repealed], 17 (§ 45.1-198 et seq.), or 23 [repealed]~~ Chapter 10 (§ 45.2-1000 et seq.) of Title ~~45.1~~ 45.2 of the Code of Virginia, but shall not affect the person's need to comply with all other requirements of said statutes, regulations or both promulgated thereunder.

4VAC25-130-801.2. Scope.

The regulations of this Part establish the procedures and requirements for an alternative bonding system through which the division will implement and administer the Coal Surface Mining Reclamation Fund (Pool Bond Fund) as established under Article 5 (~~§ 45.1-270.1~~ § 45.2-1043 et seq.) of Chapter ~~19~~ 10 of Title ~~45.1~~ 45.2 of the Code of Virginia.

4VAC25-130-801.11. Participation in the pool bond fund.

(a) Participation in the Pool Bond Fund shall be at the option of any applicant for a permit under the Act and the regulations promulgated thereunder who can demonstrate to the division's satisfaction at least a consecutive three-year history of compliance under the Act or any other comparable State or Federal Act.

(b) All participants in the Pool Bond Fund shall:

(1) Pay all entrance fees to the Pool Bond Fund as required by 4VAC25-130-801.12(a); and

(2) Comply with the applicable parts of ~~section 45.1-241~~ § 45.2-1016 of the Code of Virginia.

(c) Commencement of participation in the Pool Bond Fund shall constitute an irrevocable commitment by the permittee to participate therein as to the applicable permit and for the duration of the coal surface mining operations covered thereunder.

(d) All fees and taxes are nonrefundable.

(e) The division shall, as provided by ~~section 45.1-270.5(B)~~ § 45.2-1048 of the Code of Virginia, utilize those monies from the interest accrued to the fund which are required to properly administer the Pool Bond Fund. These monies shall be used to support one position for administration of the Pool Bond Fund; however, if it is apparent that such position is insufficient to ensure proper administration of the Pool Bond Fund, the division may upon proof of need, and upon concurrence with

the Pool Bond Fund Advisory Board obtain additional assistance.

4VAC25-130-801.17. Bond release application.

The permittee participating in the Pool Bond Fund, or any person authorized to act upon his behalf, may file an application with the division for the Phase I, II or III release of the bond furnished in accordance with 4VAC25-130-801.12 (b) for the permit area or any applicable increment thereof. The bond release application, the procedural requirements and the released percentages shall be consistent with the release criteria of 4VAC25-130-800.40. However, in no event shall the total bond of the permit be less than the minimum amounts established pursuant to §§ ~~45.1-241~~ 45.2-1016 and ~~45.1-270.3 B~~ 45.2-1045 of the Virginia Coal Surface Mining Control and Reclamation Act prior to completion of Phase III reclamation of the entire permit area.

4VAC25-130-801.18. Criteria for release of bond.

(a) The division shall release bond furnished in accordance with §§ ~~45.1-241~~ 45.2-1016 and ~~45.1-270.3~~ 45.2-1043 of the Virginia Coal Surface Mining Control and Reclamation Act through the standards specified at 4VAC25-130-800.40 upon receipt of an application for Phase I, II or III release.

(b) The division shall terminate jurisdiction for the permit area, or any increment thereof upon approval of the Phase III bond release for that area.

(c) In the event a forfeiture occurs, the division may, after utilizing the available bond monies, utilize the Fund as necessary to complete reclamation liabilities for the permit area.

4VAC25-130-816.76. Disposal of excess spoil; incidental reclamation.

(a) The division, where environmental benefits will occur, may approve placement of spoil not needed to restore the approximate original contour of the land and reclaim land within the permit area in a manner consistent with the Act and this chapter on:

(1) Another area under a permit issued pursuant to the Act, or

(2) On abandoned mine lands under a contract for reclamation according to the AML Guidelines and approved by the Division of Mined Land ~~Reclamation~~ Repurposing.

4VAC25-130-840.11. Inspections by the division.

(a) The division shall conduct an average of at least one partial inspection per month of each active surface coal mining and reclamation operation under its jurisdiction, and shall conduct such partial inspections of each inactive surface coal mining and reclamation operation under its jurisdiction as are necessary to ensure effective enforcement of the Act and this chapter. A partial inspection is an on-site or aerial review of a permittee's compliance with some of the permit conditions and requirements imposed under the Act and this chapter.

(b) The division shall conduct an average of at least one complete inspection per calendar quarter of each active or inactive surface coal mining and reclamation operation under its jurisdiction. A complete inspection is an on-site review of a permittee's compliance with all permit conditions and requirements imposed under the Act and this chapter, within the entire area disturbed or affected by the surface coal mining and reclamation operations.

(c) The division shall conduct such inspections of coal explorations as are necessary to ensure compliance with the Act and this chapter.

(d) (1) Aerial inspections shall be conducted in a manner which reasonably ensures the identification and documentation of conditions at each surface coal mining and reclamation site inspected.

(2) Any potential violation observed during an aerial inspection shall be investigated on site within three days; provided, that any indication of a condition, practice or violation constituting cause for the issuance of a cessation order under ~~§ 45.1-245~~ § 45.2-1020 of the Act shall be investigated on site immediately, and provided further, that an on-site investigation of a potential violation observed during an aerial inspection shall not be considered to be an additional partial or complete inspection for the purposes of paragraphs (a) and (b) of this section.

(e) The inspections required under paragraphs (a), (b), (c) and (d) of this section shall:

(1) Be carried out on an irregular basis, so as to monitor compliance at all operations, including those which operate nights, weekends, or holidays;

(2) Occur without prior notice to the permittee or any agent or employee of such permittee, except for necessary on-site meetings; and

(3) Include the prompt filing of inspection reports adequate to enforce the requirements of the Act and this chapter.

(f) For the purposes of this section, an inactive surface coal mining and reclamation operation is one for which:

(1) The division has secured from the permittee the written notice provided for under 4VAC25-130-816.131(b) or 4VAC25-130-817.131(b); or

(2) Reclamation has been completed to the level established in 4VAC25-130-800.40 as Phase II.

(g) Abandoned site means a surface coal mining and reclamation operation for which the division has found in writing that:

(1) All surface and underground coal mining and reclamation activities at the site have ceased;

(2) The division has issued at least one notice of violation or the interim program equivalent, and either:

(i) Is unable to serve the notice despite diligent efforts to do so; or

(ii) The notice was served and has progressed to a failure-to-abate cessation order or the interim program equivalent;

(3) The division:

(i) Is taking action to ensure that the permittee and operator, and owners and controllers of the permittee and operator, will be precluded from receiving future permits while violations continue at the site; and

(ii) Is taking action pursuant to ~~§§ 45.1 245 C, 45.1 245 E, 45.1 246 E, or § 45.1 246 F~~ § 45.2-1020 or 45.2-1021 of the Act to ensure that abatement occurs or that there will not be a recurrence of the failure-to-abate, except where after evaluating the circumstances it concludes that further enforcement offers little or no likelihood of successfully compelling abatement or recovering any reclamation costs; and

(4) Where the site is, or was, permitted or bonded:

(i) The permit has either expired or been revoked, or permit revocation proceedings have been initiated and are being pursued diligently; and

(ii) The division has initiated and is diligently pursuing forfeiture of, or has forfeited, the any available performance bond.

(h) In lieu of the inspection frequency established in paragraphs (a) and (b) of this section, the division shall inspect each abandoned site on a set frequency commensurate with the public health and safety and environmental consideration present at each specific site, but in no case shall the inspection frequency be set at less than one complete inspection per calendar year.

(1) In selecting an alternate inspection frequency authorized under the paragraph above, the division shall first conduct a complete inspection of the abandoned site and provide public notice under paragraph (h)(2) of this section. Following the inspection and public notice, the division shall prepare and maintain for public review a written finding justifying the alternative inspection frequency selected. This written finding shall justify the new inspection frequency by affirmatively addressing in detail all of the following criteria:

(i) How the site meets each of the criteria under the definition of an abandoned site under paragraph (g) of this section and thereby qualifies for a reduction in inspection frequency;

(ii) Whether, and to what extent, there exists on the site impoundments, earthen structures or other conditions that pose, or may reasonably be expected to ripen into, imminent dangers to the health or safety of the public or significant environmental harms to land, air, or water resources;

(iii) The extent to which existing impoundments or earthen structures were constructed and certified in accordance with prudent engineering designs approved in the permit;

(iv) The degree to which erosion and sediment control is present and functioning;

(v) The extent to which the site is located near or above urbanized areas, communities, occupied dwellings, schools and other public or commercial buildings and facilities;

(vi) The extent of reclamation completed prior to abandonment and the degree of stability of unreclaimed areas, taking into consideration the physical characteristics of the land mined and the extent of settlement or revegetation that has occurred naturally with them; and

(vii) Based on a review of the complete and partial inspection report record for the site during at least two consecutive years, the rate at which adverse environmental or public health and safety conditions have and can be expected to progressively deteriorate.

(2) The public notice and opportunity to comment required under paragraph (h)(1) of this section shall be provided as follows:

(i) The division shall place a notice in the newspaper with the broadest circulation in the locality of the abandoned mine site providing the public with a 30-day period in which to submit written comments.

(ii) The public notice shall contain the permittee's name, the permit number, the precise location of the land affected, the inspection frequency proposed, the general reasons for reducing the inspection frequency, the bond status of the permit, the telephone number and address of the regulatory authority where written comments on the reduced inspection frequency may be submitted, and the closing date of the comment period.

4VAC25-130-840.14. Availability of records.

(a) The division shall make available to the OSM, upon request, copies of all documents relating to applications for and approvals of existing, new, or revised coal exploration approvals or surface coal mining and reclamation operation permits and all documents relating to inspection and enforcement actions.

(b) Copies of all records, reports, inspection materials, or information obtained by the division shall be made immediately and conveniently available to the public in the area of mining until at least five years after expiration of the period during which the subject operation is active or is covered by any portion of a reclamation bond, except-

(1) As otherwise provided by state law; and

(2) For information not required to be made available under 4VAC25-130-772.15 and 4VAC25-130-773.13(d) or subdivison (d) of this section.

(c) The division shall ensure compliance with subdivison (b) of this section by either:

(1) Making copies of all records, reports, inspection materials, and other subject information available for public inspection at a federal, state, or local government office in the county where the mining is occurring or proposed to occur; or,

(2) At the division's option in accordance with the Virginia Freedom of Information Act (Chapter ~~21~~ 37 (~~§ 2.1-340~~ § 2.2-3700 et seq.) of Title ~~2.1~~ 2.2 of the Code of Virginia), providing copies of subject information promptly by mail at the request of any resident of the area where the mining is occurring or is proposed to occur, provided, that the division shall maintain for public inspection, at a federal, state, or local government office in the county where the mining is occurring or proposed to occur, a description of the information available for mailing and the procedure for obtaining such information. A list of government offices where information may be inspected can be obtained on request by contacting the division's Big Stone Gap office.

(d) In order to protect preparation for hearings and enforcement proceedings, the OSM and the division may enter into agreements regarding procedures for the special handling of investigative and enforcement reports and other such materials.

4VAC25-130-840.16. Compliance conference.

(a) A permittee may request an on-site compliance conference with an authorized representative of the Director to review the compliance status of any condition or practice proposed at any coal exploration or surface coal mining and reclamation operation. Any such conference shall not constitute an inspection within the meaning of ~~Section 45.1-244~~ § 45.2-1019 of the Act and 4VAC25-130-840.11.

(b) The division may accept or refuse any request to conduct a compliance conference under Paragraph (a).

(c) The authorized representative at any compliance conference shall review such proposed conditions and practices in order to advise whether any such condition or practice may become a violation of any requirement of the Act, this chapter, or any applicable permit or exploration approval.

(d) Neither the holding of a compliance conference under this section nor any opinion given by the authorized representative at such a conference shall affect:

(1) Any rights or obligations of the division or of the permittee with respect to any inspection, notice of violation or cessation order, whether prior or subsequent to such compliance conference; or

(2) The validity of any notice of violation or cessation order issued with respect to any condition or practice reviewed at the compliance conference.

4VAC25-130-842.12. Citizens' requests for inspections.

(a) A person may request an inspection under 4VAC25-130-842.11(a), by furnishing to an authorized representative of the Director a signed, written statement (or an oral report followed by a signed, written statement) giving the authorized representative reason to believe that a violation, condition or practice referred to in 4VAC25-130-842.11(a) exists and setting forth a phone number and address where the person can be contacted.

(b) The identity of any person supplying information to the division relating to a possible violation or imminent danger or harm shall remain confidential with the division, if requested by that person, unless that person elects to accompany the inspector on the inspection, or unless disclosure is required under the Virginia Freedom of Information Act (Chapter ~~21~~ 37 (~~§ 2.1-340~~ § 2.2-3700 et seq.) of Title ~~2.1~~ 2.2 of the Code of Virginia).

(c) If an inspection is conducted as a result of information provided to the division by a person as described in Paragraph (a) of this section, the person shall be notified as far in advance as practicable when the inspection is to occur and shall be allowed to accompany the authorized representative of the Director during the inspection. It shall be the responsibility of the person to provide any or all safety equipment needed to accompany the division's inspector during the mine site inspection. Such person has a right of entry to, upon and through the coal exploration or surface coal mining and reclamation operation about which he supplied information, but only if he is in the presence of and is under the control, direction, and supervision of the authorized representative while on the mine property. Such right of entry does not include a right to enter buildings without consent of the person in control of the building or without a search warrant.

(d) Within 10 days of the inspection or, if there is no inspection, within 15 days of receipt of the person's written statement, the division shall send the person the following:

(1) If an inspection was made, a description of the enforcement action taken, which may consist of copies of the inspection report and all notices of violation and cessation orders issued as a result of the inspection, or an explanation of why no enforcement action was taken;

(2) If no inspection was conducted, an explanation of the reason why; and

(3) An explanation of the person's right, if any, to informal review of the action or inaction of the division under 4VAC25-130-842.15.

(e) The division shall give copies of all materials in Paragraphs (d)(1) and (d)(2) of this section within the time

limits specified in those Paragraphs to the person alleged to be in violation, except that the name of the person supplying information shall be removed unless disclosure of the person's identity is permitted under Paragraph (b) of this section.

4VAC25-130-842.15. Review of decision not to inspect or enforce.

(a) Any person who is or may be adversely affected by a coal exploration or surface coal mining and reclamation operation may ask the division to review informally an authorized representative's decision not to inspect or take appropriate enforcement action with respect to any violation alleged by that person in a request for inspection under 4VAC25-130-842.12. The request for review shall be in writing and include a statement of how the person is or may be adversely affected and why the decision merits review.

(b) The division shall conduct the review and inform the person, in writing, of the results of the review within 30 days of receipt of the request. The person alleged to be in violation shall also be given a copy of the results of the review, except that the name of the person who is or may be adversely affected shall not be disclosed unless confidentiality has been waived or disclosure is required under the Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia).

(c) Informal review under this section shall not affect any right to formal review under ~~§ 45.1-249~~ § 45.2-1025 of the Act or to a citizen's suit under ~~§ 45.1-246.1~~ § 45.2-1022 of the Act.

(d) Any person who requested a review of a decision not to inspect or enforce under this section and who is or may be adversely affected by any determination made under subsection (b) of this section may request review of that determination by filing within 30 days of the division's determination an application for formal review and request for hearing under the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia). All requests for hearing or appeals for review and reconsideration made under this section shall be filed with the Director, Division of Mined Land ~~Reclamation~~ Repurposing, Department of ~~Mines, Minerals and~~ Energy, ~~Post Office Drawer 900~~ 3405 Mountain Empire Road, Big Stone Gap, Virginia 24219.

4VAC25-130-843.11. Cessation orders.

(a)(1) An authorized representative of the Director shall immediately order a cessation of a coal exploration or a surface coal mining and reclamation operation or of the relevant portion thereof, if the representative finds, on the basis of any inspection, any condition or practice, or any violation of the Act, this chapter, or any condition of a permit or an exploration approval imposed under the Act, or this chapter which:

(i) Creates an imminent danger to the health or safety of the public; or

(ii) Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.

(2) Surface coal mining operations conducted by any person without a valid surface coal mining permit constitute a condition or practice which causes or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources, unless such operations:

(i) Are an integral, uninterrupted extension of previously permitted operations, and the person conducting such operations has filed a timely and complete application for a permit to conduct such operations; or

(ii) Were conducted lawfully without a permit under this chapter because no permit under this chapter has been required for such operations by the division.

(3) If the cessation ordered under Paragraph (a)(1) of this section will not completely abate the imminent danger or harm in the most expeditious manner physically possible, the authorized representative of the Director shall impose affirmative obligations on the permittee to abate the imminent danger or significant environmental harm. The order shall specify the time by which abatement shall be accomplished.

(b)(1) When a notice of violation has been issued under 4VAC25-130-843.12(a) and the permittee fails to abate the violation within the abatement period fixed or subsequently extended by the authorized representative, the authorized representative of the Director shall immediately order a cessation of coal exploration or surface coal mining and reclamation operations, or of the portion relevant to the violation.

(2) A cessation order issued under this Paragraph (b) shall require the permittee to take all steps the authorized representative of the Director deems necessary to abate the violations covered by the order in the most expeditious manner physically possible.

(c) A cessation order issued under Paragraphs (a) or (b) of this section shall be in writing, signed by the authorized representative who issues it, and shall set forth with reasonable specificity: (1) The nature of the condition, practice or violation; (2) the remedial action or affirmative obligation required, if any, including interim steps, if appropriate; (3) the time established for abatement, including a schedule for meeting any interim steps, if appropriate; and (4) a reasonable description of the portion of the coal exploration or surface coal mining and reclamation operation to which it applies. The order shall remain in effect until the condition, practice or violation resulting in the issuance of the cessation order has been abated or until vacated, modified or terminated in writing by an authorized representative of the Director, or until the order expires pursuant to ~~Section 45.1-245(D)~~ § 45.2-1020 of the Act and 4VAC25-130-843.15.

(d) Reclamation operations and other activities intended to protect public health and safety and the environment shall continue during the period of any order unless otherwise provided in the order.

(e) An authorized representative of the Director may modify, terminate or vacate a cessation order for good cause, and may extend the time for abatement if the failure to abate within the time previously set was not caused by the permittee's lack of diligence.

(f) An authorized representative of the Director shall terminate a cessation order by written notice to the permittee when the representative determines that all conditions, practices or violations listed in the order have been abated. Termination shall not affect the right of the division to assess civil penalties under Part 845 of this chapter for those violations.

(g) Within 60 days after issuing a cessation order, the division shall notify in writing any person who has been identified under 4VAC25-130-773.17(h) and 4VAC25-130-778.13(c) and (d) as owning or controlling the permittee, that the cessation order was issued and that the person has been identified as an owner or controller.

4VAC25-130-843.12. Notices of violation.

(a) An authorized representative of the director shall issue a notice of violation if, on the basis of an inspection pursuant to ~~§ 45.1-244~~ § 45.2-1019 of the Act, the representative finds a violation of the Act, this chapter, or any condition of a permit or an exploration approval imposed under the Act, or this chapter, which does not create an imminent danger or harm for which a cessation order must be issued under 4VAC25-130-843.11.

(b) A notice of violation issued under this section shall be in writing, signed by the authorized representative who issues it, and shall set forth with reasonable specificity:

(1) The nature of the violation;

(2) The remedial action required, which may include interim steps;

(3) A reasonable time for abatement, which may include time for accomplishment of interim steps; and

(4) A reasonable description of the portion of the coal exploration or surface coal mining and reclamation operation to which it applies.

(c) An authorized representative of the director may extend the time set for abatement or for accomplishment of an interim step, if the failure to meet the time previously set was not caused by the permittee's lack of diligence. The total time for abatement under a notice of violation, including all extensions, shall not exceed 90 days from the date of issuance, except upon a showing by the permittee that it is not feasible to abate the violation within 90 calendar days due to one or more of the circumstances in subsection (f) of this section. An extended abatement date pursuant to this section shall not be granted when the permittee's failure to abate within 90 days has been caused by a lack of diligence or intentional delay by the permittee in completing the remedial action required.

(d)(1) If the permittee fails to meet the time set for abatement, the authorized representative shall issue a cessation order under 4VAC25-130-843.11(b).

(2) If the permittee fails to meet the time set for accomplishment of any interim step the authorized representative may issue a cessation order under 4VAC25-130-843.11 (b).

(e) An authorized representative of the director shall terminate a notice of violation by written notice to the permittee when the representative determines that all violations listed in the notice of violation have been abated. Termination shall not affect the right of the division to assess civil penalties under Part 845 for those violations.

(f) Circumstances which may qualify a coal exploration or a surface coal mining operation for an abatement period of more than 90 days are:

(1) Where the permittee of an on-going permitted operation has timely applied for and diligently pursued a permit renewal or other necessary approval of designs or plans but such permit or approval has not been or will not be issued within 90 days after a valid permit expires or is required, for reasons not within the control of the permittee;

(2) Where there is a valid judicial or administrative order precluding abatement within 90 days as to which the permittee has diligently pursued all rights of appeal and as to which the permittee has no other effective legal remedy;

(3) Where the permittee cannot abate within 90 days due to a labor strike;

(4) Where climatic conditions preclude abatement within 90 days, or where, due to climatic conditions, abatement within 90 days clearly would cause more environmental harm than it would prevent; or

(5) Where abatement within 90 days requires action that would violate safety standards established by statute or regulation under the Mine Safety and Health Act of 1977.

(g) Whenever an abatement time in excess of 90 days is permitted, interim abatement measures shall be imposed to the extent necessary to minimize harm to the public or the environment.

(h) If any of the conditions in subsection (f) of this section exists, the permittee may request the authorized representative to grant an abatement period exceeding 90 days. The authorized representative shall not grant such an abatement period without the concurrence of the director and the abatement period granted shall not exceed the shortest possible

time necessary to abate the violation. The permittee shall have the burden of establishing by clear and convincing proof that he is entitled to an extension under the provisions of 4VAC25-130-843.12 (c) and (f). In determining whether or not to grant an abatement period exceeding 90 days the authorized representative may consider any relevant written or oral information from the permittee or any other source. The authorized representative shall promptly and fully document in the file his reasons for granting or denying the request. The authorized representative's immediate supervisor shall review this document before concurring in or disapproving the extended abatement date and shall promptly and fully document the reasons for his concurrence or disapproval in the file.

(i) No extension granted under subsection (h) of this section may exceed 90 days in length. Where the condition or circumstance which prevented abatement within 90 days exists at the expiration of any such extension, the permittee may request a further extension in accordance with the procedures of subsection (h) of this section.

(j) Any determination made under subsection (h) of this section shall be subject to formal review pursuant to the provisions of the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

4VAC25-130-843.13. Suspension or revocation of permits; pattern of violations.

(a)(1) The director shall issue a show cause order to a permittee requiring justification as to why his permit and right to mine under the Act should not be suspended or revoked, if the director determines that a pattern of violations of any requirements of the Act, this chapter, or any permit condition required by the Act exists or has existed, and that the violations were caused by the permittee's willful or unwarranted failure to comply with those requirements or conditions, or if the permittee failed to pay the final civil penalty assessment as required by 4VAC25-130-845.20. Violations by any person conducting surface coal mining operations on behalf of the permittee shall be attributed to the permittee, unless the permittee establishes that they were acts of deliberate sabotage.

(2) The director may determine that a pattern of violations exists or has existed based upon two or more inspections of the permit area within any 12-month period, after considering the circumstances, including:

(i) The number of violations, cited on more than one occasion, of the same or related requirements of the Act, this chapter, or the permit;

(ii) The number of violations, cited on more than one occasion, of different requirements of the Act, this chapter, or the permit; and

(iii) The extent to which the violations were isolated departures from lawful conduct.

(3) The director shall promptly review the history of violations of any permittee who has been cited for violations of the same or related requirements of the Act, this chapter, or the permit during three or more inspections of the permit area within any 12-month period. If, after such review, the director determines that a pattern of violations exists or has existed, he shall issue a show cause order as provided in subdivision (a) (1) of this section.

(4)(i) In determining the number of violations within any 12-month period, the director shall consider only violations issued as a result of an inspection carried out pursuant to 4VAC25-130-840.11, 4VAC25-130-842.11 and 4VAC25-130-842.12.

(ii) The director may not consider violations issued as a result of inspections other than those mentioned in subdivision (a) (4) (i) of this section in determining whether to exercise his discretion under subdivision (a) (2) of this section, except as evidence of the "willful" or "unwarranted" nature of the permittee's failure to comply.

(5) Whenever a permittee fails to abate a violation contained in a notice of violation or cessation order within the abatement period set in the notice or order or as subsequently extended, the division shall review the permittee's history of violations to determine whether a pattern of violations exists pursuant to this section, and shall issue a show cause order as appropriate pursuant to 4VAC25-130-845.15(b)(2).

(b) The permittee shall have 15 days from receipt of the show cause order to file an answer and request a formal public hearing in writing. The director shall give 30 days written notice of the date, time and place of the hearing to the permittee, and any intervenor. The public hearing shall be conducted in accordance with § 2.2-4020 of the Virginia Administrative Process Act. The director shall publish the notice, if practicable, in a newspaper of general circulation in the area of the surface coal mining and reclamation operations, and shall post it at the division's Big Stone Gap office.

(c) Within 30 days after the hearing, the hearing officer shall issue a written decision as to whether a pattern of violations exists, and, if appropriate, an order. The decision and order shall be final, subject to the review and reconsideration by the director or his designee provided in subsection (e) of this section. If the decision and order revoke or suspend the permit and the permittee's right to mine under the Act, the permittee shall immediately cease surface coal mining operations on the permit area and shall:

(1) If the permit and right to mine under the Act are revoked, complete reclamation within the time specified in the order; or

(2) If the permit and the right to mine under the Act are suspended, complete all affirmative obligations to abate all conditions, practices or violations, as specified in the order.

(d) Within 14 days after the issuance of a decision or order, the permittee, or any person who participated in the hearing and who has an interest which is or may be adversely affected by the hearing officer's decision may appeal to the director, or his designee (who shall not be the same person who issued the show cause order) for review of the record and reconsideration of the hearing officer's decision. The director or his designee may also, on his own motion, with notice to the parties, made within 14 days of the hearing officer's decision, review the record and reconsider the hearing officer's decision. No further evidence will be allowed in connection with such review and reconsideration but the director or his designee may hear further arguments, and may also after considering the record, remand any case for further hearing if he considers such action necessary to develop the facts. Within 30 days of the appeal or motion for review and reconsideration, the director or his designee shall complete his review of the hearing officer's decision and issue a final decision thereon.

(e) All requests for hearing before a hearing officer, or appeals for review and reconsideration, made under this section, and all notices of appeal for judicial review of a hearing officer's final decision or a final decision on review and reconsideration, shall be filed with the Director, Division of Mined Land ~~Reclamation~~ Repurposing, Department of ~~Mines, Minerals and~~ Energy, ~~Post Office Drawer 900~~ 3405 Mountain Empire Road, Big Stone Gap, Virginia 24219.

(f) Any person who owns or controls or has owned or controlled any operations on which the permit has been revoked pursuant to this section may apply for reinstatement pursuant to 4VAC25-130-800.52.

4VAC25-130-843.15. Informal public hearing.

(a) A notice of violation or cessation order which requires cessation of mining, expressly or by necessary implication, shall expire within 30 days after it is served unless an informal public hearing is held or if the notice or order is terminated prior to the hearing. Expiration of a notice or order shall not affect the division's right to assess civil penalties for the violations as set forth in part 845. For purposes of this section, mining includes (1) extracting coal from the earth or coal waste piles and transporting it within or from the permit area, and (2) the processing, cleaning, concentrating, preparing or loading of coal where such operations occur at a place other than at a mine site.

(b) A person issued a notice of violation or cessation order pursuant to this part may request, in writing within 15 days from service of the notice or order, an informal public hearing to review the issuance of the notice or order. The written request must be submitted to the division's Big Stone Gap Office.

(c) The division shall conduct the informal hearing within 30 days from receipt of the hearing request pursuant to § 2.2-4019 of the Virginia Administrative Process Act. The division shall give as much advance notice as is practicable of the time, place, and subject matter of the informal public hearing to:

(1) The person to whom the notice or order was issued; and

(2) Any person who filed a report which led to that notice or order.

(d) The division shall also post notice of the hearing at its Big Stone Gap office and, where practicable, publish it in a newspaper of general circulation in the area of the mine.

(e) An informal public hearing shall be conducted by a representative of the division, who may accept oral or written arguments and any other relevant information from any person attending.

(f) Within five days after the close of the informal public hearing, the division shall affirm, modify, or vacate the notice or order in writing. The decision shall be sent to-

(1) The person to whom the notice or order was issued; and

(2) Any person who filed a report which led to the notice or order.

(g) The granting of an informal public hearing shall not affect the right of any person to formal review under ~~§ 45.1 249~~ § 45.2-1025 of the Act.

(h) The person conducting the hearing for the division shall determine whether or not the mine site should be viewed during the hearing. In making this determination the only consideration shall be whether a view of the mine site will assist the person conducting the hearing in reviewing the appropriateness of the enforcement action or of the required remedial action.

4VAC25-130-843.16. Formal review of citations.

(a) A person issued a notice of violation or cessation order under 4VAC25-130-843.11 or 4VAC25-130-843.12, or a person having an interest which is or may be adversely affected by the issuance, modification, vacation, or termination of a notice or order may request review of that action by filing an application for formal review and request for hearing, under ~~§ 45.1 249~~ § 45.2-1025 of the Act, within 30 days after receiving notice of the action. A person may also request formal review of the decision rendered under 4VAC25-130-843.15, if the request is submitted within 15 days of receipt of the informal public hearing decision.

(b) The filing of an application for review and request for a hearing under this section shall not operate as a stay of any notice or order, or of any modification, termination, or vacation of either.

(c) Hearings under subsection (a) of this section shall be conducted by a hearing officer appointed by the director. Within 30 days after the close of the record, the hearing officer shall issue a written decision affirming, modifying, terminating, or vacating the notice or order. The decision shall

be final, subject to the review and reconsideration by the director or his designee provided in subsection (d) of this section.

(d) Within 14 days after the issuance of a decision the permittee, or any person who participated in the hearing and who has an interest which is or may be adversely affected by the hearing officer's decision, may appeal to the director or his designee for review of the record and reconsideration of the hearing officer's decision. The director or his designee may also, on his own motion, with notice to the parties, made within 14 days of the hearing officer's decision, review the record and reconsider the hearing officer's decision. No further evidence will be allowed in connection with such review and reconsideration but the director or his designee may hear further arguments and may also, after considering the record remand any case for further hearing if he considers such action necessary to develop the facts. Within 30 days of the appeal or motion for review and reconsideration, the director or his designee shall complete his review of the hearing officer's decision and issue a final decision thereon.

(e) All requests for hearing before a hearing officer, or appeals for review and reconsideration, made under this section, and all notices of appeal for judicial review of a hearing officer's final decision, or a final decision on review and reconsideration, shall be filed with the Director, Division of Mined Land ~~Reclamation~~ Repurposing, Department of ~~Mines, Minerals and~~ Energy, ~~Post Office Drawer 900~~ 3405 Mountain Empire Road, Big Stone Gap, Virginia 24219.

4VAC25-130-845.2. Objective.

Civil penalties are assessed under ~~§ 45.1 246~~ § 45.2-1021 of the Act and this Part to deter violations and to ensure maximum compliance with the terms and purposes of the Act on the part of the coal mining industry.

4VAC25-130-845.15. Assessment of separate violations for each day.

(a) The division may assess separately a civil penalty for each day from the date of issuance of the notice of violation or cessation order to the date set for abatement of the violation. In determining whether to make such an assessment, the division shall consider the factors listed in 4VAC25-130-845.13 and may consider the extent to which the person to whom the notice or order was issued gained any economic benefit as a result of a failure to comply. For any violation which continues for two or more days and which has been assigned a penalty of $5,000 or more under 4VAC25-130-845.13, the division shall assess a penalty for a minimum of two separate days.

(b) In addition to the civil penalty provided for in subsection (a) of this section, whenever a violation contained in a notice of violation or cessation order has not been abated within the abatement period set in the notice or order or as subsequently extended pursuant to ~~§ 45.1 245 B~~ § 45.2-1020 of the Act, a civil penalty of not less than $750 shall be assessed for each day during which such failure to abate continues, except that:

(1)(i) If suspension of the abatement requirements of the notice or order is ordered in a temporary relief proceeding under ~~§ 45.1 249 C~~ § 45.2-1025 of the Act, after a determination that the person to whom the notice or order was issued will suffer irreparable loss or damage from the application of the requirements, the period permitted for abatement shall not end until the date on which the director or his authorized representative issues a final order with respect to the violation in question; and

(ii) If the person to whom the notice or order was issued initiates review proceedings under ~~§ 45.1 251 B~~ § 45.2-1027 of the Act with respect to the violation, in which the obligations to abate are suspended by the court pursuant to ~~§ 45.1 251 B~~ § 45.2-1027 of the Act, the daily assessment of a penalty shall not be made for any period before entry of a final order by the court;

(2) Such penalty for the failure to abate the violation shall not be assessed for more than 30 days for each such violation. If the permittee has not abated the violation within the 30 day period, the division shall take appropriate action pursuant to §§ ~~45.1 245~~ 45.2-1020 and ~~45.1 246~~ 45.2-1021 of the Act within 30 days to ensure that abatement occurs or to ensure that there will not be a reoccurrence of the failure to abate.

4VAC25-130-845.18. Procedures for assessment conference.

(a) The division shall arrange for a conference to review the proposed assessment or reassessment, upon written request of the person to whom notice or order was issued, if the request is received within 30 days from the date the proposed assessment or reassessment is served.

(b)(1) The division shall assign a conference officer to hold the assessment conference. The assessment conference shall be conducted as an informal proceeding in accordance with § 2.2-4019 of the Code of Virginia. The assessment conference shall be held within 60 days from the date the conference request is received or the end of the abatement period, whichever is later. Provided that a failure by the division to hold such conference within 60 days shall not be grounds for dismissal of all or part of an assessment unless the person against whom the proposed penalty has been assessed proves actual prejudice as a result of the delay.

(2) The division shall post notice of the time and place of the conference at the division's office in Big Stone Gap or field office located closest to the mine at least five days before the conference. Any person shall have a right to attend and participate in the conference.

(3) The conference officer shall consider all relevant information on the violation. Within 30 days after the conference is held, the conference officer shall either:

(i) Settle the issue, in which case a settlement agreement shall be prepared and signed by the division and by the person assessed; or

(ii) Affirm, raise, lower, or vacate the penalty.

(4) An increase or reduction of a proposed civil penalty assessment of more than 25% and more than $500 shall not be final and binding on the division, until approved by the director or his designee.

(c) The division shall promptly serve the person assessed with a notice of the conference decision in the manner provided in 4VAC25-130-845.17 (b) and shall include a worksheet if the penalty has been raised or lowered. The reasons for the conference officer's action shall be fully documented in the file.

(d)(1) If a settlement agreement is entered into, the person assessed will be deemed to have waived all rights to further review of the violation or penalty in question, except as otherwise expressly provided for in the settlement agreement. The settlement agreement shall contain a clause to this effect.

(2) If full payment of the amount specified in the settlement agreement is not received by the division within 30 days after that date of signing, the division may enforce the agreement or rescind it and proceed according to subdivision (b)(3)(ii) of this section within 30 days from the date of the rescission.

(e) The conference officer may terminate the conference if it is determined that the issues cannot be resolved or that the person assessed is not diligently working toward resolution of the issues.

(f) At any formal review proceedings under §§ ~~45.1-245 C, 45.1-246 and 45.1-249~~ 45.2-1020, 45.2-1021, and 45.2-1025 of the Act, no evidence as to statements made or evidence produced by one party at a conference shall be introduced as evidence by another party or to impeach a witness.

4VAC25-130-845.19. Request for hearing.

(a) The person charged with the violation may contest the proposed penalty or the fact of the violation by submitting a petition and an amount equal to the proposed penalty or, if a conference has been held, the reassessed or affirmed penalty to the division (to be held in escrow as provided in subsection (b) of this section) within 30 days from receipt of the proposed assessment or reassessment or 30 days from the date of service of the assessment conference decision, whichever is later. The fact of the violation may not be contested if it has been decided in a review proceeding commenced under 4VAC25-130-843.16.

(b) The division shall transfer all funds submitted under subsection (a) of this section to the State Treasurer's Office which shall hold them in escrow pending completion of the administrative and judicial review process, at which time it shall disburse them as provided in 4VAC25-130-845.20.

(c) The hearing requested pursuant to a petition filed under subsection (a) of this section shall be conducted as a formal hearing in accordance with the provisions of § 2.2-4020 of the Code of Virginia. The hearing officer shall cause an accurate verbatim record of the hearing to be made. The division may charge the reasonable cost of preparing such record to any party to the hearing who requests a copy of the record.

(d) All requests for hearing, or appeals for review and reconsideration made under this section; and all notices of appeal for judicial review of a hearing officer's final decision, or the final decision on review and reconsideration shall be filed with the Director, Division of Mined Land ~~Reclamation~~ Repurposing, Department of ~~Mines, Minerals and~~ Energy, ~~Post Office Drawer 900~~ 3405 Mountain Empire Road, Big Stone Gap, Virginia 24219.

4VAC25-130-846.14. Amount of the individual civil penalty.

(a) In determining the amount of an individual civil penalty, the division shall consider the criteria specified in ~~§ 45.1-246 A~~ § 45.2-1021 of the Act, including:

(1) The individual's history of authorizing, ordering or carrying out previous violations, failures or refusals at the particular surface coal mining operation;

(2) The seriousness of the violation, failure or refusal (as indicated by the extent of damage and/or the cost of reclamation), including any irreparable harm to the environment and any hazard to the health or safety of the public; and,

(3) The demonstrated good faith of the individual charged in attempting to achieve rapid compliance after notice of the violation, failure or refusal.

(b) The penalty shall not exceed $5,000 for each violation, except that if the violation resulted in a personal injury or fatality to any person, then the civil penalty determined under 4VAC25-130-845.13 (d) shall be multiplied by a factor of 20, not to exceed $70,000. Each day of a continuing violation may be deemed a separate violation and the division may assess a separate individual civil penalty for each day the violation, failure or refusal continues, from the date of service of the underlying notice of violation, cessation order or other order incorporated in a final decision issued by the director, until abatement or compliance is achieved.

4VAC25-130-850.15. Certification.

(a) The division shall issue the blaster's coal surface mining endorsement for a period of five years to those candidates examined and found to be competent and has met the requirements as described in 4VAC25-130-850.13 and 4VAC25-130-850.14.

(b) Suspension and revocation:

(1) The division, when practicable, following written notice and opportunity for a hearing may, and upon a finding of willful conduct by the DM Board of Coal Mine Examiners, shall suspend or revoke the blaster's coal surface mining endorsement certification during the term of the certification or take other necessary action for any of the following reasons:

(i) Non-compliance with any blasting related order issued by the division or DM;

(ii) Unlawful use in the work place of, or current addiction to, alcohol, narcotics, or other dangerous drugs;

(iii) Violation of any provision of the State or Federal explosives laws or regulations;

(iv) Providing false information or a misrepresentation to obtain certification.

(2) If advance notice and opportunity for a hearing cannot be provided, an opportunity for a hearing shall be provided as soon as practical following the suspension, revocation, or other adverse action.

(c) Recertification. Any person certified as a blaster must be recertified every five years by:

(1) Presenting written proof that the individual has worked in a capacity which demonstrates the blaster's competency during two of the last three years immediately preceding the expiration date; or

(2) Retaking the division's endorsement exam and achieving the required score on the exam. Anyone who fails to achieve the required score on the exam must take or retake the training prior to retaking both the division's and DM's exam.

(d) Protection of certification. Certified blasters shall take every reasonable precaution to protect their certificates from loss, theft, or unauthorized duplication. Any such occurrence shall be reported immediately to the division.

(e) Conditions:

(1) A blaster shall immediately exhibit upon request his or her certificate to any authorized representative of the division, DM, or the Office of Surface Mining.

(2) Blaster's certification shall not be assigned or transferred.

(3) Blasters shall not delegate their responsibility to any individual who is not a certified blaster.

(f) Petitions for recertification.

An individual whose certification has been revoked may petition the DMLR for recertification. The DMLR shall not accept a petition for recertification any sooner than one year from the effective date of revocation. Such petitions shall show valid reasons why the division should consider the request for recertification. The division may require retesting prior to recertification.

(g) Appeals procedures.

Appeals for review of certification including suspension and revocation decisions shall be made to the DMLR. Appeals not resolved by the DMLR may be heard pursuant to the provisions for administrative and judicial review under Chapter ~~19~~ 10 (~~§ 45.1-2.26~~ § 45.2-1000 et seq.) of Title ~~45.1~~ 45.2 of the Code of Virginia.

4VAC25-130-882.13. Liens.

(a) The Director has the discretionary authority to place or waive a lien against land reclaimed if the reclamation results in a significant increase in the fair market value; except that-

(1) A lien shall not be placed against the property of a surface owner who acquired title prior to May 2, 1977, and who did not consent to, participate in, or exercise control over the mining operation which necessitated the reclamation work.

(2) The basis for making a determination of what constitutes a significant increase in market value or what factual situation constitutes a waiver of lien will be made by the Director pursuant to the Congressional intent expressed in Section 408 of the Federal Act and consistent with the laws of the Commonwealth governing liens.

(3) A lien may be waived if findings made prior to construction indicate that the reclamation work to be performed on private land shall primarily benefit the health, safety, or environmental values of the greater community or area in which the land is located; or if the reclamation is necessitated by an unforeseen occurrence, and the work performed to restore that land will not result in a significant increase in the market value of the land as it existed immediately before the unforeseen occurrence; and

(4) The Director may waive the lien if the cost of filing it, including indirect costs to the Commonwealth, exceeds the increase in fair market value as a result of reclamation activities.

(b) If a lien is to filed, the Director shall, within six months after the completion of the reclamation work, file a statement in the office having responsibility under applicable law for recording judgments and placing liens against land. Such statement shall consist of notarized copies of the appraisals obtained under 4VAC25-130-882.12 and may include an account of moneys expended for the reclamation work. The amount reported to be the increase in value of the property shall constitute the lien to be recorded in compliance with laws of the Commonwealth; Provided, however, That prior to the time of actual filing of the proposed lien, the landowner shall be notified of the amount of the proposed lien and shall be allowed a reasonable time to prepay that amount instead of allowing the lien to be filed against the property involved.

(c) Within 60 days after the lien is filed the landowner may petition under local law to determine the increase in market value of the land as a result of reclamation work. Any

aggrieved party may appeal in the manner provided by ~~section 45.1-268~~ § 45.2-1040 of the Code of Virginia.

4VAC25-145-10. Definitions.

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

"Director" means the Director of the Department of ~~Mines, Minerals and~~ Energy.

"Division" means the Division of Mined Land ~~Reclamation~~ Repurposing.

"Net worth" means total assets less total liabilities including funds pledged or otherwise obligated to the Commonwealth or other in effect at any time during the contract period and any other contingent liabilities that might materially affect the Commonwealth's ability to realize the amount of bond required in the event of forfeiture.

"Operator" means any person engaging in coal surface mining operations whether or not such coal is sold within or without the Commonwealth.

"Reclamation project" means any work contracted out by or on behalf of the division for reclamation of eligible lands and waters, and defined in ~~§ 45.1-262~~ § 45.2-1034 of the Code of Virginia and funded by the Federal Office of Surface Mining or reclamation of mined lands where the operator who mined the land has had his bond covering the land forfeited to the division or otherwise defaulted on his reclamation obligation and the project is funded either by the forfeited bond or the Virginia Coal Surface Mining Reclamation Fund.

"Relevant mining experience" means at least three years of satisfactory mining and reclamation work in the Commonwealth under Chapter ~~19~~ 10 (§ 45.2-1000 et seq.) of Title ~~45.1~~ 45.2 of the Code of Virginia. The operator shall have active reclamation work experience for two of the three years.

"State reclamation program" means Articles 4 and 5 of Chapter ~~19~~ 10 (§ 45.2-1000 et seq.) of Title ~~45.1~~ 45.2 of the Code of Virginia, as well as reclamation done by or for the Commonwealth and funded by the forfeited bond of an operator.

4VAC25-145-20. Operator requirements.

A. Operators must demonstrate relevant mining experience in order to bid on or be awarded contracts for any reclamation project in the Commonwealth. An operator may demonstrate satisfactory mining and reclamation work to the division by showing (i) that the operator has obtained partial or complete bond release on a coal surface mining permit obtained pursuant to Chapter ~~19~~ 10 (§ 45.2-1000 et seq.) of Title ~~45.1~~ 45.2 of the Code of Virginia under his control, or that all reclamation work on any active permit operated or controlled by the operator is up to date; and (ii) that no coal surface mining permit under his control has any outstanding violations of any federal, state or local agency's laws, rules, regulations or ordinances unless the operator submits proof to the division that such violations have been corrected or are being corrected to the satisfaction of the agencies citing of such violations.

B. No operator shall be allowed to bid on or be awarded contracts for any reclamation project in the Commonwealth if:

1. The director, after opportunity for a hearing, finds that the operator controls or has controlled mining operations with a demonstrated pattern of willful violations of the Federal Act or State Reclamation Program of such nature and duration with such resulting environmental damage as to indicate an intent not to comply with the Federal Act, P.L. 95-87 or State Reclamation Program.

2. The operator has had a coal surface mining permit revoked or suspended and has not been re-instated by the director; has had his bond forfeited; or has received an order to show cause why his permit should not be revoked or suspended.

4VAC25-145-30. Compliance with other laws and obligations.

A. The operator bidding or seeking to bid on reclamation projects shall comply with all other applicable laws, ordinances, orders, rules and regulations of any federal, state or local agency with jurisdiction over the operator's mining or reclamation activities.

B. The operator shall comply with all applicable requirements of the division with regard to bidding on reclamation projects in the Commonwealth, excepting any requirements waived by ~~§ 45.1-161.1~~ § 45.2-100 of the Code of Virginia and this regulation.

4VAC25-150-10. Definitions.

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

"Act" means the Virginia Gas and Oil Act, Chapter ~~22.1~~ 16 (~~§ 45.1-361.1~~ § 45.2-1600 et seq.) of Title ~~45.1~~ 45.2 of the Code of Virginia.

"Adequate channel" means a watercourse that will convey the designated frequency storm event without overtopping its banks or causing erosive damage to the bed, banks and overbank sections.

"Applicant" means any person or business who files an application with the Division of Gas and Oil.

"Approved" means accepted as suitable for its intended purpose when included in a permit issued by the director or determined to be suitable in writing by the director.

"Berm" means a ridge of soil or other material constructed along an active earthen fill to divert runoff away from the unprotected slope of the fill to a stabilized outlet or sediment trapping facility.

"Board" means the Virginia Gas and Oil Board.

"Bridge plug" means an obstruction intentionally placed in a well at a specified depth.

"CAS number" means the unique number identifier for a chemical substance assigned by the Chemical Abstracts Service.

"Cased completion" means a technique used to make a well capable of production in which production casing is set through the productive zones.

"Cased/open hole completion" means a technique used to make a well capable of production in which at least one zone is completed through casing and at least one zone is completed open hole.

"Casing" means all pipe set in wells except conductor pipe and tubing.

"Causeway" means a temporary structural span constructed across a flowing watercourse or wetland to allow construction traffic to access the area without causing erosion damage.

"Cement" means hydraulic cement properly mixed with water.

"Cement bond log" means an acoustic survey or sonic-logging method that records the quality or hardness of the cement used in the annulus to bond the casing and the formation.

"Centralizer" means a device secured around the casing at regular intervals to center it in the hole.

"Channel" means a natural stream or man-made waterway.

"Chemical Disclosure Registry" means the chemical registry website known as FracFocus.org developed by the Ground Water Protection Council and the Interstate Oil and Gas Compact Commission.

"Chief" means the Chief of the Division of Mines of the Department of ~~Mines, Minerals and~~ Energy.

"Coal-protection string" means a casing designed to protect a coal seam by excluding all fluids, oil, gas, or gas pressure from the seam, except such as may be found in the coal seam itself.

"Cofferdam" means a temporary structure in a river, lake, or other waterway for keeping the water from an enclosed area that has been pumped dry so that bridge foundations, pipelines, etc., may be constructed.

"Completion" means the process that results in a well being capable of producing gas or oil.

"Conductor pipe" means the short, large diameter string used primarily to control caving and washing out of unconsolidated surface formations.

"Corehole" means any hole drilled solely for the purpose of obtaining rock samples or other information to be used in the exploration for coal, gas, or oil. The term shall not include a borehole used solely for the placement of an explosive charge or other energy source for generating seismic waves.

"Days" means calendar days.

"Denuded area" means land that has been cleared of vegetative cover.

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

"Detention basin" means a stormwater management facility which temporarily impounds and discharges runoff through an outlet to a downstream channel. Infiltration is negligible when compared to the outlet structure discharge rates. The facility is normally dry during periods of no rainfall.

"Dike" means an earthen embankment constructed to confine or control fluids.

"Directional survey" means a well survey that measures the degree of deviation of a hole from true vertical, and the distance and direction of points in the hole from vertical.

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

"Diversion" means a channel constructed for the purpose of intercepting surface runoff.

"Diverter" or "diverter system" means an assembly of valves and piping attached to a gas or oil well's casing for controlling flow and pressure from a well.

"Division" means the Division of Gas and Oil of the Department of ~~Mines, Minerals and~~ Energy.

"Emergency response plan" means the document that details the steps to prevent, control, and provide adequate countermeasures for a petroleum product discharge not covered by the spill prevention, control, and countermeasures plan or for a non-petroleum product discharge.

"Erosion and sediment control plan" means a document containing a description of materials and methods to be used for the conservation of soil and the protection of water resources in or on a unit or group of units of land. It may include appropriate maps, an appropriate soil and water plan inventory and management information with needed interpretations, and a record of decisions contributing to conservation treatment. The plan shall contain a record of all major conservation decisions to ensure that the entire unit or units of land will be so treated to achieve the conservation objectives.

"Expanding cement" means any cement approved by the director that expands during the hardening process, including but not limited to regular oil field cements with the proper additives.

"Firewall" means an earthen dike or fire resistant structure built around a tank or tank battery to contain the oil in the event a tank ruptures or catches fire.

"Flume" means a constructed device lined with erosion-resistant materials intended to convey water on steep grades.

"Flyrock" means any material propelled by a blast that would be actually or potentially hazardous to persons or property.

"Form prescribed by the director" means a form issued by the division, or an equivalent facsimile, for use in meeting the requirements of the Act or this chapter.

"Gas well" means any well which produces or appears capable of producing a ratio of 6,000 cubic feet (6 Mcf) of gas or more to each barrel of oil, on the basis of a gas-oil ratio test.

"Gob well" means a coalbed methane gas well that is capable of producing coalbed methane gas from the de-stressed zone associated with any full-seam extraction of coal that extends above and below the mined-out coal seam.

"Groundwater" means all water under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, which has the potential for being used for domestic, industrial, commercial, or agricultural use or otherwise affects the public welfare.

"Highway" means any public street, public alley, or public road.

"Hydraulic fracturing" means the treatment of a well by the application of hydraulic fracturing fluid under pressure for the express purpose of initiating or propagating fractures in a target geologic formation to enhance production of oil or natural gas.

"Hydraulic fracturing fluid" means the fluid, including the applicable base fluid and all additives, used to perform hydraulic fracturing treatment.

"Inclination survey" means a survey taken inside a wellbore that measures the degree of deviation of the point of the survey from true vertical.

"Inhabited building" means a building, regularly occupied in whole or in part by human beings, including, but not limited to, a private residence, church, school, store, public building or other structure where people are accustomed to assemble except for a building being used on a temporary basis, on a permitted site, for gas, oil, or geophysical operations.

"Intermediate string" means a string of casing that prevents caving, shuts off connate water in strata below the water-protection string, and protects strata from exposure to lower zone pressures.

"Live watercourse" means a definite channel with bed and banks within which water flows continuously.

"Mcf" means, when used with reference to natural gas, 1,000 cubic feet of gas at a pressure base of 14.73 pounds per square inch gauge and a temperature base of 60°F.

"Mud" means a mixture of materials that creates a weighted fluid to be circulated downhole during drilling operations for the purpose of lubricating and cooling the bit, removing cuttings, and controlling formation pressures and fluid.

"Natural channel" or "natural stream" means nontidal waterways that are part of the natural topography. They usually maintain a continuous or seasonal flow during the year and are characterized as being irregular in cross section with a meandering course.

"Nonerodible" means a material such as riprap, concrete, or plastic that will not experience surface wear due to natural forces.

"Oil well" means any well that produces or appears capable of producing a ratio of less than 6,000 cubic feet (6 Mcf) of gas to each barrel of oil, on the basis of a gas-oil ratio test.

"Open hole completion" means a technique used to make a well capable of production in which no production casing is set through the productive zones.

"Person" means any individual, corporation, partnership, association, company, business, trust, joint venture, or other legal entity.

"Plug" means the sealing of, or a device or material used for the sealing of, a gas or oil wellbore or casing to prevent the migration of water, gas, or oil from one stratum to another.

"Pre-development" means the land use and site conditions that exist at the time that the operations plan is submitted to the division.

"Produced waters" means water or fluids produced from a gas well, oil well, coalbed methane gas well, or gob well as a byproduct of producing gas, oil, or coalbed methane gas.

"Producer" means a permittee operating a well in Virginia that is producing or is capable of producing gas or oil.

"Production string" means a string of casing or tubing through which the well is completed and may be produced and controlled.

"Red shales" means the undifferentiated shaley portion of the Bluestone formation normally found above the Pride Shale Member of the formation, and extending upward to the base of the Pennsylvanian strata, which red shales are predominantly red and green in color but may occasionally be gray, grayish green, and grayish red.

"Red zone" is a zone in or contiguous to a permitted area that could have potential hazards to workers or to the public.

"Retention basin" means a stormwater management facility that, similar to a detention basin, temporarily impounds runoff

and discharges its outflow through an outlet to a downstream channel. A retention basin is a permanent impoundment.

"Sediment basin" means a depression formed from the construction of a barrier or dam built to retain sediment and debris.

"Sheet flow" or "overland flow" means shallow, unconcentrated and irregular flow down a slope. The length of strip for sheet flow usually does not exceed 200 feet under natural conditions.

"Slope drain" means tubing or conduit made of nonerosive material extending from the top to the bottom of a cut or fill slope.

"Special diligence" means the activity and skill exercised by a good businessperson in a particular specialty, which must be commensurate with the duty to be performed and the individual circumstances of the case, not merely the diligence of an ordinary person or nonspecialist.

"Spill prevention, control, and countermeasure plan" or "SPCC plan" means the document that details the steps to prevent, control, and provide adequate countermeasures to certain petroleum product discharges.

"Stabilized" means able to withstand normal exposure to air and water flows without incurring erosion damage.

"Stemming" means the inert material placed in a borehole after an explosive charge for the purpose of confining the explosion gases in the borehole or the inert material used to separate the explosive charges (decks) in decked holes.

"Stimulate" means any action taken by a gas or oil operator to increase the inherent productivity of a gas or oil well, including, but not limited to, fracturing, shooting, or acidizing, but excluding (i) cleaning out, bailing, or workover operations and (ii) the use of surface-tension reducing agents, emulsion breakers, paraffin solvents, and other agents that affect the gas or oil being produced, as distinguished from the producing formation.

"Storm sewer inlet" means any structure through which stormwater is introduced into an underground conveyance system.

"Stormwater management facility" means a device that controls stormwater runoff and changes the characteristics of that runoff, including but not limited to, the quantity, quality, the period of release, or the velocity of flow.

"String of pipe" or "string" means the total footage of pipe of uniform size set in a well. The term embraces conductor pipe, casing, and tubing. When the casing consists of segments of different size, each segment constitutes a separate string. A string may serve more than one purpose.

"Sulfide stress cracking" means embrittlement of the steel grain structure to reduce ductility and cause extreme brittleness or cracking by hydrogen sulfide.

"Surface mine" means an area containing an open pit excavation, surface operations incident to an underground mine, or associated activities adjacent to the excavation or surface operations, from which coal or other minerals are produced for sale, exchange, or commercial use and includes all buildings and equipment above the surface of the ground used in connection with such mining.

"Target formation" means the geologic gas or oil formation identified by the well operator in his application for a gas, oil or geophysical drilling permit.

"Temporary stream crossing" means a temporary span installed across a flowing watercourse for use by construction traffic. Structures may include bridges, round pipes or pipe arches constructed on or through nonerodible material.

"Ten-year storm" means a storm that is capable of producing rainfall expected to be equaled or exceeded on the average of once in 10 years. It may also be expressed as an exceedance probability with a 10% chance of being equaled or exceeded in any given year.

"Tidewater Virginia" means the region defined in § 62.1-44.15:68 of the Code of Virginia.

"Trade secret" means the term defined in § 59.1-336 of the Code of Virginia.

"Tubing" means the small diameter string set after the well has been drilled from the surface to the total depth and through which the gas or oil or other substance is produced or injected.

"Two-year storm" means a storm that is capable of producing rainfall expected to be equaled or exceeded on the average of once in two years. It may also be expressed as an exceedance probability with a 50% chance of being equaled or exceeded in any given year.

"Vertical ventilation hole" means any hole drilled from the surface to the coal seam used only for the safety purpose of removing gas from the underlying coal seam and the adjacent strata, thus, removing the gas that would normally be in the mine ventilation system.

"Water bar" means a small obstruction constructed across the surface of a road, pipeline right-of-way, or other area of ground disturbance in order to interrupt and divert the flow of water on a grade for the purpose of controlling erosion and sediment migration.

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

4VAC25-150-20. Basis and authority.

This chapter implements the Virginia Gas and Oil Act, Chapter ~~22.1~~ 16 (~~§ 45.1-361.1~~ § 45.2-1600 et seq.) of Title ~~45.1~~

45.2 of the Code of Virginia. The Director of the Department of ~~Mines, Minerals and~~ Energy is authorized to promulgate this chapter pursuant to §§ ~~45.1-161.3~~ 45.2-103 and ~~45.1-361.27~~ 45.2-1629 of the Code of Virginia.

4VAC25-150-40. Registration.

A. Persons required to register under ~~§ 45.1-361.37~~ § 45.2-1639 of the Code of Virginia shall register with the division on a registration form prescribed by the director.

B. Registered persons shall notify the division within 30 days of any change in the information included on the registration form filed in accordance with subsection A of this section.

4VAC25-150-80. Application for a permit.

A. Applicability.

1. Persons required in ~~§ 45.1-361.29~~ § 45.2-1631 of the Code of Virginia to obtain a permit or permit modification shall apply to the division on the forms prescribed by the director. All lands on which gas, oil, or geophysical operations are to be conducted shall be included in a permit application.

2. In addition to specific requirements for variances in other sections of this chapter, any applicant for a variance shall, in writing, document the need for the variance and describe the alternate measures or practices to be used.

3. Prior to accepting an application for a permit to drill for gas or oil in Tidewater Virginia, the department shall convene a pre-application meeting within the locality where the operation is proposed. The pre-application meeting shall ensure those who desire to submit an application are aware of the requirements established in § 62.1-195.1 of the Code of Virginia and 9VAC15-20. The department, in conjunction with the Department of Environmental Quality, shall conduct the meeting. The meeting shall be open to the public, and the department shall notify the locality in which the meeting is to take place and adjacent localities. No application for a permit to drill for gas or oil in Tidewater Virginia shall be accepted until the meeting is completed.

B. The application for a permit shall, as applicable, be accompanied by the fee in accordance with ~~§ 45.1-361.29~~ § 45.2-1631 of the Code of Virginia, the bond in accordance with ~~§ 45.1-361.31~~ § 45.2-1633 of the Code of Virginia, and the fee for the Orphaned Well Fund in accordance with ~~§ 45.1-361.40~~ § 45.2-1642 of the Code of Virginia.

C. Each application for a permit shall include information on all activities, including those involving associated facilities, to be conducted on the permitted site. This shall include the following:

1. The name and address of:

a. The gas, oil, or geophysical applicant;

b. The agent required to be designated under ~~§ 45.1-361.37~~ § 45.2-1639 of the Code of Virginia; and

c. Each person whom the applicant must notify under ~~§ 45.1-361.30~~ § 45.2-1632 of the Code of Virginia;

2. The certifications required in ~~§ 45.1-361.29 E~~ § 45.2-1631 E of the Code of Virginia;

3. Certification from the applicant that the proposed operation complies with all applicable local land use ordinances;

4. The proof of notice to affected parties required in ~~§ 45.1-361.29 E~~ § 45.2-1631 E of the Code of Virginia, which shall be:

a. A copy of a signed receipt or electronic return receipt of delivery of notice by certified mail;

b. A copy of a signed receipt acknowledging delivery of notice by hand; or

c. If all copies of receipt of delivery of notice by certified mail have not been signed and returned within 15 days of mailing, a copy of the mailing log or other proof of the date the notice was sent by certified mail, return receipt requested;

5. If the application is for a permit modification, proof of notice to affected parties, as specified in subdivision C 4 of this section;

6. Identification of the type of well or other gas, oil, or geophysical operation being proposed;

7. A list of ingredients anticipated to be used in any hydraulic fracturing operations. The applicant should identify any ingredients claimed to be trade secrets, and the department shall utilize the process described in 4VAC25-150-365 C to determine if the identified ingredients are entitled to trade secret protection;

8. The groundwater baseline sampling, analysis, and monitoring plan in accordance with 4VAC25-150-95;

9. The plat in accordance with 4VAC25-150-90;

10. The operations plan in accordance with 4VAC25-150-100;

11. The information required for operations involving hydrogen sulfide in accordance with 4VAC25-150-350;

12. The spill prevention, control, and countermeasure (SPCC) plan, if one is required;

13. The emergency response plan;

14. The Department of ~~Mines, Minerals and~~ Energy, Division of Mined Land ~~Reclamation's~~ Repurposing's permit number for any area included in a Division of Mined Land ~~Reclamation~~ Repurposing permit on which a proposed gas, oil, or geophysical operation is to be located;

15. For an application for a conventional well, the information required in 4VAC25-150-500;

16. For an application for a coalbed methane gas well, the information required in 4VAC25-150-560;

17. For an application for a geophysical operation, the information required in 4VAC25-150-670; and

18. For an application for a permit to drill for gas or oil in Tidewater Virginia, the environmental impact assessment meeting the requirements of § 62.1-195.1 B of the Code of Virginia and 9VAC15-20.

D. All permit applications and plats submitted to the division shall be in electronic form or a format prescribed by the director.

4VAC25-150-90. Plats.

A. When filing an application for a permit for a well or corehole, the applicant also shall file an accurate plat certified by a licensed professional engineer or licensed land surveyor on a scale, to be stated thereon, of 1 inch equals 400 feet (1:4800). The scope of the plat shall be large enough to show the board approved unit and all areas within the greater of 750 feet or one half of the distance specified in ~~§ 45.1-361.17~~ § 45.2-1616 of the Code of Virginia from the proposed well or corehole. The plat shall be submitted on a form prescribed by the director.

B. The known courses and distances of all property lines and lines connecting the permanent points, landmarks or corners within the scope of the plat shall be shown thereon. All lines actually surveyed shall be shown as solid lines. Lines taken from deed or chain of title descriptions only shall be shown by broken lines. All property lines shown on a plat shall agree with any one of the following: surveys, deed descriptions, or acreages used in county records for tax assessment purposes.

C. A north and south line shall be given and shown on the plat, and point to the top of the plat.

D. Wells or coreholes shall be located on the plat as follows:

1. The proposed or actual surface elevation of the subject well or corehole shall be shown on the plat, within an accuracy of one vertical foot. The surface elevation shall be tied to either a government benchmark or other point of proven elevation by differential or aerial survey, by trigonometric leveling, or by global positioning system (GPS) survey. The location of the government benchmark or the point of proven elevation and the method used to determine the surface elevation of the subject well or corehole shall be noted and described on the plat.

2. The proposed or actual horizontal location of the subject well or corehole determined by survey shall be shown on the plat. The proposed or actual well or corehole location shall be shown in accordance with the Virginia Coordinate System of 1983, as defined in ~~Chapter 17 (§ 55-287 et seq.) of Title 55~~ § 1-600 of the Code of Virginia, also known as the State Plane Coordinate System.

3. The courses and distances of the well or corehole location from two permanent points or landmarks on the tract shall be shown; such landmarks shall be set stones, iron pipes, T-rails or other manufactured monuments, including mine coordinate monuments, and operating or abandoned wells which are platted to the accuracy standards of this section and on file with the division. If temporary points are to be used to locate the actual well or corehole location as provided for in 4VAC25-150-290, the courses and distances of the well or corehole location from the two temporary points shall be shown.

4. Any other well, permitted or drilled, within the distance specified in ~~§ 45.1-361.17~~ § 45.2-1616 of the Code of Virginia or the distance to the nearest well completed in the same pool, whichever is less, or within the boundaries of a drilling unit established by the board around the subject well shall be shown on the plat or located by notation. The type of each well shall be designated by the following symbols as described in the Federal Geographic Data Committee (FGDC) Digital Cartographic Standard for Geologic Map Symbolization:

OPERATION TYPE	SYMBOL	FGDC REF. NO.
CBM		
Active		19.5.57
Plugged/Abandoned		19.5.59
Conventional		
Active		19.5.54
Plugged/Abandoned		19.5.56
Oil		
Active		19.5.40
Plugged/Abandoned		19.5.42
Pipeline		
Aboveground	ABOVEGROUND PIPELINE	30.3.24
Underground	PIPELINE	30.3.23
Other		
Proposed Well		19.5.10
Horizontal Well		19.5.14
Waste Disposal Well		19.5.26
Gas Storage Well		19.5.92
Facility		30.3.15

Symbols for additional features as required in 4VAC25-150-510, 4VAC25-150-590, and 4VAC25-150-680 should be taken from the FDGC standard where applicable.

E. Plats shall also contain:

1. For a conventional gas and oil or injection well, the information required in 4VAC25-150-510;

2. For a coalbed methane gas well, the information required in 4VAC25-150-590; or

3. For a corehole, the information required in 4VAC25-150-680.

F. Any subsequent application for a new permit or permit modification shall include an accurate copy of the well plat, updated as necessary to reflect any changes on the site, newly discovered data or additional data required since the last plat

was submitted. Any revised plat shall be certified as required in subsection A of this section.

4VAC25-150-100. Operations plans.

A. Each application for a permit or permit modification shall include an operations plan, in a format approved by or on a form prescribed by the director. The operations plan and accompanying maps or drawings shall become part of the terms and conditions of any permit which is issued.

B. The operations plan shall describe the specifications for the use of centralizers to ensure casing is centered in the hole. The specifications shall include, at a minimum, one centralizer within 50 feet of the water protection string seat and then in intervals no greater than every 150 feet above the first centralizer and are subject to the approval of the director.

C. The applicant shall indicate how risks to the public safety or to the site and adjacent lands are to be managed, consistent with the requirements of ~~§ 45.1-361.27 B~~ § 45.2-1629 B of the Code of Virginia, and shall provide a short narrative, if pertinent. The operations plan shall identify red zone areas.

4VAC25-150-110. Permit supplements and permit modifications.

A. Permit supplements.

1. Standard permit supplements. A permittee shall be allowed to submit a permit supplement when work being performed:

a. Does not change the disturbance area as described in the original permit; and

b. Involves activities previously permitted.

The permittee shall submit written documentation of the changes made to the permitted area no later than 30 days after completing the change. All other changes to the permit shall require a permit modification in accordance with ~~§ 45.1-361.29~~ § 45.2-1631 of the Code of Virginia.

2. Permit supplements for disclosure of ingredients used in hydraulic fracturing. Prior to completion of a well, the permittee shall submit a permit supplement when the ingredients expected to be used in the hydraulic fracturing process differ in any way from that which was submitted pursuant to subdivision C 7 of 4VAC25-150-80. The permittee should identify any ingredients claimed to be trade secrets, and the department shall utilize the process described in 4VAC25-150-365 C to determine if the identified ingredients are entitled to trade secret protection.

3. Emergency permit supplements. If a change must be implemented immediately for an area off the disturbance area as described in the original permit, or for an activity not previously permitted due to actual or threatened imminent danger to the public safety or to the environment, the permittee shall:

a. Take immediate action to minimize the danger to the public or to the environment;

b. Notify the director as soon as possible of actions taken to minimize the danger and, if the director determines an emergency still exists and grants oral approval, commence additional changes if necessary; and

c. Submit a supplement to the permit within seven working days of notifying the director with a written description of the emergency and action taken. An incident report may also be required as provided for in 4VAC25-150-380.

Any changes to the permit are to be temporary and restricted to those that are absolutely necessary to minimize danger. Any permanent changes to the permit shall require a permit modification as provided for in subsection B of this section.

B. Permit modifications.

1. Applicability. All changes to the permit which do not fit the description contained in subsection A of this section shall require a permit modification in accordance with ~~§ 45.1-361.29~~ § 45.2-1631 of the Code of Virginia.

2. Notice and fees. Notice of a permit modification shall be given in accordance with ~~§ 45.1-361.30~~ § 45.2-1632 of the Code of Virginia. The application for a permit modification shall be accompanied, as applicable, by the fee in accordance with ~~§ 45.1-361.29~~ § 45.2-1631 of the Code of Virginia and the bond in accordance with ~~§ 45.1-361.31~~ § 45.2-1633 of the Code of Virginia.

3. Waiver of right to object. Upon receipt of notice, any person may, on a form approved by the director, waive the time requirements and their right to object to a proposed permit modification. The department shall be entitled to rely upon the waiver to approve the permit modification.

4. Permit modification. The permittee shall submit a written application for a permit modification on a form prescribed by the director. The permittee may not undertake the proposed work until the permit modification has been issued. As appropriate, the application shall include, but not be limited to:

a. The name and address of:

(1) The permittee; and

(2) Each person whom the applicant must notify under ~~§ 45.1-361.30~~ § 45.2-1632 of the Code of Virginia;

b. The certifications required in ~~§ 45.1-361.29 E~~ § 45.2-1631 E of the Code of Virginia;

c. The proof of notice required in ~~§ 45.1-361.29 E~~ § 45.2-1631 E of the Code of Virginia, as provided for in 4VAC25-150-80 C 4;

d. Identification of the type of work for which a permit modification is requested;

e. The plat in accordance with 4VAC25-150-90;

f. All data, maps, plats and plans in accordance with 4VAC25-150-100 necessary to describe the activity proposed to be undertaken;

g. When the permit modification includes abandoning a gas or oil well as a water well, a description of the plugging to be completed up to the water-bearing formation and a copy of the permit issued for the water well by the Virginia Department of Health;

h. The information required for operations involving hydrogen sulfide in accordance with 4VAC25-150-350 if applicable to the proposed operations;

i. The spill prevention, control, and countermeasure (SPCC) plan, if one has been developed for the site of the proposed operations, or the emergency response plan;

j. The Department of ~~Mines, Minerals and~~ Energy, Division of Mined Land ~~Reclamation's~~ Repurposing's permit number for any area included in a Division of Mined Land ~~Reclamation~~ Repurposing permit; and

k. The information, as appropriate, required in 4VAC25-150-500, 4VAC25-150-560, 4VAC25-150-670, or 4VAC25-150-720.

5. Upon receipt of an application for a permit modification for a well in Tidewater Virginia, the director may require additional documentation to supplement information submitted to the department pursuant to subsection B of § 62.1-195.1 of the Code of Virginia. If additional documentation is required, the operator shall submit that documentation to the director and the Department of Environmental Quality.

4VAC25-150-120. Transfer of permit rights.

A. Applicability.

1. No transfer of rights granted by a permit shall be made without prior approval from the director.

2. Any approval granted by the director of a transfer of permit rights shall be conditioned upon the proposed new operator complying with all requirements of the Act, this chapter and the permit.

B. Application. Any person requesting a transfer of rights granted by a permit shall submit a written application on a form prescribed by the director. The application shall be accompanied by a fee of $75 and bond, in the name of the person requesting the transfer, in accordance with ~~§ 45.1-361.31~~ § 45.2-1633 of the Code of Virginia. The application shall contain, but is not limited to:

1. The name and address of the current permittee, the current permit number and the name of the current operation;

2. The name and address of the proposed new operator and the proposed new operations name;

3. Documentation of approval of the transfer by the current permittee;

4. If the permit was issued on or before September 25, 1991, an updated operations plan, in accordance with 4VAC25-150-100, showing how all permitted activities to be conducted by the proposed new permittee will comply with the standards of this chapter;

5. If the permit was issued on or before September 25, 1991, for a well, a plat meeting the requirements of 4VAC25-150-90 updated to reflect any changes on the site, newly discovered data or additional data required since the last plat was submitted, including the change in ownership of the well; and

6. If the permit was issued on or before September 25, 1991, if applicable, the docket number and date of recordation of any order issued by the board for a pooled unit, pertaining to the current permit.

C. Standards for approval. The director shall approve the transfer of permit rights when the proposed new permittee:

1. Has registered with the department in accordance with ~~§ 45.1-361.37~~ § 45.2-1639 of the Code of Virginia;

2. Has posted acceptable bond in accordance with ~~§ 45.1-361.31~~ § 45.2-1633 of the Code of Virginia; and

3. Has no outstanding debt pursuant to ~~§ 45.1-361.32~~ § 45.2-1634 of the Code of Virginia.

D. The new permittee shall be responsible for any violations of or penalties under the Act, this chapter, or conditions of the permit after the director has approved the transfer of permit rights.

4VAC25-150-130. Notice of permit applications and modifications.

A. Gas, oil or geophysical operators shall provide notice of an application for a permit or permit modification in accordance with ~~§ 45.1-361.30~~ § 45.2-1632 of the Code of Virginia, as identified on the "Technical Data Sheet for Permit Applications ~~Under § 45.1-361.29~~," prescribed by the director.

B. If notice required under ~~§ 45.1-361.30~~ § 45.2-1632 of the Code of Virginia has been sent by certified mail, return receipt requested, and the notice has not been delivered within 15 days of mailing the notice, the director shall consider notice to be given as of the end of the 15-day period and the objection period specified in ~~§§ 45.1-361.35~~ § 45.2-1637 of the Code of Virginia shall commence.

4VAC25-150-140. Objections to permit applications.

A. Objections shall be filed in writing, at the office of the division, in accordance with ~~§ 45.1-361.35~~ § 45.2-1637 of the Code of Virginia. The director shall notify affected parties of an objection as soon as practicable.

B. If after the director has considered notice to be given under 4VAC25-150-130 B of this chapter, a person submits an objection with proof of receipt of actual notice within 15 days

prior to submitting the objection, then the director shall treat the objection as timely.

C. Objections to an application for a new or modified permit shall contain:

1. The name of the person objecting to the permit;

2. The date the person objecting to the permit received notice of the permit application;

3. Identification of the proposed activity being objected to;

4. A statement of the specific reason for the objection;

5. A request for a stay to the permit, if any, together with justification for granting a stay; and

6. Any other information the person objecting to the permit wishes to provide.

D. When deciding to convene a hearing pursuant to ~~§ 45.1-361.35~~ § 45.2-1637 of the Code of Virginia, the ~~dir0ctor~~ director shall consider the following:

1. Whether the person objecting to the permit has standing to object as provided in ~~§ 45.1-361.35~~ § 45.2-1632 of the Code of Virginia;

2. Whether the objection is timely; and

3. Whether the objection meets the applicable standards for objections as provided in ~~§ 45.1-361.35~~ § 45.2-1637 of the Code of Virginia.

E. If the director decides not to hear the objection, then he shall notify the person who objects and the permit applicant in writing, indicating his reasons for not hearing the objection, and shall advise the objecting person of his right to appeal the decision.

4VAC25-150-150. Hearing and decision on objections to permit applications.

A. In any hearing on objections to a permit application:

1. The hearing shall be an informal fact finding hearing in accordance with the Administrative Process Act, § 2.2-4019 of the Code of Virginia.

2. The permit applicant and any person with standing in accordance with ~~§ 45.1-361.30~~ § 45.2-1632 of the Code of Virginia may be heard.

3. Any valid issue in accordance with ~~§ 45.1-361.35~~ § 45.2-1637 of the Code of Virginia may be raised at the hearing. The director shall determine the validity of objections raised during the hearing.

B. The director shall, as soon after the hearing as practicable, issue his decision in writing and hand deliver or send the decision by certified mail to all parties to the hearing. The decision shall include:

1. The subject, date, time and location of the hearing;

2. The names of the persons objecting to the permit;

3. A summary of issues and objections raised at the hearing;

4. Findings of fact and conclusions of law;

5. The text of the decision, including any voluntary agreement; and

6. Appeal rights.

C. Should the director deny the permit issuance and allow the objection, a written notice of the decision shall be sent to any person receiving notice of the application.

4VAC25-150-160. Approval of permits and permit modifications.

A. Permits, permit modifications, permit renewals, and transfer of permit rights shall be granted in writing by the director.

B. The director may not issue a permit, permit renewal, or permit modification prior to the end of the time period for filing objections pursuant to ~~§ 45.1-361.35~~ § 45.2-1637 of the Code of Virginia unless, upon receipt of notice, any person may, on a form approved by the director, waive the time requirements and their right to object to a proposed permit application or permit modification application. The director shall be entitled to rely upon the waiver to approve the permit application or permit modification.

C. The director may not issue a permit to drill for gas or oil or approve a permit modification for a well where additional documentation is required pursuant to subdivision B 5 of 4VAC25-150-110 in Tidewater Virginia until he has collaborated with the Department of Environmental Quality to ensure permit conditions accurately reflect the results from the Department of Environmental Quality's coordinated review of the environmental impact assessment required pursuant to § 62.1-195.1 of the Code of Virginia.

D. The provisions of any order of the Virginia Gas and Oil Board that govern a gas or oil well permitted by the director shall become conditions of the permit.

4VAC25-150-170. Enforcement.

A. The director shall enforce the provisions of the Act, this chapter, 4VAC25 Chapter 160 (4VAC25-160-10 et seq.) entitled "The Virginia Gas and Oil Board Regulation," any board order, or any condition of a permit, and may use the following methods:

1. Obtaining voluntary compliance through conference, warning or other means prior to issuing any enforcement notice or order;

2. Issuing notices of violation in accordance with 4VAC25-150-180;

3. Issuing closure orders in accordance with 4VAC25-150-190;

4. Issuing show cause orders in accordance with 4VAC25-150-200;

5. Issuing emergency orders in accordance with ~~§ 45.1-361.27 D~~ § 45.2-1629 of the Code of Virginia; or

6. Any other action in accordance with the Code of Virginia.

B. The purpose of taking actions under this section is to obtain compliance with the provisions of the Act, this chapter, 4VAC25 Chapter 160 (4VAC25-160-10 et seq.) entitled "The Virginia Gas and Oil Board Regulation," any board order, or conditions of a permit.

C. Reclamation operations and other activities intended to protect the public health and safety and the environment shall continue during the period of any notice or order unless otherwise provided in the notice or order.

D. Any person found to be conducting a gas, oil or geophysical operation without a permit from the director shall be subject to enforcement for operating without a permit and for not meeting any other standards of the Act or this chapter which would be required if the person was operating under a permit.

E. Decisions of the director may be appealed to the Virginia Gas and Oil Board pursuant to ~~§ 45.1-361.23~~ § 45.2-1625 of the Code of Virginia.

4VAC25-150-180. Notices of violation.

A. The director may issue a notice of violation if he finds a violation of any of the following:

1. Chapter ~~22.1~~ 16 (~~§ 45.1-361.1~~ § 45.2-1600 et seq.) of Title ~~45.1~~ 45.2 of the Code of Virginia;

2. This chapter;

3. 4VAC25-160 entitled "Virginia Gas and Oil Board Regulation";

4. Any board order; or

5. Any condition of a permit, which does not create an imminent danger or harm for which a closure order must be issued under 4VAC5-150-190.

B. A notice of violation shall be in writing, signed, and set forth with reasonable specificity:

1. The nature of the violation, including a reference to the section or sections of the Act, applicable regulation, order or permit condition which has been violated;

2. A reasonable description of the portion of the operation to which the violation applies, including an explanation of the condition or circumstance that caused the portion of the operation to be in violation, if it is not self-evident in the type of violation itself;

3. The remedial action required, which may include interim steps; and

4. A reasonable deadline for abatement, which may include a deadline for accomplishment of interim steps.

C. The director may extend the deadline for abatement or for accomplishment of an interim step, if the failure to meet the deadline previously set was not caused by the permittee's lack of diligence. An extension of the deadline for abatement may not be granted when the permittee's failure to abate has been caused by a lack of diligence or intentional delay by the permittee in completing the remedial action required.

D. If the permittee fails to meet the deadline for abatement or for completion of any interim steps, the director shall issue a closure order under 4VAC25-150-190.

E. The director shall terminate a notice of violation by written notice to the permittee when he determines that all violations listed in the notice of violation have been abated.

F. A permittee issued a notice of violation may request, in writing to the director, an informal fact-finding hearing to review the issuance of the notice. This written request shall be made within 10 days of receipt of the notice. The permittee may request, in writing to the director, an expedited hearing.

G. A permittee is not relieved of the duty to abate any violation under a notice of violation during an appeal of the notice. A permittee may apply for an extension of the deadline for abatement during an appeal of the notice.

H. The director shall issue a decision on any request for an extension of the deadline for abatement under a notice of violation within five days of receipt of such request. The director shall conduct an informal fact-finding hearing, in accordance with the Administrative Process Act, § 2.2-4019 of the Code of Virginia, no later than 10 days after receipt of the hearing request.

I. The director shall affirm, modify, or vacate the notice in writing to the permittee within five days of the date of the hearing.

4VAC25-150-220. Annual reports.

A. Each permittee shall submit a calendar-year annual report to the division by no later than March 31 of the next year.

B. The annual report shall include as appropriate:

1. A confirmation of the accuracy of the permittee's current registration filed with the division or a report of any change in the information;

2. The name, address and phone number or numbers of the persons to be contacted at any time in case of an emergency;

3. Production of gas or oil on a well-by-well and county-by-county or city-by-city basis for each permit or as prescribed by the director and the average price received for each Mcf of gas and barrel of oil;

4. Certification by the permittee that the permittee has paid all severance taxes for each permit;

5. When required, payment to the Gas and Oil Plugging and Restoration Fund as required in ~~§ 45.1-361.32~~ § 45.2-1634 of the Code of Virginia; and

6. Certification by the permittee that bonds on file with the director have not been changed.

4VAC25-150-290. Actual well or corehole location.

A. The actual horizontal surface location of the well shall be within three feet of the permitted location designated on the well plat, except where an operator has stated that the location may vary up to 10 feet in the notice as required in ~~§ 45.1-361.30~~ § 45.2-1632 of the Code of Virginia.

B. The permittee shall survey the actual location of the well which may be made from a minimum of two temporary points not disturbed during development of the well or site and shown on the plat submitted with the permit application. The permittee shall submit an updated plat, certified by a licensed land surveyor or licensed professional engineer, showing the actual well location certified to be within three feet of the permitted location, or within 10 feet as provided for in subsection A of this section. This updated plat shall be included with the drilling report submitted in accordance with 4VAC25-150-360.

4VAC25-150-365. Disclosure of well stimulation fluids.

A. In addition to other requirements that may be prescribed by the director, each completion report required in 4VAC25-150-360 shall also contain the following disclosures:

The operator of the well shall complete the Chemical Disclosure Registry form and upload the form on the Chemical Disclosure Registry, including:

a. The operator name;

b. The date of completion of the hydraulic fracturing treatment or treatments;

c. The county in which the well is located;

d. The American Petroleum Institute (API) number for the well;

e. The well name and number;

f. The longitude and latitude of the wellhead;

g. The total vertical depth of the well;

h. The total volume of water used in the hydraulic fracturing treatment or treatments of the well or the type and total volume of the base fluid used in the hydraulic fracturing treatment or treatments, if something other than water;

i. Each additive used in the hydraulic fracturing treatments and the trade name, supplier, and a brief description of the intended use or function of each additive in the hydraulic fracturing treatment or treatments;

j. Each chemical ingredient used in the hydraulic fracturing treatment or treatments of the well that is subject to the requirements of 29 CFR 1910.1200(g)(2), as provided by the chemical supplier or service company or by the operator, if the operator provides its own chemical ingredients;

k. The actual or maximum concentration of each chemical ingredient listed under subdivision j of this subsection in percent by mass;

l. The CAS number for each chemical ingredient listed, if applicable; and

m. A supplemental list of all chemicals, their respective CAS numbers, and the proportions thereof not subject to the requirements of 29 CFR 1910.1200(g)(2), that were intentionally included in and used for the purpose of creating the hydraulic fracturing treatments for the well.

B. The department shall obtain and maintain data submitted to the Chemical Disclosure Registry. If the Chemical Disclosure Registry is temporarily inoperable, the operator of a well on which hydraulic fracturing treatment or treatments were performed shall supply the department with the required information and upload the information on the registry when it is again operable. The information required shall also be filed as an attachment to the completion report for the well, which shall be posted, along with all attachments, on the department's website, except that information determined to be subject to trade secret protection shall not be posted.

C. All information related to the specific identity or CAS number or amount of any additive or chemical ingredient used in hydraulic fracturing shall be submitted to the department and shall be available to the public unless the department determines that information supplied by the operator and claimed to be a trade secret is entitled to such protection. All information claimed as a trade secret shall be identified as such at the time of submission of the appropriate report. The department shall treat as confidential in accordance with law, information that meets the criteria specified in law for a trade secret and is contained on such forms and filings as is required under this chapter. Such criteria shall include a demonstration by the claimant that the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Should the department determine that information is protected as a trade secret, the operator of the well shall indicate on the Chemical Disclosure Registry or the supplemental list that the additive or chemical ingredient or their amounts are entitled to trade secret protection. If a chemical ingredient name or CAS number is entitled to trade secret protection, the chemical family or other similar description associated with such chemical ingredient shall be

provided. The operator of the well on which hydraulic fracturing was performed shall provide the contact information, including the name, authorized representative, mailing address, and phone number of the business organization for which trade secret protection exists. Unless the information is entitled to protection as a trade secret, information submitted to the department or uploaded on the Chemical Disclosure Registry is public information.

D. The operator understands that the director may disclose information regarding the specific identity of a chemical, the concentration of a chemical, or both the specific identity and concentration of a chemical claimed to be a trade secret to additional department staff to the extent that such disclosure is necessary to assist the department in responding to an emergency resulting in an order pursuant to subsection D of ~~§ 45.1-361.27~~ § 45.2-1629 of the Code of Virginia provided that such individuals shall not disseminate the information further. In addition, the director may disclose such information to any relevant state or local government official to assist in responding to the emergency. Any information so disclosed shall at all times be considered confidential and shall not be construed as publicly available. The director shall notify the trade secret claimant or holder of disclosures made to relevant state or local government officials as soon as practicable after such disclosure is made.

E. An operator may not withhold information related to chemical ingredients used in hydraulic fracturing, including information identified as a trade secret, from any health professional or emergency responder who needs the information for diagnostic, treatment, or other emergency response purposes subject to procedures set forth in 29 CFR 1910.1200(i). An operator shall provide directly to a health professional or emergency responder, all information in the person's possession that is required by the health professional or emergency responder, whether or not the information may qualify for trade secret protection under this section. The person disclosing information to a health professional or emergency responder shall include with the disclosure, as soon as circumstances permit, a statement of the health professional's confidentiality obligation. In an emergency situation, the operator shall provide the information immediately upon request to the person who determines that the information is necessary for emergency response or treatment. The disclosures required by this subsection shall be made in accordance with the procedures in 29 CFR 1910 with respect to a written statement of need and confidentiality agreements, as applicable.

4VAC25-150-410. Venting and flaring of gas; escape of oil.

A. It shall be unlawful for any permittee to allow crude oil or natural gas to escape from any well, gathering pipeline or storage tank except as provided for in this section or in an approved operations plan. The permittee shall take all reasonable steps to shut in the gas or oil in the well, or make the necessary repairs to the well, gathering pipeline or storage tank to prevent the escape. All actions shall be consistent with the requirements of an abatement plan, if any has been set, in a notice of violation or closure, emergency or other order issued by the director.

B. A permittee shall drill or repair a well with special diligence so that waste of gas or oil from the well shall not continue longer than reasonably necessary under the following circumstances:

1. When, during drilling, gas or oil is found in the well and the permittee desires to continue to search for gas or oil by drilling deeper; or

2. When making repairs to any well producing gas or oil, commonly known as cleaning out.

C. No gas shall be flared or vented from a well for more than seven days after completion of the well except in these circumstances:

1. When a well must be blown to remove accumulated formation fluid which has restricted efficient production, or the well must be otherwise cleaned out as provided for in subsection B of this section;

2. For the safety of mining operations;

3. For any activity excluded in the definition of "waste" under ~~§ 45.1-361.1~~ § 45.2-1600 of the Act; or

4. For any other operational reason approved in advance by the director.

D. In all cases where both gas and oil are found and produced from the same stratum, the permittee shall use special diligence to conserve and save as much of the gas as is reasonably possible.

E. Venting shall only be used when flaring is not safe or not feasible.

4VAC25-150-435. Plugging for abandonment or plug-back operations.

A. Permit requirements; variances.

1. Plugging operations shall not commence until a detailed plugging plan has been submitted to and approved by the director. A permit modification is required if the well was not previously permitted for plugging.

2. Any person may file an application with the director to replug a previously plugged well in any manner permissible under provisions of this section to facilitate the safe mining-through of the well at a later date. The application shall be treated in all respects like any other application for a permit under ~~§ 45.1-361.29~~ § 45.2-1631 of the Code of Virginia.

3. The director may, upon application by the permittee, approve a variance to the prescribed plugging methods for

the following reasons if it is determined that the alternate plan meets the requirements of the Act:

a. The coal owner or operator requests a special plugging program to facilitate mine safety, mining through the well, or to obtain approval from another governmental agency for the safe mining-through of a well. The application for a variance must include documentation of the request from the coal owner or operator.

b. The permittee has obtained written authorization from the coal owner or operator for alternate plugging of the coal-bearing section. The application for a variance must include documentation of approval by the coal owner or operator.

c. Downhole conditions such as junk in the hole, a stuck or collapsed casing, caving or other adverse conditions which would prevent proper execution of the prescribed plugging methods.

d. A permittee presents an alternate plugging plan which may differ in method from that prescribed herein, but which will achieve the desired result.

B. Plugging in open hole. When a well or section of a well without casing is to be plugged or plugged back, it shall be sealed and filled as prescribed in this section.

1. At a point approximately 20 feet above each oil, gas or water-bearing stratum in open hole, a plug shall be placed so as to completely seal the wellbore. Whenever two or more gas or oil stratum are not widely separated, they may be treated as a single stratum and plugged accordingly. Cement plugs shall be at least 100 feet in length. At least 20 feet of cement shall be placed on top of open hole bridge plugs.

2. At each coal seam, a cement plug shall be placed from not less than 50 feet below the base of the coal to not less than 50 feet above the top of the coal. Whenever two or more coal seams are not widely separated, they may be treated as a single seam and plugged accordingly. This subsection applies only to coal seams which occur at a depth compatible with mining. Coal-bearing sections at greater depths may be plugged in accordance with subdivision B 1 of this section.

3. If a source of groundwater capable of having a beneficial use is exposed in open hole below surface (water-protection) casing, a cement plug at least 100 feet in length shall be placed below the base of the lowest such groundwater zone.

4. A cement plug of a minimum length of 100 feet shall be placed across the shoe of the surface (water-protection) casing. The plug shall be placed so as to have approximately equal lengths in open hole and inside casing. If the well is without surface casing, a continuous cement plug shall be placed from at least 50 feet below the base of the lowest known aquifer or 300 feet depth, whichever is deeper, to the surface.

5. All intervals below and between plugs shall be filled with drilling mud, bentonite gel, or other appropriately weighted materials approved by the director.

C. Plugging in cased hole. When a cased hole or section of a cased hole is to be plugged or plugged back, it shall be sealed and filled as prescribed in this section.

1. All perforated intervals shall be either squeeze-cemented or otherwise isolated from the wellbore by suitable plugs placed across or immediately above the perforated interval. Cement plugs placed across perforations shall extend to at least 50 feet above the top perforations. A cement plug shall be placed to at least 50 feet above squeezed perforations. Cement plugs placed entirely above perforations shall be at least 100 feet in length. At least 20 feet of cement shall be placed on top of bridge plugs, cement retainers, or other tools left in the hole.

2. At each coal seam which is behind a properly installed and cemented coal-protection casing, a cement plug shall be placed from not less than 50 feet below the base of the coal to not less than 50 feet above the top of the coal. Whenever two or more coal seams are not widely separated, they may be treated as a single seam and plugged accordingly.

3. If casing is not to be pulled, and there is uncemented annulus behind the pipe, plugging shall be as follows:

a. Each oil, gas or water-bearing stratum present behind the pipe in an uncemented annulus must be isolated by perforating the casing at each zone and squeezing cement up into the zone, or circulating cement up the annulus such that a cement fill-up of not less than 100 feet is achieved. When squeezing or circulating the annulus, a cement plug of at least 50 feet shall be placed inside the casing above the perforations.

b. If the well penetrates a minable coal-bearing section, and no coal-protection casing was used, and if surface (water-protection) casing is either absent or not properly placed and cemented to surface, the production casing shall be converted to a coal-protection string by perforating at least 50 feet below the base of the lowest coal stratum, and circulating cement in the annulus from that point to the surface.

c. At each coal seam in a minable coal-bearing section which is protected by a properly installed and cemented coal-protection string, a cement plug shall be placed in casing from not less than 50 feet below the base of the coal to not less than 50 feet above the top of the coal. If there is uncemented annulus between the inner casing and the coal-protection string, the casing shall be perforated to allow cement to be circulated over the prescribed interval, and a plug of equal length shall be placed inside the inner casing.

d. If a fresh water aquifer is exposed to the wellbore in an uncemented annulus, it shall be isolated by perforating the

casing at least 100 feet below the aquifer and squeezing cement into the annulus or circulating it up the annulus so that a fill-up of not less than 100 feet is achieved. When squeezing or circulating cement, a cement plug of at least 100 feet shall be placed inside the casing above the perforation.

e. At a point no less than 50 feet below the shoe of surface (water-protection) string, the casing shall be perforated and cement circulated up the annulus to a minimum fill-up of 100 feet. A plug of equal length shall be placed inside the casing.

f. From a point not less than 50 feet below surface, a cement plug shall be installed which reaches the surface. If any uncemented annuli are present at the surface, the voids should be filled and sealed to the greatest extent possible by introducing cement from the surface.

g. All intervals below and between plugs shall be filled with drilling mud, bentonite gel, or other appropriately weighted materials approved by the director.

4. If casing is to be pulled, plugging shall be as follows:

a. All perforated intervals shall be isolated as described in subdivision C 1 of this section.

b. Casing stubs shall be isolated by placing a plug across or above the cut-off point. Cement plugs shall be at least 100 feet in length and shall be placed so as to have approximately equal lengths inside and above the remnant casing. Permanent bridge plugs may be placed above the stub and shall be capped by at least 20 feet of cement.

D. Plugging operations involving uncemented water-protection casing or coal-protection casing.

1. If the annulus of the largest casing present across a minable coal-bearing section is not cemented across that section, then one of the two procedures listed below must be followed:

a. The casing must be perforated at least 50 feet below the lowest coal seam, and cement circulated in the annulus to the surface (if water-protection casing is absent or not properly placed and cemented to surface), or to at least 100 feet above the highest coal (if the casing is to be partially pulled to facilitate plugging operations in the fresh water zone). Plugging shall proceed according to cased hole requirements; or

b. The casing shall be pulled from the well, and plugging shall proceed according to open hole requirements.

2. If the annulus of the largest casing present across the fresh-water-bearing section is not cemented across that section, then one of the two procedures listed below must be followed:

a. The casing shall be perforated below the lowest known fresh-water zone or at a minimum depth of 300 feet. Cement shall be circulated in the annulus to the surface. Plugging shall proceed according to cased hole requirements; or

b. The casing shall be pulled from the well, and a continuous cement plug shall be placed from below the base of the lowest known fresh-water aquifer exposed to the wellbore, or 300-foot depth, whichever is deeper, to the surface.

E. Unfillable cavities. When an unfillable cavity such as a cavern, mine void, blast stimulation zone or gob completion is encountered, the section shall be plugged as follows:

1. If the stratum with the unfillable cavities is the lowest gas or oil stratum in the well, a plug shall be placed at the nearest suitable point not less than 20 feet above the stratum. Cement plugs shall be at least 100 feet long, and at least 20 feet of cement shall be placed on top of bridge plugs.

2. If the stratum with unfillable cavities is above the lowest gas or oil stratum, a plug shall be placed below the stratum and shall extend to within 20 feet of its base. A plug shall also be placed above the stratum as described in subdivision E 1 of this section.

4VAC25-150-470. Release of bond.

A. Application for bond release.

A permittee desiring to have a bond released by the director shall apply in writing identifying the operation, and documenting that the well or disturbed land meets the requirements for partial or full bond release. A bond may be reduced or released by the director only in writing.

B. Partial bond release.

The portion of a permittee's bond covering disturbed land may be released as follows:

1. A permittee with an individual bond under ~~§ 45.1-361.31 A~~ § 45.2-1633 of the Code of Virginia shall be eligible for release of the portion of the bond covering disturbed land after the land has been successfully reclaimed to the standards of 4VAC25-150-260 of this chapter.

2. A permittee with a blanket bond under ~~§ 45.1-361.31 B~~ § 45.2-1633 of the Code of Virginia shall be eligible for release of 75% of the portion of the bond calculated on acreage of disturbed land after the land has been successfully reclaimed to the standards of 4VAC25-150-260 of this chapter.

C. Full bond release.

A permittee's bond or coverage of a well and land under a blanket bond is eligible for full release when:

1. A well has been plugged, the plugging affidavit has been submitted to the director and the land under the bond has been successfully reclaimed to the standards of 4VAC25-150-260 of this chapter;

2. The well is abandoned as a water well in accordance with 4VAC25-150-440 of this chapter and the land under the bond has been successfully reclaimed to the standards of 4VAC25-150-260 of this chapter;

3. The well is abandoned as a vertical ventilation hole in accordance with 4VAC25-150-650 of this chapter and the land under the bond is permitted by the department's Division of Mined Land ~~Reclamation~~ Repurposing or has been successfully reclaimed to the standards of 4VAC25-150-260 of this chapter; or

4. Other bond has been accepted by the director.

4VAC25-150-480. Orphaned wells; right of entry.

A. Written consent from the owner of record or lessee, or their authorized agents, is the preferred means for obtaining agreements to enter lands in order to carry out plugging of orphaned wells and restoration of their sites. Nonconsensual entry under ~~§ 45.1- 361.27~~ § 45.2-1629 E of the Code of Virginia shall be undertaken only after reasonable efforts have been made to obtain written consent.

B. Consent and entry shall meet the following standards:

1. The director or authorized contractors may enter lands to perform plugging and restoration activities or to conduct studies or investigations of orphaned wells if consent from the owner is obtained.

2. If consent is not obtained, then, prior to entry under this section, the director shall find, in writing, with supporting reasons, that:

a. Citizens or the environment of the Commonwealth or persons involved in coal or mineral mining may be at risk from an orphaned well; and

b. The owner of the land where entry must be made to plug an orphaned well and restore the site is not known or readily available, or the owner will not give permission for the director or authorized contractors to enter to plug the orphaned well and reclaim the site.

C. If consent is not obtained, the director shall give notice of his intent to enter for the purposes of conducting plugging and restoration at least 30 days before entry into the property. The notice shall be in writing and shall be mailed, return receipt requested, to the owner, if known, with a copy of the findings required by this section. If the owner is not known, or if the current mailing address of the owner is not known, notice shall be posted in one or more places on the property to be entered, where it is readily visible to the public. The notice posted on the property and the newspaper notice pursuant to ~~§ 45.1-361.40~~ § 45.2-1642 C of the Code of Virginia shall include a statement of where the findings required by this section may be inspected or obtained.

4VAC25-150-510. Plats, conventional wells or Class II injection wells.

A. In addition to the requirements of 4VAC25-150-90, every plat for a conventional gas or oil well shall show:

1. The boundaries of any drilling unit established by the board around the subject well;

2. The boundaries and acreage of the tract on which the well is located or is to be located;

3. The boundaries and acreage of all other tracts within one-half of the distance specified in ~~§ 45.1 361.17~~ § 45.2-1616 of the Code of Virginia or within one-half of the distance to the nearest well completed in the same pool, whichever is less, or within the boundaries of a drilling unit established by the board around the subject well;

4. Surface owners on the tract to be drilled and on all other tracts within the unit where the surface of the earth is to be disturbed;

5. All gas, oil or royalty owners on any tract located within one half of the distance specified in ~~§ 45.1 361.17~~ § 45.2-1616 of the Code of Virginia or within one-half of the distance to the nearest well completed in the same pool, whichever is less, or within the boundaries of a drilling unit established by the board around the subject well;

6. Coal owners and mineral owners on the tract to be drilled and on all other tracts located within 500 feet of the subject well location;

7. Coal operators who have registered operations plans with the department for activities located on the tract to be drilled, or who have applied for or obtained a coal mine license, coal surface mine permit or a coal exploration notice or permit from the department with respect to all tracts within 500 feet of a proposed gas or oil well;

8. Any inhabited building, highway, railroad, stream, permitted surface mine or permitted mine opening within 500 feet of the proposed well; and

9. If the plat is for an enhanced oil recovery injection well, any other well within 2,500 feet of the proposed or actual well location, which shall be presumed to embrace the entire area to be affected by an enhanced oil recovery injection well in the absence of a board order establishing units in the target pool of a different size or configuration.

B. If the well location is underlain by known coal seams, or if required by the director, the well plat shall locate the well and two permanent points or landmarks with reference to the mine coordinate system if one has been established for the area of the well location, and shall in any event show all other wells, surface mines and mine openings within the scope of the plat.

4VAC25-150-560. Application for a permit, coalbed methane well operations.

In addition to the requirements of 4VAC25-150-80 or 4VAC25-150-110, every application for a permit or permit modification for a coalbed methane gas well shall contain:

1. An identification of the category of owner or operator, as listed in ~~§ 45.1-361.30~~ § 45.2-1632 A of the Code of Virginia, that each person notified of the application belongs to;

2. The signed consent required in ~~§ 45.1-361.29~~ § 45.2-1631 of the Code of Virginia;

3. Proof of conformance with any mine development plan in the vicinity of the proposed coalbed methane gas well, when the Virginia Gas and Oil Board has ordered such conformance;

4. The approximate depth to which the well is proposed to be drilled or deepened, or the actual depth if the well has been drilled;

5. The approximate depth and thickness, if applicable, of all known coal seams, known groundwater-bearing strata, and other known gas or oil strata between the surface and the depth to which the well is proposed to be drilled;

6. If casing or tubing is proposed to be or has been set, a description of the entire casing program, including the size of each string of pipe, the starting point and depth to which each string is to be or has been set, and the extent to which each string is to be or has been cemented together with any request for a variance under 4VAC25-150-580; and

7. The procedures to be followed to protect the safety of persons working in an underground coal mine for any coalbed methane well to be drilled within 200 feet of or into active workings. The permittee shall give notice of such drilling to the mine operator and the chief at least two working days prior to drilling.

4VAC25-150-590. Plats, coalbed methane wells.

A. In addition to the requirements of 4VAC25-150-90, every plat for a coalbed methane gas well shall show:

1. Boundaries and acreage of any drilling unit established by the board around the subject well;

2. Boundaries and acreage of the tract on which the well is located or is to be located;

3. Boundaries and acreage of all other tracts within one-half of the distance specified in ~~§ 45.1-361.17~~ § 45.2-1616 of the Code of Virginia or within one-half of the distance to the nearest well completed in the same pool, whichever is less, or within the boundaries of a drilling unit established by the board around the subject well;

4. Surface owners on the tract to be drilled and on all other tracts within the unit where the surface of the earth is to be disturbed;

5. All gas, oil or royalty owners on any tract located within one-half of the distance specified in ~~§ 45.1-361.17~~ § 45.2-1616 of the Code of Virginia or within one-half of the distance to the nearest well completed in the same pool, whichever is less, or within the boundaries of a drilling unit established by the board around the subject well;

6. Coal owners and mineral owners on the tract to be drilled and on all other tracts located within 750 feet of the subject well location;

7. Coal operators who have registered operations plans with the department for activities located on the tract to be drilled, or who have applied for or obtained a coal mine license, coal surface mine permit or a coal exploration notice or permit from the department with respect to all tracts within 750 feet of a proposed gas or oil well; and

8. Any inhabited building, highway, railroad, stream, permitted surface mine or permitted mine opening within 500 feet of the proposed well.

B. The well plat shall locate the well and two permanent points or landmarks with reference to the mine coordinate system if one has been established for the area of the well location, and shall show all other wells within the scope of the plat.

4VAC25-150-620. Coalbed methane gas wellhead equipment.

Wellhead equipment and facilities installed on any gob well or on any coalbed methane gas well subject to the requirements of §§ ~~45.1-161.121~~ 45.2-707 and ~~45.1-161.292~~ 45.2-939 of the Code of Virginia addressing mining near or through a well shall include a safety precaution plan submitted to the director for approval. Such plans shall include, but shall not be limited to, flame arrestors, back-pressure systems, pressure-relief systems, vent systems and fire-fighting equipment. The director may require additional safety precautions or equipment to be installed on a case-by-case basis.

4VAC25-160-10. Definitions.

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

"Act" means the Virginia Gas and Oil Act of 1990, Chapter ~~22.1~~ 16 (~~§ 45.1-361.1~~ § 45.2-1600 et seq.) of Title ~~45.1~~ 45.2 of the Code of Virginia.

"Applicant" means a person or business who files an application, petition, appeal or other request with the Division of Gas and Oil.

"Board" means the Virginia Gas and Oil Board.

"Complete application" means all the materials required to be filed by the applicant under this chapter.

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

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

"Directional survey" means a well survey that measures the degree of deviation of a hole, or distance, from the vertical and the direction of departure.

"Division" means the Division of Gas and Oil of the Department of ~~Mines, Minerals and~~ Energy.

"Division director" means the Director of the Division of Gas and Oil.

"Election" means the performance of an act within the time established or required by statute, order or regulation. An election required to be made by board order or regulation must be in writing and (i) be personally delivered to the person or agent of the person described in the order or regulation by the date established or required, or (ii) be mailed to the person or agent of the person described in the order or regulation at the address stated therein and be postmarked by the United States Postal Service before midnight on the date established or required.

"Field" means the general area underlain by one or more pools.

"Gas/oil ratio" means the product of the number of Mcf of natural gas produced from a well divided by the number of barrels of oil produced from the well as determined by a gas/oil ratio test.

"Gas well" means any well which produces or appears capable of producing a ratio of 6,000 cubic feet (6 Mcf) of gas or more to each barrel of oil, on the basis of a gas-oil ratio test.

"Inclination survey" means a well survey to determine the deviation, using the surface location of the well as the apex, of a well bore from the true vertical beneath the apex on the same horizontal subsurface plane.

"Mcf" means, when used with reference to natural gas, 1,000 cubic feet of gas at a pressure base of 14.73 pounds per square inch gauge and a temperature base of 60°F.

"Mine development plan" means a permit or license application filed with the Division of Mines or Mined Land ~~Reclamation~~ Repurposing for legal permission to engage in extraction of coal resources.

"Oil well" means any well which produces or appears capable of producing a ratio of less than 6,000 cubic feet (6 Mcf) of gas to each barrel of oil, on the basis of a gas-oil ratio test.

"Petitioner" means any person or business who files a petition, appeal, or other request for action with the Division of Gas and Oil or the Virginia Gas and Oil Board.

"Pooling" means the combining of all interests or estates in a gas, oil or coalbed methane drilling unit for the development and operations thereof. Pooling may be accomplished either through voluntary agreement or through a compulsory order of the board.

"Respondent" means a person named in an application, petition, appeal or other request for board action and against whom relief is sought by the applicant, or a person who under the terms of a board order, is required to make an election.

"Unit operator" means the gas or oil owner designated by the board to operate in or on a pooled unit.

4VAC25-160-20. Authority and applicability.

A. This chapter is promulgated by the Virginia Gas and Oil board pursuant to ~~§ 45.1-361.15~~ § 45.2-1614 of the Code of Virginia.

B. ~~As provided for in the Virginia Acts of Assembly, 1990, Chapter 92, all~~ All field rules and orders issued pursuant to the provisions of the Oil and Gas Act of 1982, Chapter 22 (§ 45.1-286 et seq.) of Title 45.1 of the Code of Virginia shall remain in force and effect until modified or revoked pursuant to the provisions of the Gas and Oil Act of 1990, Chapter ~~22.1~~ 16 (~~§ 45.1-361.1~~ § 45.2-1600 et seq.) of Title ~~45.1~~ 45.2 of the Code of Virginia. The requirements of this chapter are in addition to requirements of field rules and orders.

4VAC25-160-30. Administrative provisions.

A. The Virginia Gas and Oil Board shall meet on the third Tuesday of each calendar month unless no action is required by the board or unless otherwise scheduled by the board. All hearings shall be scheduled in accordance with the requirements for notice by publication in ~~§ 45.1-361.19~~ § 45.2-1618 of the Code of Virginia. Except where otherwise established by the Act, the board may establish deadlines for filing materials for meetings or hearings scheduled on other than the third Tuesday of each month. Except where otherwise established by the Act, filings shall be in electronic form or a format prescribed by the board.

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

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

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

a. The affidavit demonstrating that due diligence was used to locate and serve persons in accordance with ~~§ 45.1-361.19~~ § 45.2-1618 of the Code of Virginia and 4VAC25-160-40; and

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

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

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

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

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

a. "Before the Virginia Gas and Oil Board";

b. The name of the applicant;

c. The relief sought; and

d. The docket number assigned by the division.

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

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

4. Applicants shall submit a copy of each application and exhibits. Each person offering exhibits into evidence shall also have available a reasonably sufficient number of exhibits for other persons who are subject to the provisions of §§ ~~45.1-361.19~~ 45.2-1618 and ~~45.1-361.23~~ 45.2-1625 of the Code of Virginia, who have notified the division of their request for copies of exhibits, and are expected to be in attendance at the hearing.

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

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

4VAC25-160-40. Notice of hearings.

A. Each applicant for a hearing to establish an exception to statewide spacing under ~~§ 45.1-361.17~~ § 45.2-1616 of the Code of Virginia shall provide notice by electronic mail, by certified mail, return receipt requested, or by another commercial carrier including Federal Express and United Parcel Service, return receipt requested, to all gas, oil, coal or mineral owners having an interest underlying any tract located within the distances provided in ~~§ 45.1-361.17~~ § 45.2-1616 of the Code of Virginia or the distance to the nearest well completed in the same pool, whichever is less. Each applicant for a hearing to establish an exception to a well location provided for in a drilling unit established by an order of the board shall provide notice by certified mail, return receipt requested, to all gas, oil, coal or mineral owners having an interest underlying the unit where the exception is requested.

B. Each applicant shall include, in or with the mailed notice of the hearing required under ~~§ 45.1-361.19~~ § 45.2-1618 of the Code of Virginia, the following information:

1. The name and address of the applicant and the applicant's counsel, if any;

2. In the case of an application to vacate or amend an order, identification of the order to be vacated or amended;

3. A statement of the relief sought and proposed provisions of the order or proposed order;

4. Citations of statutes, rules, orders and decided cases supporting the relief sought;

5. A statement of the type of well or wells (gas, oil or coalbed methane gas);

6. a. For a pooling order, the notice should include: a plat showing the size and shape of the proposed unit and boundaries of tracts within the unit. The location of the proposed unit shall be shown in accordance with the Virginia Coordinate System of 1983, as defined in ~~Chapter 17 (§ 55-287 et seq.) of Title 55~~ § 1-600 of the Code of Virginia, also known as the State Plane Coordinate System. The plat shall include property lines taken from (i) deed descriptions and chain of title, (ii) county courthouse records, or (iii) a physical survey for each land track in the unit. The location of the well and the percentage of acreage in each tract in the unit shall be certified by a licensed land surveyor or a licensed professional engineer and attested by the applicant as to its conformity to existing orders issued by the board;

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

c. For a location exception, the notice should include: a description of the proposed well location in relation to

other wells within statewide spacing limits or in relation to the allowable area for drilling within a unit;

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

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

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

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

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

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

1. The name and address of the applicant;

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

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

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

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

D. Notice of a hearing made in accordance with ~~§ 45.1-361.19~~ § 45.2-1618 of the Code of Virginia or this section shall be sufficient, and no additional notice is required to be made by the applicant upon a postponement or continuance of the hearing.

E. Each applicant for a hearing to modify an order established under ~~§ 45.1-361.21~~ § 45.2-1620 or ~~§ 45.1-361.22~~ § 45.2-1622 of the Code of Virginia shall provide notice in accordance with ~~§ 45.1-361.19~~ § 45.2-1618 of the Code of Virginia to each person having an interest underlying the tract or tracts to be affected by the proposed modification.

F. An applicant filing a petition to modify a forced pooling order established under ~~§ 45.1-361.21~~ § 45.2-1620 or ~~§ 45.1-361.22~~ § 45.2-1622 of the Code of Virginia to change the unit operator based on a change in the corporate name of the unit operator; a change in the corporate structure of the unit operator; or a transfer of the unit operator's interests to any single subsidiary, parent or successor by merger or consolidation is not required to provide notice. Other applicants for a hearing to modify a forced pooling order shall provide notice in accordance with ~~§ 45.1-361.19~~ § 45.2-1618 of the Code of Virginia to each respondent named in the order to be modified whose interest may be affected by the proposed modification.

4VAC25-160-50. Applications for field rules.

Each application filed under ~~§ 45.1-361.20~~ § 45.2-1619 of the Code of Virginia to establish or modify a field rule, a drilling unit or drilling units shall contain:

1. The name and address of the applicant and the applicant's counsel, if any;

2. In the case of an application to vacate or amend an order, identification of the order to be vacated or amended;

3. A statement of the relief sought and the proposed provisions of the order or a proposed order;

4. Citations of statutes, rules, orders, and decided cases supporting the relief sought;

5. In the case where a field rule is proposed to be established or modified:

a. A statement of the type of field (gas, oil or coalbed methane gas);

b. A description of the proposed formation or formations subject to the petition; and

c. A description of the pool or pools included in the field, based on geological and technical data, including the boundaries of the pool or pools and field, shown in accordance with the Virginia Coordinate System of 1983, as defined in ~~Chapter 17 (§ 55-287 et seq.) of Title 55~~ § 1-600 of the Code of Virginia, also known as the State Plane Coordinate System;

6. In the case where a drilling unit or units are proposed to be established or modified:

a. A statement of the acreage to be embraced within each drilling unit;

b. A description of the formation or formations to be produced by the well or wells in the unit or units; and

c. The boundaries of the drilling unit or units shown in accordance with subdivision 5 c of this section;

7. A statement of the amount of acreage to be included in the order;

8. A statement of the proposed allowable production rate or rates and supporting documentation, if applicable;

9. Evidence that any proposal to establish or modify a unit or units for coalbed methane gas will meet the requirements of ~~§ 45.1-361.20~~ § 45.2-1619 of the Code of Virginia;

10. An affidavit demonstrating that due diligence was used to locate and serve persons in accordance with ~~§ 45.1-361.19~~ § 45.2-1618 of the Code of Virginia and 4VAC25-160-40; and

11. When required, proof of notice by publication in accordance with 4VAC25-160-40 C.

4VAC25-160-60. Applications for exceptions to minimum well spacing requirements.

Applications for an exception to statewide spacing under ~~§ 45.1-361.17~~ § 45.2-1616 of the Code of Virginia or under a field rule issued by the board shall contain the following:

1. The name and address of the applicant and the applicant's counsel, if any;

2. In the case of an application for an exception to spacing established in a field rule, identification of the order governing spacing in the field;

3. A statement of the proposed location of the well in relation to wells permitted or for which a permit application is pending before the Division of Gas and Oil at the time of filing within the distances prescribed in ~~§ 45.1-361.17~~ § 45.2-1616 of the Code of Virginia;

4. A description of the formation or formations to be produced by the well proposed for alternative spacing and the wells identified in subdivision 3 of this section;

5. A description of the conditions justifying the alternative spacing;

6. An affidavit demonstrating that due diligence was used to locate and serve persons in accordance with 4VAC25-160-40; and

7. When required, proof of notice by publication in accordance with 4VAC25-160-40 C.

4VAC25-160-70. Applications to pool interests in a drilling unit: conventional gas or oil or no conflicting claims to coalbed methane gas ownership.

A. Applications filed under ~~§ 45.1-361.21~~ § 45.2-1620 of the Code of Virginia to pool interests in a drilling unit for conventional gas or oil or for coalbed methane gas where there are no conflicting claims to ownership of the coalbed methane gas, except as provided for in subsection B of this section, shall contain the following:

1. The name and address of the applicant and the applicant's counsel, if any;

2. In the case of an application to vacate or amend an order, identification of the order to be vacated or amended;

3. A statement of the relief sought and proposed provisions of the order or a proposed order;

4. Citations of statutes, rules, orders, and decided cases supporting the relief sought;

5. A statement of the type of well or wells (gas, oil or coalbed methane gas);

6. The permit number or numbers, if any have been issued;

7. A plat showing the size and shape of the proposed unit and boundaries of tracts within the unit, shown in accordance with the Virginia Coordinate System of 1983, as defined in ~~Chapter 17 (§ 55-287 et seq.) of Title 55~~ § 1-600 of the Code of Virginia, also known as the State Plane Coordinate System. Also included shall be the names of owners of record of the tracts, and the percentage of acreage in each tract, certified by a licensed land surveyor or a licensed professional engineer and attested by the applicant as to its conformity to existing orders issued by the board;

8. A description of the status of interests to be pooled in the unit at the time the application is filed;

9. For an application to pool a coalbed methane gas unit, a statement of the percentage of the total interest held by the applicant in the proposed unit at the time the application for the hearing is filed;

10. A statement of the names of owners and the percentage of interests to be escrowed under ~~§ 45.1-361.21 D~~ § 45.2-1620 of the Code of Virginia for each owner whose location is unknown at the time the application for the hearing is filed;

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

12. An estimate of production over the life of well or wells, and, if different, an estimate of the recoverable reserves of the unit;

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

14. An affidavit demonstrating that due diligence was used to locate and serve persons in accordance with ~~§ 45.1-361.19~~ § 45.2-1618 of the Code of Virginia and 4VAC25-160-40 C; and

15. When required, proof of notice by publication in accordance with 4VAC25-160-40 C.

B. Applications to amend an order pooling interests in a drilling unit may be filed by written stipulation of all persons affected. The application is not required to contain the information specified in subsection A of this section, but shall contain the proposed amended language to the order, shown by interlineation.

C. Within 45 days after the time for election provided in any pooling order has expired, the unit operator shall file an affidavit with the board stating whether or not any elections were made. If any elections were made, the affidavit shall

name each respondent making an election and describe the election made. The affidavit shall state if no elections were made or if any response was untimely. The affidavit shall be accompanied by a proposed supplemental order to be made and recorded to complete the record regarding elections. The affidavit and proposed supplemental order shall be filed by the unit operator within 45 days of the last day on which a timely election could have been delivered or mailed, or within 45 days of the last date for payment set forth in the pooling order, whichever occurs last. The applicant shall mail a true and correct copy of any supplemental order to all persons identified in the supplemental order.

4VAC25-160-80. Applications to pool interests in a drilling unit: conflicting claims to coalbed methane gas ownership.

In addition to the information required in 4VAC25-160-70 of this chapter, applications filed under ~~§ 45.1-361.22~~ § 45.2-1622 of the Code of Virginia to pool interests in a drilling unit for coalbed methane gas where there are conflicting claims to ownership of the coalbed methane gas shall contain a description of the conflicting ownership claims and the percentage of interests to be escrowed for the conflicting claims, and a plan for escrowing the costs of drilling and operating the well or wells and the proceeds from the well or wells attributable to the conflicting interests.

4VAC25-160-100. Allowable cost which may be shared in pooled gas or oil operations.

A. The unit operator of a pooled unit may share all reasonable costs of operating the unit, including a reasonable supervision fee, with other participating and nonparticipating operators, as provided for in ~~§ 45.1-361.21~~ § 45.2-1620 of the Code of Virginia, which may include:

1. Direct costs:

a. Ecological and environmental;

b. Rentals and royalties;

c. Labor;

d. Employee benefits;

e. Material;

f. Transportation;

g. Services;

h. Equipment and facilities furnished by the unit operator;

i. Damages and losses to joint property;

j. Legal expenses;

k. Taxes;

l. Insurance;

m. Abandonment and reclamation;

n. Communications; and

o. Other expenditures.

2. Indirect charges:

a. Drilling and production operations;

b. Major construction; and

c. Catastrophe.

B. Where there are conflicting royalty claims to coalbed methane gas, the unit operator of a forced pooled coalbed methane gas unit shall deposit proceeds in accordance with ~~§ 45.1-361.22~~ § 45.2-1622 of the Code of Virginia, to be determined at the wellhead.

C. Where there are conflicting claims and one or more persons have elected to become participating or nonparticipating operators, the unit operator of a forced pooled coalbed methane gas unit shall escrow net proceeds after deduction for royalty and other costs consistent with the terms of this chapter and the board's order regarding the unit.

D. In any dispute which may arise regarding a unit operator's costs, the unit operator shall be entitled to the benefit of a presumption of reasonableness where it is shown that the types of costs being disputed are, by custom and practice, customary and usual within the industry. The unit operator shall not be entitled to a presumption of reasonableness of the amount of the costs being disputed.

E. Unless one or more respondents elect to participate or elect to be a nonparticipating operator on a carried basis, the unit operator shall have no obligation to report costs after the expiration of the election period.

4VAC25-160-120. Applications to change the unit operator for a unit established by order of the board.

A. Transfer of the right to operate a unit established by the board must be approved by the board prior to the transfer of unit operations to a new operator.

1. For a voluntary transfer, the proposed new unit operator shall file written notification of the proposed transfer of operations.

2. An involuntary transfer may be requested by an applicant or considered by the board on its own motion if the unit operator has not continued gas or oil operations of the unit with due diligence, or the permit for any well in the unit has been revoked by the department.

B. The request for a transfer shall include:

1. The name and address of the existing unit operator;

2. The name and address of the proposed new unit operator;

3. Written approval from the existing unit operator, or a detailed statement of the facts supporting the removal of the existing operator; and

4. Identification of the order to be amended.

C. The notice of the board hearing shall be provided under ~~§ 45.1-361.19 B~~ § 45.2-1618 of the Code of Virginia.

4VAC25-160-130. Appeals of the director's decisions.

A. Appeals of the division director's decisions shall be filed in writing, at the office of the division, in accordance with §§ ~~45.1-361.23~~ 45.2-1625 and ~~45.1-361.36~~ 45.2-1637 of the Code of Virginia.

B. A petition to appeal a decision of the division director shall contain:

1. The name and address of the petitioner and the petitioner's counsel, if any;

2. Identification of the decision being appealed, and the date the decision was issued;

3. A statement identifying the standing of the petitioner to appeal;

4. A statement setting forth the reasons for the appeal, including errors alleged in the director's decision and the reasons why the decision is deemed contrary to law or regulation;

5. A statement that the issues on appeal were in fact raised as required by ~~§ 45.1-361.36 B~~ § 45.2-1637 of the Code of Virginia;

6. A statement setting forth the specific relief requested; and

7. When a stay to any proposed activity allowed as a result of the director's decision is desired, a request for the stay and the basis for granting the stay.

C. Upon receipt of an appeal containing a request for a stay, the division director shall decide on the request in accordance with ~~§ 45.1-361.23 D~~ § 45.2-1625 of the Code of Virginia.

4VAC25-160-140. Miscellaneous petitions to the board.

A. Any petition to the board not otherwise provided for in this chapter shall be made in writing, and shall contain:

1. The name and address of the petitioner and the petitioner's counsel, if any;

2. The names and addresses of any persons who are named as respondents in the petition;

3. An affidavit that notice has been given to each respondent, if any, named in the petition;

4. A statement of the issues of the petition; and

5. A statement setting forth the specific relief requested.

B. If a petitioner for a unit under ~~§ 45.1-361.17~~ § 45.2-1616 or ~~§ 45.1-361.22~~ § 45.2-1622 fails to provide notification to an owner of interest of any part of a unit subject to a petition before the board, then such party may file a written objection to the proceedings in the form of a petition as set out in subsection A of this section. Such petition does not require the submission of an application fee as required in 4VAC25-160-30 F.

4VAC25-160-150. Effective dates for and enforcement of board orders.

A. All orders issued by the board under ~~§ 45.1-361.20~~ § 45.2-1619 of the Code of Virginia shall remain in effect until vacated or amended by the board on its own motion or on application from an owner or operator in the field or unit subject to the order.

B. Unless otherwise provided in the board order, all orders issued by the board under §§ ~~45.1-361.21~~ 45.2-1620 and ~~45.1-361.22~~ 45.2-1622 of the Code of Virginia shall remain in effect:

1. For a period of two years from the date of issuance of the board order;

2. If a permit has been issued for a well in a unit subject to the order, until the permit or permits have expired or been released on the well or wells; or

3. Until vacated or amended by the board on its own motion or on application.

C. In the event that an appeal is taken from any order of the board, the time between the filing of the petition for appeal and the final order of the circuit court shall be excluded in calculating the time period as contained in subsection B of this section.

D. All orders of the board shall be enforced by the director pursuant to the process set out in this chapter and ~~§ 45.1-361.24~~ § 45.2-1626 of the Code of Virginia.

4VAC25-160-190. Civil charges.

A. Civil charges shall be provided for in accordance with ~~§ 45.1-361.8 C~~ § 45.2-1608 of the Code of Virginia.

B. The division director, after finding any violation of the Act, a regulation promulgated under the Act, or order of the director or board, or upon direction from the board, may recommend a civil charge against a gas, oil or geophysical operator and shall base the recommendation on the Civil Charge Calculation Procedure established by order of the board.

4VAC25-160-200. Surveys and tests.

A. Deviation tests.

1. An inclination survey shall be made on all rotary drilled wells located in accordance with a field rule established by the board. An inclination survey is not required for wells drilled in accordance with the distance limitations of ~~§ 45.1-361.17~~ § 45.2-1616 of the Code of Virginia.

2. The first shot point shall be at a depth not greater than the bottom of the surface casing or, for a well drilled through a coal seam, at a depth not greater than that of the bottom of the coal protection string. Succeeding shot points shall be no more than 1,000 feet apart, or as otherwise ordered by the director.

3. Inclination surveys conforming to these requirements may be made either during the normal course of drilling or after the well has reached total depth. Survey data shall be certified in writing as being true and correct by the designated agent or person in charge of a permittee's Virginia operations, or the drilling contractor, and shall indicate the resultant lateral deviation as the maximum calculated lateral displacement determined at any inclination survey point in a horizon approved for production, by an order of the board or a permit approved by the director, assuming that all displacement occurs in the direction of the nearest boundary of the unit. The resultant lateral deviation shall be recorded on the drilling or completion report filed by the permittee.

4. If a directional survey determining the location of the bottom of the hole is filed upon completion of the well, it shall not be necessary to file the inclination survey data.

5. A directional survey shall be made when:

a. A well is directionally controlled and is thereby intentionally deflected from vertical;

b. The resultant lateral deviation of any well, calculated from inclination survey data, is greater than the distance from the center of the surface location of the well bore to the nearest boundary of the area where drilling is allowed in a unit established by the board; or

c. A well is drilled as an exception location and a directional survey is ordered by the board.

6. The board or the director, on their own initiative or at the request of a gas or oil owner on a contiguous unit or tract, may require the permittee drilling any well to make a directional survey of the well if there is reasonable cause therefor. Whenever a survey is required by the board or the director at the request of a contiguous owner and the permittee of the well and contiguous owner are unable to agree as to the terms and conditions for making the directional survey, the permittee shall pay for the survey if the bottom hole location is found to be outside of the area approved for drilling, and the contiguous owner shall pay for the survey if the bottom hole location is found to be inside of the area approved for drilling.

7. Directional surveys shall be run from total depth to the base of the surface casing or coal protection string, unless otherwise approved by the board or the director. In the event that the proposed or final location of the producing interval or intervals of any well is not in accordance with this section or a board order, the unit operator shall apply to the board for an exception to spacing. However, directional surveys to total depth shall not be required in cases where the interval below the latest survey is less than 500 feet, and in such an instance, a projection of the latest survey shall be deemed to satisfy board requirements.

8. The results of each inclination or directional survey made in accordance with this section shall be filed by the permittee with the first drilling or completion report required by the division.

B. Flow potential and gas/oil ratio tests: conventional gas or oil wells.

1. If a gas or oil well appears capable of producing gas or oil, the permittee shall conduct a potential flow test and a gas/oil ratio test within 14 days after the well is completed and capable of producing gas or oil. The permittee shall file the test results, electronically or in writing, with the division. The division director shall hold the test results confidential in accordance with ~~§ 45.1-361.6~~ § 45.2-1606 of the Code of Virginia.

2. If a permittee deepens or stimulates a well after the initial potential flow test and gas/oil ratio test have been conducted, when determined to be necessary by the permittee or when requested by the board, the permittee shall conduct another potential flow test and gas/oil ratio test and, within 30 days after completing the test, file the results, in writing, with the division.

3. A back-flow method of determining open flow shall be used, such as recommended by the Interstate Oil and Gas Compact Commission, "Manual of Back-Pressure Testing of Gas Wells," 2000. However, when a back-flow method is believed not to be feasible, the permittee shall obtain prior approval from the division, and test the well in accordance with, an alternate method approved by the director that does not entail excessive physical waste of gas.

C. Testing of coalbed methane gas wells. If a permittee cannot test the potential flow of a coalbed methane gas well by a back-flow method or complete the test within the time period required in subdivision B 1 of this section, the permittee may request approval from the director to perform a coalbed methane gas production test. Such a test shall only be made when the water production and the gas flow rates are stabilized for a period of not less than 14 days prior to the test. The test shall be conducted for a minimum of 24 hours in the manner approved by the director. The permittee shall file the test results, electronically or in writing, with the division. The division director shall hold the test results confidential in accordance with ~~§ 45.1-361.6~~ § 45.2-1606 of the Code of Virginia.

D. The board may, by order and after notice and hearing, require a permittee to complete other tests on any well.

4VAC25-165-10. Definitions.

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

"Accrued interest" means funds accrued during the preceding 36 months on total proceeds held in the general escrow

account. Accrued interest does not include escrow account fees or administrative costs of the board related to the general escrow account.

"Act" means the Virginia Gas and Oil Act of 1990, Chapter ~~22.1~~ 16 (~~§ 45.1-361.1~~ § 45.2-1600 et seq.) of Title ~~45.1~~ 45.2 of the Code of Virginia.

"Arbitrator" means a qualified individual appointed by a court to render a determination in an ownership dispute concerning coalbed methane gas.

"Board" means the Virginia Gas and Oil Board.

"Claimant" means a person or entity in a dispute over ownership of coalbed methane gas who has agreed to arbitration to resolve the dispute.

"Court" means a circuit court in the Commonwealth of Virginia wherein the majority of the subject tract of land is located.

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

"Escrow account" means the account established by the board pursuant to ~~§ 45.1-361.21~~ § 45.2-1620 and subdivision 2 of ~~§ 45.1-361.22~~ § 45.2-1622 of the Code of Virginia.

"Ex parte communication" means any form of communication between an arbitrator and a claimant without the presence of the opposing claimant.

"Operator" means the gas or oil owner designated by the board to operate in or on a pooled unit.

4VAC25-165-30. Qualification of arbitrators.

The department shall review all applications from potential arbitrators pursuant to ~~§ 45.1-361.22:1 C~~ § 45.2-1623 of the Code of Virginia. Applications shall be submitted on a form prescribed by the department. In order to qualify, applicants must demonstrate substantial expertise in mineral title examination. Substantial expertise shall be determined on an individual basis. The department shall notify applicants deemed to be qualified.

The department shall maintain a list of qualified arbitrators and update it annually. The list shall be supplied to the court when the board issues an order for arbitration. Pursuant to ~~§ 45.1-361.22:1 C~~ § 45.2-1623 of the Code of Virginia, the court has the discretion to appoint an individual not on the list of qualified arbitrators.

In order to maintain a current, accurate list, qualified arbitrators shall at least annually update their disclosures to the department.

4VAC25-165-40. Agreement to arbitrate.

Claimants shall submit their request of arbitration to the board on a form prescribed by the department. Claimants shall also provide an affidavit pursuant to ~~§ 45.1-361.22:1 A~~ § 45.2-1623 of the Code of Virginia.

4VAC25-165-50. Conflicts of interest.

In addition to the limitations set forth in ~~§ 45.1-361.22:1 A~~ § 45.2-1623 of the Code of Virginia, an arbitrator may not hear an arbitration if the arbitrator is related to one of the claimants, has a personal interest in the subject of the arbitration, or if other circumstances exist that might affect the arbitrator's ability to render a fair determination. If evidence of a conflict exists under this section, a claimant may petition the court to appoint a different arbitrator.

4VAC25-165-60. Location.

The arbitrator shall determine an appropriate time and place for the arbitration. The arbitration shall take place in the jurisdiction where the majority of the subject tract is located, unless all claimants agree to an alternate location. Notice to claimants shall be given pursuant to the requirements of ~~§ 45.1-361.22:1 D~~ § 45.2-1623 of the Code of Virginia.

4VAC25-165-80. Discovery.

Pursuant to §§ 8.01-581.06 and ~~45.1-361.22:1 D~~ 45.2-1623 of the Code of Virginia, the arbitrator may issue subpoenas, administer oaths, and take depositions. Additionally, any documents a claimant intends to introduce at the arbitration must be shared with the opposing claimant and the arbitrator not less than five days prior to the arbitration. If this provision is found not to be met, the arbitrator may elect to continue the arbitration.

4VAC25-165-90. Extension of arbitration.

If, pursuant to ~~§ 45.1-361.22:1 E~~ § 45.2-1623 of the Code of Virginia, the claimants agree that the arbitrator may take longer than six months from the date the board ordered the arbitration to render a determination, the arbitrator shall notify the board of this extension.

4VAC25-165-100. Determination of arbitrator.

Pursuant to ~~§ 45.1-361.22:1 E~~ § 45.2-1623 of the Code of Virginia, the determination of the arbitrator shall be in writing and sent to the board and each party to whom notice is required to be given. The determination shall include, at a minimum, a finding of facts and an explanation for the basis of the determination. A copy of the determination shall be placed on the department's website. The arbitrator shall record the determination with the clerk's office of the court.

4VAC25-165-120. Fees.

Arbitrators shall be paid at the rate of no more than $250 per hour. Expenses of the arbitrator incurred during the course of the arbitration shall be reimbursed in accordance with the State Travel Regulations prescribed by the Department of Accounts. Arbitrators shall submit a complete W-9 form to the department before payment is made.

Pursuant to ~~§ 45.1-361.22:1 F~~ § 45.2-1623 of the Code of Virginia, payment of fees and expenses of the arbitration may be delayed if there are intervening disbursements from the general escrow account under subdivision 5 (i) or (iii) of ~~§ 45.1-361.22~~ § 45.2-1623 of the Code of Virginia that reduce the interest balance below the amount of fees and expenses requested.

4VAC25-165-130. Disbursement of proceeds.

Within 30 days of receipt of an affidavit from the claimants affirming the determination, the operator shall petition the board for disbursement pursuant to subdivision 5 of ~~§ 45.1-361.22~~ § 45.2-1622 of the Code of Virginia.

4VAC25-170-10. Definitions.

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

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

"Casing" means all pipe set in wells.

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

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

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

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

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

"Division director" means the Director of the Division of Gas and Oil, also known as the Gas and Oil Inspector as defined in the Virginia Gas and Oil Act of 1990, Chapter ~~22.1~~ 16 (~~§ 45.1-361.1~~ § 45.2-1600 et seq.) of Title ~~45.1~~ 45.2 of the Code of Virginia or his authorized agent.

"Drilling log" means the written record progressively describing all strata, water, minerals, geothermal resources, pressures, rate of fill-up, fresh and salt water-bearing horizons and depths, caving strata, casing records and such other information as is usually recorded in the normal procedure of drilling. The term shall also include the downhole geophysical survey records or logs if any are made.

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

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

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

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

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

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

1. Underground loss resulting from the inefficient, excessive, or improper use or dissipation of geothermal energy; or the locating, spacing, construction, equipping, operating, or producing of any well in a manner that results, or tends to result, in reducing the quantity of geothermal energy to be recovered from any geothermal area in Virginia; provided, however, that unavoidable dissipation of geothermal energy resulting from oil and gas exploration and production shall not be construed to be geothermal waste.

2. The inefficient above-ground transportation and storage of geothermal energy; and the locating, spacing, equipping, operating, or producing of any well or injection well in a manner causing or tending to cause, unnecessary or excessive surface loss or destruction of geothermal energy.

3. The escape into the open air of steam or hot water in excess of what is reasonably necessary in the efficient development or production of a well.

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

"Injection well" means a well drilled or converted for the specific use of injecting waste geothermal fluids back into a

geothermal production zone for disposal, reservoir pressure maintenance, or augmentation of reservoir fluids.

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

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

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

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

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

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

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

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

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

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

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

A. 1. Before any person shall engage in drilling for geothermal resources or construction of a geothermal well in Virginia, such person shall give bond with surety acceptable to the division director and payable to the Commonwealth. At the election of the permit applicant, a cash bond may be given. The amount of bond required shall be sufficient to cover the costs of properly plugging the well and restoring the site, but in no case shall the amount of bond be less than $10,000 for each exploratory and injection well, and $25,000 for each production well. Blanket bonds of $100,000 may be granted at the discretion of the division director.

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

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

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

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

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

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

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

Before commencement of exploratory drilling operations on any tract of land, the operator or designated agent shall file an exploration permit application with the department. An accurate map of the proposed wells on an appropriate scale showing adjoining property lines and the proposed locations using the Virginia Coordinate System of 1983 (~~Chapter 17 (§ 55-287 et seq.) of Title 55~~ § 1-600 of the Code of Virginia), and the depths and surface elevations shall be filed with the application. The application also shall include an inventory of local water resources in the area of proposed development.

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

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

4. All applications, requests, maps, reports, records, notices, filings, submissions, and other data (including report forms) required by or submitted to the department shall be in electronic form or a format prescribed by the director.

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

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

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

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

a. An accurate plat or map, on a scale not smaller than 400 feet to the inch, showing the proposed location using the Virginia Coordinate System of 1983 (~~Chapter 17 (§ 55-287 et seq.) of Title 55~~ § 1-600 of the Code of Virginia), and surface elevation of the production and injection wells as determined by survey, the courses and distances of such locations from two permanent points or landmarks on said tract, the well numbers, the name of the owner, the boundaries and acreage of the tract on which the wells are to be drilled, the location of water wells, surface bodies of water, actual or proposed access roads, other production and injection wells on adjoining tracts, the names of the owners of all adjoining tracts and of any other tract within 500 feet of the proposed location, and any building, highway, railroad, stream, oil or gas well, mine openings or workings, or quarry within 500 feet of the proposed location. The location must be surveyed and the plat certified by a professional engineer or registered surveyor and bear his certificate number.

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

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

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

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

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

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

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

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

j. The method of monitoring for land subsidence.

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

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

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

2. Geothermal fluid analysis.

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

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

3. Proposal for injection of geothermal fluids.

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

(1) Existing reservoir conditions.

(2) Method of injection.

(3) Source of injection fluid.

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

(5) Geologic zones or formations affected.

(6) Chemical analyses of fluid to be injected.

(7) Treatment of spent geothermal fluids prior to injection.

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

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

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

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

3. Copies of all productions records required by this chapter shall be submitted to the division director.

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

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

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

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

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

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

1. The well's location and identification number.

2. A record of casings set in wells.

3. Formations encountered.

4. Deviation tests for every one thousand feet drilled.

5. Cementing procedures.

6. A copy of the downhole geophysical logs.

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

1. Pressure measurements as monitored by valves on production and injection wells.

2. The volumetric rate of production or injection measured in terms of the average flow of geothermal fluids in gallons per minute per day of operation.

3. Temperature measurements of the geothermal fluid being produced or injected, including the maximum temperature measured in the bore-hole and its corresponding depth, and the temperature of the fluid as measured at the discharge point at the beginning and conclusion of a timed production test.

4. Hydraulic head as measured by the piezometric method.

VA.R. Doc. No. R22-6960; Filed January 13, 2022, 9:58 a.m.

VIRGINIA SOIL AND WATER CONSERVATION BOARD

Fast-Track Regulation

Title of Regulation: **4VAC50-85. Nutrient Management Training and Certification Regulations (amending 4VAC50-85-40).**

Statutory Authority: § 10.1-104.2 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: March 16, 2022.

Effective Date: April 1, 2022.

Agency Contact: Lisa McGee, Policy and Planning Director, Department of Conservation and Recreation, 600 East Main Street, 24th Floor, Richmond, VA 23219, telephone (804) 786-4378, FAX (804) 786-6141, or email lisa.mcgee@dcr.virginia.gov.

Basis: Section 10.1-104.2 of the Code of Virginia requires the Department of Conservation and Recreation to operate a voluntary nutrient management training and certification program to certify, in accordance with regulations adopted by

the Virginia Soil and Water Conservation Board, the competence of persons preparing nutrient management plans.

Purpose: This regulatory action will provide an additional option for individuals to meet the eligibility criteria established in 4VAC50-85-40, which outlines the items needed to achieve certification. Individuals who successfully complete a two-year college degree program and one and one-half years of practical experience will meet the educational components of these requirements. In order to meet Virginia's water quality goals, which protect public health, a significant increase in the number of nutrient management plans developed and implemented by producers needs to occur. However, in order for this to happen, an increase in the number of certified planners is also necessary. This regulatory action will expand the number of certified nutrient management planners that are available to assist agricultural producers, state agencies, localities, institutions of higher learning, and other entities with the development and implementation of nutrient management plans. The amendments of the Nutrient Management Training and Certification Regulations are for the protection of public health, safety, and welfare. This regulation details the training needed for an individual to become a certified nutrient management planner. Certified nutrient management planners develop plans that indicate how nutrients are managed on farm fields and other agricultural land. Proper management of those nutrients minimizes the amount of pollutants that could enter groundwater and surface water, protecting both groundwater and surface water.

Rationale for Using Fast-Track Rulemaking Process: This regulatory action is expected to be noncontroversial as it provides an additional option for achieving the educational components needed to achieve nutrient management certifications. This does not have any impact on the individuals who are currently certified. Additionally, increasing the number of certified planners will assist Virginia in meeting its water quality goals.

Substance: The amendment will allow for individuals who have successfully completed a two-year college degree program with a major in an agriculturally related area with coursework in the area of nutrient management such as soils, soil fertility, and plant science, and one and one-half years of practical experience related to nutrient management planning or implementation of nutrient management concepts and principles acceptable to the department to be eligible for certification under these regulations. This action reflects the increased number of colleges offering two-year degrees in agricultural studies and the value of practical in-field experiences. This amendment should lead to an increase in the number of certified nutrient management planners. An additional amendment also clarifies that an individual who receives a four-year degree will only be required to complete one-year of practical experience in order to meet the education requirements for certification.

Issues: The primary advantage of this regulatory action is an additional educational option for those individuals interested in becoming certified nutrient management planners. This does not have any impact on the individuals who are currently certified. Additionally, increasing the number of certified planners will assist Virginia in meeting its water quality goals, which is an advantage for the Commonwealth. There are no disadvantages to the public or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 14 (as amended, July 16, 2018). The analysis presented represents DPB's best estimate of these economic impacts.[1]

Summary of the Proposed Amendments to Regulation. As the result of a 2021 periodic review, the Soil and Water Conservation Board (Board) proposes to provide an additional option for individuals to meet the eligibility criteria for certification as a nutrient management planner.

Background. Certified nutrient management planners assist agricultural producers, state agencies, localities, institutions of higher learning, and other entities with the development and implementation of nutrient management plans. These plans address nutrient applications to both urban landscapes and agricultural operations, and improve and protect water quality using best management practices such as timing, rate and placement of fertilizer, manure and biosolids for agricultural and urban purposes. The Board collects a $100 exam fee for initial certification and $100 every two years thereafter for recertification.

During the 2021 periodic review,[2] the Board received comments requesting that the regulation be amended to decrease the education and experience requirements needed for certification. Currently, this regulation provides two pathways: 1) A four year degree with a major in an agriculturally related area with coursework in the area of nutrient management such as soils, soil fertility, and plant science, and one year of practical experience related to nutrient management planning or implementation of nutrient management concepts and principles acceptable to the Department of Conservation and Recreation (DCR); and 2) A combination of education to include nutrient management related educational courses or training [over an unspecified time period] and a minimum of three years of practical experience related to nutrient management planning or implementation of nutrient management concepts and principles acceptable to DCR. In this second pathway, no college degree is required and necessary educational courses or training are mostly obtained through the training courses provided by DCR.

As a direct result of the comments, the Board proposes to add a third pathway to certification that would allow a two-year

college degree in an agriculturally-related area and one and a half years of practical experience.

Estimated Benefits and Costs. DCR reports that there are currently 415 certified planners in Virginia. Of these, approximately 25~~%~~ are certified under the first pathway and 75% are certified through the second pathway.

The proposed new pathway to certification would require a two-year college degree and 1.5 years of experience. The proposal appears to represent a middle-of-the-way approach regarding education (proposed two-year college degree vs. four-year degree or no degree) and experience requirements (proposed 1.5 years of experience vs. one or three year(s) of experience) between the two current pathways. By reducing the maximum education and training required under the two current pathways, the proposal would expand the pool of eligible individuals for certification. The Board notes that this new pathway reflects the increased number of colleges offering two-year degrees in agricultural studies and the value of practical in-field experience. Thus, this change would benefit the public and persons working in this field to the degree that the education provided under the new pathway is commensurate with the education that is received under the two existing pathways.

Currently, Virginia Tech is the only college that offers a two-year degree that would be eligible for certification under this proposal. Additionally, other institutions of higher education may choose to offer two-year degrees in the future that would also qualify. However, the magnitude of the expected increase in the pool of eligible candidates and eventual certifications cannot be assessed at this time.

DCR states that Virginia's Phase III Chesapeake Bay Watershed Implementation Plan would result in an increased need for nutrient management plans across the Commonwealth and therefore an increase in the number of certified planners is necessary to meet Virginia's water quality goals. More specifically, while currently 717,831 acres are under active nutrient management plans, DCR estimates that approximately 951,395 acres would need to be under nutrient management plans by the end of 2025, representing a 33% increase. This proposed action would help meet to some extent the expected increase in the demand for services offered by certified nutrient management planners. Greater supply of planners would help mitigate a potential increase in market prices for these plans given the expected planner shortage in the absence of the proposed expansion in eligibility.

Also, an increase in certifications would result in DCR collecting additional fees to cover the additional administrative costs of regulating a greater number of planners.

Businesses and Other Entities Affected. The proposed new pathway to nutrient management certification is expected to increase the pool of eligible candidates by an unknown amount. Currently, there are 415 certified planners in Virginia.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.[3] An 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. As noted above, the proposal would expand the pool of eligible individuals for certification and may indirectly mitigate potential price hikes and indirectly may benefit the entities required to develop plans. A direct adverse impact is not indicated.

Small Businesses[4] Affected.[5] Although some of the planners may operate as a small business and may be prevented from charging higher prices and some small businesses may be subject to develop and implement nutrient management plans and may indirectly benefit from a greater pool of planners to choose from, the proposed amendments do not appear to adversely affect small businesses directly.

Localities[6] Affected.[7] Although some localities may be required by permit to develop and implement nutrient management plans and may indirectly benefit from a greater pool of planners to choose from, the proposed action does not disproportionately affect particular localities and does not introduce costs for local governments.

Projected Impact on Employment. The proposed new pathway to become a certified planner may present a new career opportunity for those who have the required education and experience under the proposal. There is not enough information to assess whether there would be an effect on total employment.

Effects on the Use and Value of Private Property. Although being indirectly prevented from charging higher prices may also mitigate any potential increase in asset values of nutrient management and planning businesses, the proposed changes do not appear to have a direct impact on the use and value of private property or the real estate development costs.

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[1]Section 2.2-4007.04 of the Code of Virginia requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

[2]https://townhall.virginia.gov/l/ViewPReview.cfm?PRid=2042

[3]Pursuant to Code § 2.2-4007.04 D: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

[4]Pursuant to § 2.2-4007.04, 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]If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses

include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

[6]"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.

[7]§ 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency's Response to Economic Impact Analysis: The Department for Conservation and Recreation concurs with the economic impact analysis performed by the Department of Planning and Budget.

Summary:

The amendments (i) provide an additional option for individuals to meet the educational components of eligibility criteria to be certified as a certified nutrient management planner by completing a two-year college degree program and one and one-half years of practical experience; and (ii) clarify that an individual who receives a four-year degree will only be required to complete one-year of practical experience in order to meet the education requirements for certification.

4VAC50-85-40. Eligibility requirements.

A. Certification may be obtained by satisfying all of the following requirements for certification:

1. Satisfactorily completing and submitting to the department an application in the form required by the department, including a statement of any felony convictions. Such application shall be submitted to the department at least 30 days before the approved examination date set by the department. The application shall request information relating to the person's education, work experience, knowledge of nutrient management, and willingness to abide by the requirements of these regulations;

2. Supplying proof of meeting one of the following:

a. A copy of a college transcript indicating completion of a four-year college degree with a major in an agriculturally related area with coursework in the area of nutrient management such as soils, soil fertility, and plant science, and one year of practical experience related to nutrient management planning or implementation of nutrient management concepts and principles acceptable to the department~~, or;~~

b. A copy of a college transcript indicating completion of a two-year college degree with a major in an agriculturally related area with coursework in the area of nutrient management such as soils, soil fertility, and plant science, and one and one-half years of practical experience related to nutrient management planning or implementation of nutrient management concepts and principles acceptable to the department; or

c. A combination of education to include nutrient management related educational courses or training and a minimum of three years of practical experience related to nutrient management planning or implementation of nutrient management concepts and principles acceptable to the department;

3. Obtaining a passing score on each of the parts of the nutrient management certification examination administered by the department; and

4. Submitting a $100 certification fee by check or money order to the department.

B. Certificates shall be valid for two years and will expire on the last day of the expiration month. Certified nutrient management planners or applicants shall notify the department of any change in mailing address within 30 days of such change in address.

C. Individuals certified as nutrient management consultants by the State of Maryland or certified as nutrient management specialists by the Commonwealth of Pennsylvania will be eligible for certification in Virginia by complying with all requirements of these regulations except for subdivision A 2 of this section. These individuals may also substitute, for the requirements in 4VAC50-85-60 C, the attainment of a passing score on a Virginia specific examination component which shall include at a minimum the elements listed in 4VAC50-85-60 C 9 and C 10. The department, upon review, may accept or approve nutrient management certification programs of other states as satisfying partial requirements for certification.

VA.R. Doc. No. R22-6988; Filed January 25, 2022, 8:12 p.m.

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TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

STATE BOARD OF LOCAL AND REGIONAL JAILS

Final Regulation

REGISTRAR'S NOTICE: The State Board of Local and Regional Jails 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 Board of Local and Regional Jails will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **6VAC15-28. Regulations for Public/Private Joint Venture Work Programs Operated in a State Correctional Facility (repealing 6VAC15-28-10 through 6VAC15-28-40).**

Statutory Authority: §§ 53.1-5 and 53.1-45.1 of the Code of Virginia.

Effective Date: March 16, 2022.

Agency Contact: Ryan McCord, Executive Director, State Board of Local and Regional Jails, 6900 Atmore Drive, Richmond, VA 23225, telephone (804) 887-8340, or email ryan.mccord@vadoc.virginia.gov.

Summary:

The action repeals Regulations for Public/Private Joint Venture Work Programs Operated in a State Correctional Facility (6VAC15-28). Chapters 94 and 854 of the 2003 Acts of Assembly divested the Board of Corrections (predecessor to the State Board of Local and Regional Jails) of authority to regulate public and private work programs operated in state correctional facilities. Therefore, this regulation should be repealed.

VA.R. Doc. No. R22-7075; Filed January 20, 2022, 10:47 a.m.

BOARD OF JUVENILE JUSTICE

Reproposed Regulation

Titles of Regulations: **6VAC35-71. Regulation Governing Juvenile Correctional Centers (amending 6VAC35-71-10, 6VAC35-71-30 through 6VAC35-71-290, 6VAC35-71-310, 6VAC35-71-320, 6VAC35-71-330, 6VAC35-71-350, 6VAC35-71-360, 6VAC35-71-400 through 6VAC35-71-590, 6VAC35-71-610, 6VAC35-71-620, 6VAC35-71-630, 6VAC35-71-650 through 6VAC35-71-720, 6VAC35-71-740, 6VAC35-71-745, 6VAC35-71-747, 6VAC35-71-750, 6VAC35-71-760, 6VAC35-71-770, 6VAC35-71-790 through 6VAC35-71-930, 6VAC35-71-950, 6VAC35-71-960, 6VAC35-71-970, 6VAC35-71-990 through 6VAC35-71-1120, 6VAC35-71-1140, 6VAC35-71-1180, 6VAC35-71-1190, 6VAC35-71-1210; adding 6VAC35-71-15, 6VAC35-71-215, 6VAC35-71-545, 6VAC35-71-735, 6VAC35-71-765, 6VAC35-71-1175, 6VAC35-71-1195, 6VAC35-71-1203, 6VAC35-71-1204, 6VAC35-71-1205, 6VAC35-71-1206, 6VAC35-71-1207, 6VAC35-71-1208, 6VAC35-71-1209; repealing 6VAC35-71-20, 6VAC35-71-1130, 6VAC35-71-1150, 6VAC35-71-1160, 6VAC35-71-1200, 6VAC35-71-1230, 6VAC35-71-1240, 6VAC35-71-1250, 6VAC35-71-1260, 6VAC35-71-1270).**

6VAC35-73. Regulation Governing Juvenile Boot Camps (adding 6VAC35-73-10 through 6VAC35-73-50).

Statutory Authority: §§ 16.1-309.9 and 66-10 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: March 16, 2022.

Agency Contact: Ken Davis, Regulatory Affairs Coordinator, Department of Juvenile Justice, 600 East Main Street, 20th Floor, Richmond, VA 23219, telephone (804) 807-0486, FAX (804) 371-6490, or email kenneth.davis@djj.virginia.gov.

Basis: Section 66-13 of the Code of Virginia gives the Department of Juvenile Justice the authority to receive juveniles committed to it by the courts of the Commonwealth and to establish, staff, and maintain facilities for the rehabilitation, training, and confinement of such juveniles. The Board of Juvenile Justice is entrusted with general, discretionary authority to promulgate regulations by § 66-10 of the Code of Virginia, which authorizes the board to promulgate such regulations as may be necessary to carry out the provisions of this title and other laws of the Commonwealth. The provisions governing privately operated juvenile correctional centers and boot camps are mandated by the Juvenile Corrections Private Management Act (§ 66-25.3 et seq. of the Code of Virginia) and § 66-13 of the Code of Virginia, respectively.

Purpose: In June 2016, the board authorized the submission of a Notice of Intended Regulatory Action (NOIRA) to initiate the regulatory process for a comprehensive review of 6VAC35-71. To complete the comprehensive review and revisions to this regulation, the department convened a committee consisting of representatives from various divisions of the department. The committee recommended revisions to the regulation with the goal of streamlining the language, clarifying ambiguous provisions, and imposing new requirements that align with the changes that have occurred since the department's last review of the regulation. The board approved these proposed amendments in January 2018. Since the board's 2018 review, the department has identified additional changes that should have been proposed at the previous stage and are needed to clarify requirements, properly differentiate between various programs available for youth committed to the department, minimize the incorporation of procedural requirements into the regulation, and increase compliance with regulatory and statutory mandates among regulants and departmental staff.

Having clear, concise regulations is essential to protecting the health, safety, and welfare of residents, staff, and visitors in juvenile correctional centers (JCCs) and citizens in the community. Clearer expectations for the administrators running these facilities will promote efficiency and allow staff to utilize additional resources for supporting the needs of the residents, thus supporting the overall rehabilitation and community safety goals of the department.

Substance:

The department is recommending the following new provisions be added to the regulation:

6VAC35-71-15 (recommended at Revised Proposed Stage), narrowing the scope of this regulatory chapter to apply solely to state-operated JCCs and privately operated JCCs governed by the Juvenile Corrections Private Management Act;

6VAC35-71-215 (recommended at Proposed Stage), mandating that employees or contractors who threaten substantial harm to residents, others, or the public be removed immediately from duties involving the supervision of residents;

6VAC35-71-545 (recommended at Proposed Stage), addressing the rules staff must follow if an emergency or other situation necessitates a facility or unit lockdown, including mandated periodic checks of locked down residents, required notification to or approval by the superintendent, and provision of daily opportunities to interact with the superintendent and for large muscle exercise;

6VAC35-71-735 (recommended at Proposed Stage), requiring JCC housing units to function as therapeutic communities with consistent staffing and resident placement, daily therapeutic activities, and oversight by an interdisciplinary JCC team;

6VAC35-71-765 (recommended at Proposed Stage with additional changes at Revised Proposed Stage), requiring JCCs, where practicable, to increase family and natural support engagement opportunities through visitation, contacts, and other opportunities;

6VAC35-71-1175 (recommended at Revised Proposed Stage), capturing the physical restraint requirements formerly imposed in Section 1130;

6VAC35-71-1180 and 6VAC35-71-1190 (existing), 6VAC35-71-1195, 6VAC35-71-1203 through 6VAC35-71-1208 (recommended at Revised Proposed Stage), establishing new restrictions and controls on the use of mechanical restraints, protective devices including spit guards, and mechanical restraint chairs; and

6VAC35-71-1209 (recommended at Revised Proposed Stage), prohibiting the use of certain physical and mechanical restraints and protective devices on pregnant residents with certain exceptions.

The department is recommending a number of substantive revisions to existing language in this regulation:

6VAC35-71-60 (recommended at Revised Proposed Stage), narrowing the classes of incidents subject to incident reporting requirements to exclude incidents identified by written procedures, expanding the class of incidents to include mechanical restraint chair use, and directing the department to establish written procedures to address additional reportable incidents;

6VAC35-71-80 (recommended at Revised Proposed Stage), establishing a deadline for reviewing and resolving nonemergency grievances within 30 business days and clarifying what constitutes a resolution for these purposes;

6VAC35-71-110 (recommended at Revised Proposed Stage), changing the frequency of and staff required to make periodic visits to housing units, and allowing parameters to be determined through written procedures;

6VAC35-71-150 (recommended at Proposed Stage), removing duplicative orientation requirements that are addressed as part of the required initial training and mandating that contractors be oriented rather than trained on expectations of working in a secure environment;

6VAC35-71-160 and 6VAC35-71-170 (recommended at Proposed Stage), amending the initial and retraining requirements to (i) specify the required training hours for medical staff; (ii) allow medical staff and direct supervision employees to receive a portion of training prior to assuming their roles, with the remaining hours completed before the end of their first year's employment; and (iii) expanding the staff who must receive initial and recurring training in implementing a suicide prevention program to include direct supervision and security employees and medical staff;

6VAC35-71-185 (recommended at Proposed Stage), requiring contractors who regularly serve residents to comply with the same tuberculosis mandates as other employees;

6VAC35-71-220 (recommended at Proposed Stage), removing any explicit or implicit provision authorizing volunteers and interns to be alone with residents and adding language explicitly prohibiting them from assuming direct care or direct supervision responsibilities;

6VAC35-71-260 (recommended at Revised Proposed Stage), removing the requirement that certain records be kept up to date and uniformly and directing the department to have written procedures in place for maintaining such records.

6VAC35-71-400 (recommended at Revised Proposed Stage), expanding the smoking prohibitions to include additional items and the category of individuals precluded from using such products on the JCC premises;

6VAC35-71-460 (recommended at Revised Proposed Stage), amending the emergency and evacuation provisions such that emergencies jeopardizing the health, safety, and welfare of residents shall be reported to various individuals within the same timeframes as other serious incidents;

6VAC35-71-460 (recommended at Proposed Stage), expanding the required documentation for JCC monthly evacuation drills;

6VAC35-71-480 (recommended at Proposed and Revised Proposed Stages), mandating that manual or instrumental body cavity searches be conducted at a local medical facility except in exigent circumstances creating a threat to the health of a resident, and directing that such searches occurring at the facility be conducted by a qualified medical professional;

6VAC35-71-510 (recommended at Revised Proposed Stage), modifying the permissible purposes for having weapons on the JCC premises or during JCC-related activities;

6VAC35-71-540 (recommended at Proposed and Revised Proposed Stages), requiring staff members responsible for transporting residents to maintain a valid driver's license and report changes in their license status; expanding the staff authorized to transport residents by vehicle; and directing staff to provide nonemployees who temporarily assume custody of

a resident for transportation purposes with certain information and the resident's applicable medication;

6VAC35-71-610 (recommended at Revised Proposed Stage), removing the current exception permitting the board to excuse the department from providing residents with daily opportunities to shower, instead permitting an exception for documented emergencies;

6VAC35-71-630 (recommended at Proposed Stage), limiting the facility's authority to provide restricted diets or impose alternative dietary schedules for managing maladaptive behavior only to scenarios where the resident has used food or culinary equipment inappropriately and jeopardized JCC security; and reducing the maximum time permitted between the JCC's evening meal and the following morning's meal;

6VAC35-71-680 (recommended at Proposed Stage), amending the provision that requires staff to furnish residents with a copy of written information at orientation, including, for examples rules of the facility and disciplinary reports, so that staff have the discretion to show residents displaying maladaptive behavior this information instead of providing a copy;

6VAC35-71-690 (recommended at Revised Proposed Stage), eliminating certain requirements related to contraband discovered at admission;

6VAC35-71-710 (recommended at Revised Proposed Stage), requiring staff to document due process safeguards in writing and provide a copy of such safeguards to the resident, both during orientation and if the resident is reassigned or transferred;

6VAC35-71-720 (recommended at Revised Proposed Stage), requiring staff to retain certain information in a determinately committed resident's case record at discharge and removing the discharge plan from the list of documents that must be included in the record at discharge;

6VAC35-71-820 (recommended at Proposed Stage), permitting qualified direct supervision employees to be alone with residents without direct care employees conducting the required visual checks;

6VAC35-71-830 (recommended at Proposed and Revised Proposed Stages), adjusting the required staff-to-resident ratio from 1:10 to 1:8, authorizing security staff to transport residents for routine or emergency purposes, and authorizing either security employees or direct care employees to supervise residents in the infirmary or nurse's station;

6VAC35-71-1060 (recommended at Revised Proposed Stage), changing the requirements when residents require offsite medical treatment;

6VAC35-71-1110 (recommended at Revised Proposed Stage) extending the documentation retention period for records of disciplinary hearings from six months to three years;

6VAC35-71-1120 (recommended at Revised Proposed Stage), removing the qualifier that timeout is only available after application of less-restrictive alternatives and the provision prohibiting timeout to address chargeable offenses;

6VAC35-71-1140 (recommended at Proposed Stage and Revised Proposed Stages), narrowing the definition of room confinement for safety purposes; removing isolation as a permissible form of confinement; requiring confined residents to be monitored visually at least every 15 minutes, imposing a graduated review and approval process for confinement beyond 24, 48, and 72 hours; changing the opportunities available to residents during confinement to more closely align with existing regulatory provisions; setting out a case management review process for confinement exceeding five days and specifying a deadline for holding applicable meetings; requiring additional staff interaction with confined residents; and removing the delayed effective date for implementing these provisions.

In addition to these changes, the department proposes to add a new chapter, Regulation Governing Juvenile Boot Camps (6VAC35-73), into which the existing boot camp provisions, currently contained in 6VAC35-71-1230 through 6VAC35-71-1270, will be moved. The new chapter includes 6VAC35-73-10 through 6VAC35-73-50.

Issues: Primary advantages: The proposed amendments mandating therapeutic communities and emphasizing family inclusion will ensure a greater focus on the rehabilitation of residents and help the department in its efforts to reduce recidivism among youth formerly committed to the department. Additional controls placed on the use of mechanical restraints, protective devices, and the mechanical restraint chair will help to ensure that residents who are mechanically restrained due to behavior that threatens themselves or others or impedes critical facility operations will be restrained in a manner that ensures their safety.

The proposed amendments excluding certain important practices from the definition of room confinement will allow staff to confine residents temporarily during these activities in order to ensure facility security and protection of residents and staff. Safety will also be enhanced among JCC staff and residents due to expanded smoking prohibitions within the secure perimeter, more stringent monitoring of residents demonstrating self-injurious behaviors, and more frequent room checks.

Primary disadvantages: The department does not expect the proposed regulatory changes to result in any disadvantages to the public, the department, or the Commonwealth in general.

Department of Planning and Budget's Economic Impact Analysis:

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 14 (as amended, July 16, 2018). The analysis presented represents DPB's best estimate of these economic impacts.[1]

Summary of the Proposed Amendments to Regulation. On September 30, 2019, amendments to 6VAC35-71 Regulation Governing Juvenile Correctional Centers proposed by the

Board of Juvenile Justice (Board) were published in the Virginia Register of Regulations. The Board's proposed amendments reflected the Department of Juvenile Justice's (DJJ) continued efforts to transform its approach to juvenile justice, including implementing the community treatment model in its housing units, abolishing the use of segregation as a disciplinary measure in any existing and future juvenile correctional centers (JCCs), requiring additional monitoring of confined residents, enhancing training for DJJ personnel and staff, and increasing required staff-to-resident ratios in order to comply with federal law. An economic impact analysis of that proposal was published in the Virginia Regulatory Town Hall on August 18, 2018.[2]

The Board has now submitted a revised proposed stage with additional amendments. Among the numerous additional amendments are additional restrictions on the use of mechanical restraints and protective devices and removing the boot camp provisions from 6VAC35-71 Regulation Governing Juvenile Correctional Centers, and placing those provisions into their own new regulation called 6VAC35-75 Regulation Governing Juvenile Boot Camps.

Background The Regulation Governing Juvenile Correctional Centers establishes the minimum standards to which staff in the JCCs must comply. The existing regulation addresses program operations, health care, personnel and staffing requirements, facility safety, residents' rights, and the physical environment. It contains additional provisions for boot camps and privately operated JCCs. According to DJJ, the regulation seeks to promote the safety and security of residents, staff, volunteers, interns, and contractors, while protecting the rights of youth committed to DJJ and preparing them for successful re-entry into the community following their commitment.

Estimated Benefits and Costs

Proposed Stage Proposals

For the most part, the proposed amendments at the proposed stage reflected current practice, conformed regulatory language to federal or Virginia statutes, or were clarifications. Proposals that would have an impact in practice included: 1) narrowing authority to apply physical restraints, 2) reducing the length of time a resident may be restrained mechanically before a consult with a QMHP is necessary, 3) expanding the tuberculosis screening requirement to contractors, 4) adding "health-trained professionals" as individuals authorized to clear staff to return to work once they are suspected of having tuberculosis, 5) increasing the frequency of the required checks of residents under room confinement from every 30 minutes to every 15 minutes, 6) removing the requirement that animals be housed a reasonable distance from sleeping, living, and eating areas, 7) reducing restrictions on telephone calls, and 8) narrowing the category of individuals who must review and be prepared to implement the resident's behavior support contract.

Some of the proposals would require extra staff time. Examples of these are an expansion of the tuberculosis screening requirement to contractors, and increasing the frequency of the required checks of residents under room confinement from every 30 minutes to every 15 minutes. Other proposals would reduce needed staff time. Adding "health-trained professionals" as individuals authorized to clear staff to return to work once they are suspected of having tuberculosis, and narrowing the category of individuals who must review and be prepared to implement the resident's behavior support contract fall into this category. Reducing restrictions on telephone calls and removing the requirement that animals be housed a distance from sleeping, living, and eating areas are both beneficial for residents without significantly affecting costs.

Revised Proposed Stage Proposals

Additional proposed amendments here at the revised proposed stage that would likely have some impact include:

- Limiting the scope of Regulation Governing Juvenile Correctional Centers to apply solely to state-operated JCCs and privately operated JCCs governed by the Juvenile Corrections Private Management Act (Act).[3] Currently there is only one state-operated JCC and no privately operated JCCs in the Commonwealth.
- Establishing a new regulation called 6VAC35-75 Regulation Governing Juvenile Boot Camps that would consist of the current provisions applicable to juvenile boot camps in Regulation Governing Juvenile Correctional Centers unchanged.
- Narrowing the classes of incidents subject to reporting requirements to exclude incidents identified by written procedures, expanding the class of incidents subject to reporting requirements to include mechanical restraint chair use, and directing the department to establish written procedures to address additional reportable incidents.
- Establishing a deadline for reviewing and resolving non-emergency grievances within 30 business days and clarifying what constitutes a resolution.
- Expanding the smoking prohibitions to include additional items and the category of individuals precluded from using these products on the JCC premises.
- Requiring that emergencies that may jeopardize the health, safety, and welfare of residents be reported to the parents or legal guardians of all residents, the director of DJJ, or the director's designee, and the Board within 24 hours. The current requirement is that it be reported within 72 hours.
- Requiring that documentation of the discussion with the parent/guardian at discharge and a comprehensive discharge summary be retained for determinate commitments as well as indeterminate commitments.
- Extending the documentation retention period for records of disciplinary hearings from 6 months to three years.
- Limiting permissible purposes of mechanical restraints to the following: (i) to control residents whose behavior imminently risks their own safety or that of staff or others; (ii) for controlled movement, or (iii) in emergencies.

• Stating that a mental health clinician or other qualifying licensed medical professional may order termination of a mechanical restraint or protective device at any time upon determining that the item poses a health risk.

• Expressly allowing JCC staff to use spit guards[4] on residents provided the guard's design does not inhibit the resident's ability to breathe, allows for visibility, and the device is sold specifically to prevent biting or spitting. Such use would only be permitted on residents who previously bit or spat on someone at the current facility or threaten, attempt to, or actually spit on a resident or staff in the course of a current restraint.

• Require that if a resident remains in a mechanical restraint for a period of two hours or more, the resident shall be permitted to exercise the his or her limbs for a minimum of 10 minutes every two hours in order to prevent blood clots.

• Excluding restraint chairs from the definition of mechanical restraint.[5] Separate requirements are proposed for restraint chairs.

• Defining "mechanical restraint chair" as an approved chair used to restrict the freedom of movement or voluntary functioning of a portion of an individual's body as a means of controlling his physical activities while the individual is seated and either stationary or being transported.

• Greatly restricting the circumstances when and how a restraint chair may be used.

• Requiring that a video recording be produced and retained for a minimum of three years when a resident is placed in a restraint chair until the resident's release, when restrained in the chair for purposes other than controlled movement.

According to DJJ, the proposed and revised proposed changes are designed to enhance the safety of residents and staff in JCCs, reduce injuries, ensure the involvement of families in the committed youth's rehabilitation, and help DJJ better monitor the value and effectiveness of existing regulations, thereby promoting public safety. To the extent the proposed and revised proposed amendments are effective in achieving these goals, they would be beneficial.

With one possible exception, the revised proposed amendments are unlikely to require that any additional items be purchased, or otherwise substantively affect (either upward or downward) the need for any particular expenditures. According to DJJ, the one existing JCC has not used the restraint chair at that facility since 2015. If the agency resumes use of the restraint chair at the one JCC facility, or permits its use in any future facilities, DJJ may need to update or expand its stock of video cameras to meet the video recording requirement.

Some of the revised proposed amendments may require a modest increase in staff time, for example, requiring that emergencies that may jeopardize the health, safety, and welfare of residents be reported to the parents or legal guardians of all residents, the director of DJJ, or the director's designee, and the Board within 24 hours. Some of the revised proposed amendments, may moderately reduce required staff time, for example, narrowing the classes of incidents subject to reporting requirements to exclude incidents identified by written procedures. DJJ does not believe that any additional staff would need to be hired.

Businesses and Other Entities Affected. Currently, the regulation affects the one state-operated JCC. Proposed revisions to this regulation would affect the facility's administration, staff, and any contract service providers, in addition to the residents in the facility and their families. The revised proposal does not appear to have an adverse economic impact.[6]

Small Businesses[7] Affected. The revised proposed regulation is unlikely to substantively affect costs for small businesses.

Localities[8] Affected.[9] Currently, the regulation affects the one state-operated JCC, which is located in Chesterfield County. The proposal does not require additional expenditures for localities.

Projected Impact on Employment. The revised proposed regulation is unlikely to significantly affect total employment.

Effects on the Use and Value of Private Property. The revised proposed regulation is unlikely to substantively affect the use and value of private property or real estate development costs.

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[1]Section 2.2-4007.04 of the Code of Virginia requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

[2]See https://townhall.virginia.gov/L/GetFile.cfm?File=44\4608\8208\EIA_DJJ_8208_v2.pdf

[3]This Act is found at § 66-25.3 et seq. of the Code of Virginia.

[4]"Spit guard" is defined as "a protective device designed for the purpose of preventing the spread of communicable diseases as a result of spitting or biting."

[5]In the revised proposed regulation, "mechanical restraint" is defined as "an approved mechanical device that involuntarily restricts the freedom of movement or voluntary functioning of a limb or portion of an individual's body as a means of controlling his physical activities when the individual being restricted does not have the ability to remove the device. For purposes of this chapter mechanical restraints shall include flex-cuffs, handcuffs, leather restraints, leg irons, restraining belts and straps, and waist chains."

[6]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.

[7]Pursuant to § 2.2-4007.04, 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."

[8]"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.

[9]§ 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency's Response to Economic Impact Analysis: The responsible Virginia Board of Juvenile Justice agency representatives have reviewed the Department of Planning and Budget's (DPB's) economic impact analysis, and the agency is in agreement with DPB's analysis.

Summary:

The revised proposed regulatory action is a comprehensive revision of Regulation Governing Juvenile Correctional Centers (6VAC35-71) to streamline language, clarify ambiguous provisions, and adopt new requirements that align with changes in the community treatment model. The revised proposed amendments include (i) implementing the community treatment model in the Department of Juvenile Justice housing units, (ii) abolishing the use of segregation as a disciplinary measure in any existing or future juvenile correction center, (iii) requiring additional monitoring of confined residents, (iv) enhancing training for department personnel and staff, (v) placing restrictions on the use of mechanical restraints and protective devices, (vi) increasing required staff-to-resident ratios to comply with federal law, and (vii) moving provisions applicable to juvenile boot camps into a new, separate chapter, Regulation Governing Juvenile Boot Camps (6VAC35-73).

6VAC35-71-10. Definitions.

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

"Active supervision" or "actively supervise" means [~~a method~~ the act] of resident supervision in which a direct care employee is (i) actively patrolling and frequently viewing the areas in which residents are present a minimum of once every 15 minutes and (ii) close enough in proximity to the resident to provide a quick response should an incident occur.

"Annual" means within 13 months of the previous event or occurrence.

"Assistant superintendent" means the individual who provides regular assistance and support to the superintendent in the management and operation of a juvenile correctional center.

"Aversive stimuli" means physical forces, such as sound, electricity, heat, cold, light, water, or noise, or substances, such as hot pepper, pepper sauce, or pepper spray, measurable in duration and intensity that when applied to a resident are noxious or painful to the resident.

"Behavior management" means the principles and methods employed to help a resident achieve positive behavior and to address and correct a resident's inappropriate behavior in a constructive and safe manner [~~in accordance with written procedures governing~~ that emphasizes] program expectations, treatment goals, resident and staff safety and security, and the resident's individual service plan.

"Board" means the Board of Juvenile Justice.

[~~"Boot camp" means a short-term secure or nonsecure juvenile residential program that includes aspects of basic military training and that utilizes a form of military-style discipline whereby employees are authorized to respond to minor institutional offenses by imposing immediate sanctions that may require the performance of some physical activity based on the program's written procedures.~~]

"Case record" [~~or "record"~~] means [the collection of] written ~~or electronic~~ information regarding a resident and the resident's family, if applicable [~~, maintained in accordance with written procedures~~].

"Community manager" means the individual who supervises, coordinates, and directs an assigned group of staff in multiple housing units and who oversees the schedules, programs, and services for assigned housing units within a juvenile correctional center.

"Contraband" means [~~any~~ an] item possessed by or accessible to a resident or found within a juvenile correctional center or on its premises that (i) is prohibited by statute, regulation, or department procedure; (ii) is not acquired through approved channels or in prescribed amounts; or (iii) may jeopardize the safety and security of the juvenile correctional center or individual residents.

"Contractor" means an individual who has entered into a legal agreement to provide services on a recurring basis to a juvenile correctional center.

"Department" means the Department of Juvenile Justice.

"Direct care" means the ~~time~~ period during which a resident who is committed to the department pursuant to § 16.1-272 or 16.1-285.1 [~~,~~] or ~~subsection~~ subdivision A 14 [~~or A 17~~] of § 16.1-278.8 of the Code of Virginia is under the supervision of staff in a juvenile correctional center operated by or under contract with the department.

"Direct care ~~staff~~ employee" means [~~the~~ an] ~~staff~~ employee whose primary job responsibilities are ~~for~~ (i) maintaining the safety, care, and well-being of residents; (ii) implementing the structured program of care and the behavior management program; and (iii) maintaining the security of the facility. [For purposes of this chapter, the term "direct care employee" shall include a security employee assigned, either on a primary or as-needed basis, to perform the duties of clauses (i), (ii), and (iii) of this definition and who is required to receive initial and annual training in these areas in order to carry out the responsibilities in clauses (i), (ii), and (iii) of this definition.]

"Direct supervision" or "directly supervise" means ~~the act of working with residents who are not in the presence of direct care staff. Staff members who provide direct supervision are responsible for maintaining the safety, care, and well-being of the residents in addition to providing services or performing the primary responsibilities of that position~~ [~~a method of resident supervision in which~~ the act of] a direct supervision employee [~~is authorized to provide~~ providing] services to a resident while direct care [~~staff~~ employees] are not within close proximity and do not have direct and continuous visual

observation of or the ability to hear any sounds or words spoken by the resident.

"Direct supervision employee" means [~~a staff member~~ an employee] who is responsible for maintaining the safety, care, and well-being of the residents in addition to providing services or performing the primary responsibilities of that position and who is authorized to directly supervise residents.

"Director" means the Director of the Department of Juvenile Justice.

"Emergency" means a sudden, generally unexpected occurrence or set of circumstances demanding immediate action such as a fire, chemical release, loss of utilities, natural disaster, ~~taking of hostages~~ hostage situation, major ~~disturbances~~ disturbance, escape, ~~and~~ or bomb ~~threats~~ threat. ~~Emergency~~ For purposes of this definition, "emergency" does not include regularly scheduled employee time off or other situations that reasonably could be ~~reasonably~~ anticipated.

"Gender identity" means a person's internal sense of being male or female, regardless of the person's sex assigned at birth.

"Grievance" means a written communication by a resident on a department-approved form that reports a condition or situation that [relates to department procedure and that] presents a risk of hardship or harm to a resident [~~and relates to department procedure~~].

["Health care record" means the complete record of] ~~medical screening and examination information and ongoing records of medical and ancillary service delivery, including but not limited to all findings, diagnoses, treatments, dispositions, prescriptions, and their administration.~~ [all health care services provided to a resident, including medical, dental, orthodontic, mental health, family planning, obstetrical, gynecological, health education, and other ancillary records.]

"Health care services" means those actions, [~~preventative~~ preventive] and therapeutic, taken for the physical and mental well-being of a resident. Health care services include medical, dental, orthodontic, mental health, family planning, obstetrical, gynecological, health education, and other ancillary services.

[~~"Health trained~~ "Health-trained] personnel" means an individual who is trained ~~by a licensed health care provider to perform specific duties, such as administering health care screenings, reviewing screening forms for necessary follow-up care, preparing residents and records for sick call, and assisting in the implementation of certain medical orders~~ and appropriately supervised to carry out specific duties with regard to the administration of health care.

"Housing unit" means the space in a juvenile correctional center in which a particular group of residents resides, which comprises sleeping areas, bath and toilet facilities, and a living room or its equivalent for use by the residents. Depending upon its design, a building may contain one or several separate housing units.

"Human research" means any systematic investigation, including research development, testing, and evaluation utilizing human subjects that is designed to develop or contribute to generalized knowledge. Human research shall not be deemed to include research exempt from federal research regulation pursuant to 45 CFR 46.101(b).

"Immediate family member" means a resident's parent or legal guardian, step-parent, grandparent, spouse, child, sibling, [~~and~~ or] step-sibling.

"Individual service plan" ~~or "service plan"~~ means a written plan of action developed, revised as necessary, and reviewed at specified intervals~~,~~ to meet [~~the needs of~~] a [~~resident~~ resident's needs]. ~~The individual service plan specifies (i) measurable short-term and long-term goals; (ii) the objectives, strategies, and time frames for reaching the goals; and (iii) the individuals responsible for carrying out the plan.~~

"Juvenile correctional center," "JCC," or "facility" means a public or private facility, operated by or under contract with the ~~Department of Juvenile Justice~~ department, where ~~24 hour per day~~ care is provided to residents under the direct care of the department 24 hours a day, seven days a week. [~~For purposes of this chapter, "juvenile correctional center" does not include any facility at which a direct care alternative placement program is operated~~.]

~~"Living unit" means the space in a juvenile correctional center in which a particular group of residents resides that contains sleeping areas, bath and toilet facilities, and a living room or its equivalent for use by the residents. Depending upon its design, a building may contain one living unit or several separate living units.~~

["JCC administration" or "facility administration" means the juvenile correctional center superintendent or the superintendent's designee.]

"Legal mail" means a written communication that is sent to or received from a designated class of correspondents, [~~as defined in written procedures, which shall include any~~ including a] court, legal counsel, administrator of the grievance system, the department, or the regulatory authority.

"Lockdown" means the restriction of all or a group of residents to their housing unit, an area within their housing unit, or another area within a JCC for the purpose of (i) relieving temporary tensions within the facility [that may threaten or critically affect staff or residents or present a risk to public safety]; (ii) conducting a facility search for [~~missing tools or other security~~] contraband; (iii) responding to an imminent threat to the security and control of the facility or to the safety of staff, residents, or the public; or (iv) responding to other unexpected circumstances that threaten the safe operation of the facility, such as a loss of electricity, a critical shortage of staff, or an emergency.

"Mechanical restraint" means [~~the use of~~] an approved mechanical device that involuntarily restricts the freedom of movement or voluntary functioning of a limb or portion of an individual's body as a means of controlling his physical activities when the individual being restricted does not have the ability to remove the device. For purposes of this [~~definition~~ chapter], mechanical restraints [~~are limited to handcuffs, handcuff covers, leather restraints,~~ shall include] flex-cuffs, [handcuffs, leather restraints, ~~waist chains,~~] leg irons, restraining belts and straps, [~~helmets, spit guards, anti-mutilation gloves, and restraint chairs~~ and waist chains.

"Mechanical restraint chair" means an approved chair used to restrict the freedom of movement or voluntary functioning of a portion of an individual's body as a means of controlling his physical activities while the individual is seated and either stationary or being transported.]

"Medical record" means the complete record of medical screening and examination information and ongoing records of medical and ancillary service delivery, including all findings, diagnoses, treatments, dispositions, prescriptions, and their administration.

"Medication incident" means any one of the following errors made in administering a medication to a resident: (i) a resident is given incorrect medication; (ii) medication is administered to the incorrect resident; (iii) an incorrect dosage is administered; (iv) medication is administered at the wrong time or not at all; or (v) the medication is administered through an improper method. For purposes of this regulation, a medication incident does not include a resident's refusal of appropriately offered medication.

["Mental health clinician" means a clinician licensed to provide assessment, diagnosis, treatment planning, treatment implementation, and similar clinical counseling services, or a license-eligible clinician under supervision of a licensed mental health clinician.]

"Natural support" means [a department-approved personal association and pro-social relationship typically developed in the community that enhances the quality and security of life for a resident and that is expected to provide post-release support, including] an extended family member, person serving as a mentor, [or] representative from a community organization [~~,or other person in the community with whom a resident has developed a relationship that enhances the resident's quality and security of life and who is expected to provide post-release support~~].

"On duty" means the period of [~~time, during~~] an employee's scheduled work hours~~,~~ during which the employee is responsible for the ~~direct~~ supervision of one or more residents in the performance of that employee's [~~position's~~ position] duties.

"Parent" or "legal guardian" means (i) a biological or adoptive parent who has legal custody of a resident, including either parent if custody is shared under a joint decree or agreement; (ii) a biological or adoptive parent with whom a resident regularly resides; (iii) a person judicially appointed as a legal guardian of a resident; or (iv) a person who exercises the rights and responsibilities of legal custody by delegation from a biological or adoptive parent, upon provisional adoption, or otherwise by operation of law.

"Physical restraint" means the application of behavior intervention techniques involving a physical intervention to prevent an individual from moving all or part of his body.

"Premises" means the tracts of land within the secure perimeter on which any part of a juvenile correctional center is located ~~and any buildings on such tracts of land~~.

["Protective device" means an approved device placed on a portion of a resident's body to protect the resident or staff from injury.]

~~"Reception and Diagnostic Center" or "RDC" means the juvenile correctional center that serves as the central intake facility for all individuals committed to the department. The Reception and Diagnostic Center's primary function is to orient, evaluate, and classify each resident before being assigned to a juvenile correctional center or alternative placement.~~

"Regulatory authority" means the board, or the department if designated by the board.

"Resident" means an individual, [~~either a minor or an adult~~ regardless of age], who is committed to the department and resides in a juvenile correctional center.

"Rest day" means a period of not less than 24 consecutive hours during which the direct care [~~staff person~~ employee] has no responsibility to perform duties related to employment at the JCC or with the department.

"Room confinement" means the involuntary placement of an individual resident in the resident's room or other designated room [~~, except during normal sleeping hours,~~] and the imposition of additional restrictions [~~for the purpose of (i) ensuring the safety of the resident, staff, or others within the facility; (ii) ensuring the security of the facility; or (iii) protecting property within the facility~~]. For purposes of this [~~regulation~~ chapter], room confinement shall not include [~~any~~ (i)] timeout [~~period~~ periods; (ii) confinement during normal sleeping hours; (iii) confinement for purposes of allowing residents in a housing unit to shower safely; (iv) confinement for purposes of conducting facility counts; (v) confinement during shift changes; or (vi) ~~or any~~] confinement resulting from a lockdown.

"Rules of conduct" means a ~~listing~~ list of a juvenile correctional center's rules or regulations that is maintained to inform residents and others of the behavioral expectations of the behavior management program, ~~about~~ behaviors that are

not permitted, and ~~about~~ the ~~sanctions~~ consequences that may be applied when impermissible behaviors occur.

"Security [~~staff~~ employee]" means [~~staff~~ an employee] who [~~are~~ is] responsible for maintaining the safety, care, and well-being of residents and the safety and security of the facility.

"Sick call" means the evaluation and treatment of a resident in a clinical setting, either onsite or offsite, by a qualified health care professional.

["Spit guard" means a protective device designed for the purpose of preventing the spread of communicable diseases as a result of spitting or biting.]

"Superintendent" means the individual who [~~has the responsibility~~ is responsible] for the ~~on-site~~ onsite management and operation of a juvenile correctional center on a regular basis.

"Timeout" means a systematic behavior management technique [~~program component~~] designed to reduce or eliminate [minor] inappropriate or problematic behavior by having staff require a resident to move to a specific location that is away from a source of reinforcement [~~for the earlier of a period not to exceed 60 minutes or~~] until the problem behavior has subsided [, not to exceed 60 minutes].

"Volunteer" or "intern" means [~~any~~ an] individual or group under the direction and authority of the juvenile correctional center who ~~of their own free will~~ voluntarily provides goods and services without competitive compensation.

"Vulnerable population" means a resident or group of residents who has been determined by designated JCC staff to be reasonably likely to be exposed to the possibility of being attacked or harmed, either physically or emotionally [~~, due to factors such as the resident's age, height, size, English proficiency, sexual orientation, gender nonconformity, history of being bullied, or history of self-injurious behavior~~].

"Written" means the required information is communicated in writing~~. Such writing may be available~~ in either hard copy or in electronic form.

[6VAC35-71-15. Applicability.

This chapter applies exclusively to (i) state-operated juvenile correctional centers and (ii) privately operated juvenile correctional centers governed by the Juvenile Corrections Private Management Act (§ 66-25.3 et seq. of the Code of Virginia). Parts I through VIII apply to state-operated and privately operated facilities. Part IX applies solely to privately operated juvenile correctional centers. Provisions applicable to juvenile boot camps and locally, regionally, or privately operated alternative direct care programs for juveniles are not included in this chapter.]

~~6VAC35-71-20. Previous regulations terminated.~~ (Repealed.)

~~This chapter replaces the Standards for the Interim Regulation of Children's Residential Facilities, (6VAC35-51), and the Standards for Juvenile Residential Facilities, (6VAC35-140), for the regulation of all JCCs as defined herein. The Standards for the Interim Regulation of Children's Residential Facilities and the Standards for Juvenile Residential Facilities remain in effect for secure detention facilities and group homes, regulated by the board, until such time as the board adopts new regulations related thereto.~~

6VAC35-71-30. Certification.

A. The JCC [administration] shall maintain a current certification demonstrating compliance with the provisions of the ~~Regulations~~ Regulation Governing the Monitoring, Approval, and Certification of Juvenile Justice Programs and Facilities (6VAC35-20).

B. The JCC [administration] shall demonstrate compliance with this chapter, other applicable regulations issued by the board, and applicable statutes and regulations [~~as interpreted by the assessment and compliance measures approved in accordance with board regulations or department procedures~~].

C. Documentation necessary to demonstrate compliance with this chapter shall be maintained for a minimum of three years.

D. The current certificate shall be posted at all times in a place conspicuous to the public.

6VAC35-71-40. Relationship to the regulatory authority.

All reports and information as the regulatory authority may require to establish compliance with this chapter and other applicable regulations and statutes shall be submitted to or made available to the ~~regulatory authority~~ audit team leader.

6VAC35-71-50. Variances and waivers.

A. Board action may be requested by the ~~superintendent~~ director or the director's designee to relieve a JCC from having to meet or develop a plan of action for the requirements of a specific section or subsection of this regulation, provided the section or subsection is a noncritical regulatory requirement. The variance request may be granted either permanently or for a determined period of time, as provided in the ~~Regulations~~ Regulation Governing the Monitoring, Approval, and Certification of Juvenile Justice Programs and Facilities (6VAC35-20) [~~and in accordance with written procedures~~].

B. A variance may not be implemented prior to approval of the board.

C. If the superintendent has submitted a variance request to the director or the director's designee concerning a noncritical regulatory requirement and board action has been requested formally by the director or the director's designee, the director may [,] but is not required to [,] grant a waiver temporarily

excusing the facility from meeting the requirements of a specific section or subsection of this regulation. The waiver shall be subject to the requirements in 6VAC35-20-93.

6VAC35-71-55. Operational procedures.

Current operational procedures shall be readily accessible to all staff.

6VAC35-71-60. ~~Serious incident~~ Incident reports.

A. The following events shall be reported to the director or the director's designee as soon as practicable, but no later than 24 hours after the incident [~~, and in accordance with written department procedures~~] ~~to the director or his designee~~:

1. ~~Any~~ A serious illness, incident, injury, or accident involving the serious injury of a resident;

2. ~~Any~~ A resident's absence from the facility without permission ; and

3. [~~All other situations required by written procedures~~ The facility's use of the mechanical restraint chair, regardless of the purpose or duration of use].

B. As appropriate and applicable, [~~the~~] facility [staff] shall, as soon as practicable, but no later than 24 hours after the incident, [~~and in accordance with written procedures,~~] report the incidents listed in subsection A of this section to (i) the parent or legal guardian and (ii) the supervising court service unit or agency.

C. Any incident involving the death of a resident shall be reported to the individuals specified in subsections A and B of this section without undue delay.

D. [~~The facility~~ Facility staff] shall prepare and maintain a written report of the events listed in subsections A and C of this section ~~which~~ that shall contain the following information:

1. The date and time the incident occurred;

2. A brief description of the incident;

3. The action taken as a result of the incident;

4. The name of the person who completed the report;

5. The name or identifying information of the person who made the report to the supervising agency and to the parent or legal guardian; and

6. The name ~~or identifying information of the person~~ of any law-enforcement agency or local department of social services to ~~whom~~ which the report was made~~, including any law enforcement or child protective service personnel~~.

E. [The department shall establish written procedures that address any additional serious incidents that must be reported, the process for notifying the parties identified in subsection B of this section, and the steps for completing and submitting the written report required in subsection D of this section. The JCC administration shall ensure the written procedures are accessible to JCC staff.

F.] The resident's [case] record shall contain a written reference (i) that an incident occurred and (ii) of all applicable reporting.

[~~F.~~ G.] In addition to the requirements of this section, any suspected child abuse and neglect shall be governed by 6VAC35-71-70 ~~(suspected child abuse or neglect)~~.

6VAC35-71-70. Suspected child abuse or neglect.

A. When there is reason to suspect that a resident is an abused or neglected child, the matter shall be reported immediately to the local department of social services or to the Virginia Department of Social Services toll-free child abuse and neglect hotline as required by § 63.2-1509 of the Code of Virginia [~~and in accordance with written procedures~~].

B. Any case of suspected child abuse or neglect occurring at ~~the~~ a JCC, occurring ~~on~~ during a ~~JCC-sponsored~~ JCC-sponsored event or excursion~~,~~ or involving JCC staff shall be reported within 24 hours~~,~~ [~~in accordance with written procedures,~~] to (i) the director or ~~his~~ the director's designee, (ii) the supervising court ~~services~~ service unit, and (iii) the resident's parent or legal guardian, as appropriate and applicable.

C. When a case of suspected child abuse or neglect is reported ~~to child protective services~~ in accordance with subsection A of this section, a record shall be maintained at the facility that contains the following information:

1. The date and time the suspected abuse or neglect occurred;

2. A brief description of the suspected abuse or neglect;

3. ~~Action~~ The action taken as a result of the suspected abuse or neglect; and

4. The name or identifying information of the person to whom the report was made at the local ~~child protective services unit~~ department of social services.

D. The resident's [case] record shall contain a written reference that a report was made.

E. Written procedures shall be accessible to staff regarding the following:

1. Handling accusations of child abuse or neglect, including those made against staff;

2. Reporting [~~,~~] consistent with requirements of the Code of Virginia [~~,~~] and documenting suspected cases of child abuse or neglect to the local child protective services unit;

3. Cooperating during any investigation; and

4. Measures to be taken to ensure the safety of the resident and the staff.

6VAC35-71-75. Reporting criminal activity.

A. Staff shall be required to report to the superintendent or the superintendent's designee all known criminal activity alleged to have been committed by residents or staff, including ~~but not limited to any~~ physical abuse, sexual abuse, or sexual harassment of residents~~, to the superintendent or designee~~.

B. [The ~~In accordance with written procedures, the~~] superintendent~~, in accordance with written procedures,~~ [or the superintendent's designee] shall notify the appropriate persons or agencies, including law enforcement and the local department of social services division of child protective services, if applicable and appropriate, of suspected criminal violations by residents or staff.

C. The JCC superintendent and applicable staff shall assist and cooperate with the investigation of ~~any such~~ these complaints and allegations ~~as necessary~~ subject to restrictions in federal or state law.

6VAC35-71-80. Grievance procedure.

A. [~~The superintendent or the superintendent's designee shall ensure the facility's compliance with the department's grievance procedure.~~] The [department shall have a] grievance procedure [~~shall provide~~ in place that provides] for the following:

1. Resident participation in the grievance process, with assistance from staff upon request;

2. Investigation of the grievance by an impartial and objective ~~person~~ employee who is not the subject of the grievance;

3. Documented~~, timely~~ responses to all grievances with the supporting reasons for the decision;

4. At least one level of appeal;

5. Administrative review of grievances;

6. Protection of residents from retaliation or the threat of retaliation for filing a grievance; and

7. Immediate review of [~~emergency~~] grievances [that pose an immediate risk of harm to a resident] with resolution as soon as practicable but no later than eight hours after the initial review [and review and resolution of all other grievances as soon as practicable but no later than 30 business days after receipt of the grievance. For purposes of this subdivision, a grievance may be deemed resolved once facility staff have addressed, corrected, or referred the issue to an external organizational unit].

B. Residents shall be oriented to the grievance procedure in an age ~~or~~ and developmentally appropriate manner.

C. The grievance procedure shall be (i) written in clear and simple language, (ii) posted in an area accessible to residents, and (iii) ~~posted~~ available in an area easily accessible to parents and legal guardians.

D. Staff shall assist and work cooperatively with other employees in facilitating the grievance process.

6VAC35-71-90. ~~Resident advisory committee~~ Student government association.

~~Each~~ A. [~~A~~ The] JCC~~, except RDC,~~ [administration] shall ~~have a resident advisory committee~~ maintain a student government association that ~~(i)~~ is representative of the facility's population and ~~(ii) shall meet monthly with the superintendent or designees during which time the residents shall be given the opportunity to raise matters of concern to the residents and the opportunity to have input into planning, problem-solving, and decision-making in areas of the residential program that affect their lives~~ [~~that~~] is organized to (i) provide leadership [~~,~~] development opportunities [~~,~~] and opportunities for civic participation and engagement for residents and (ii) allow for resident communication with facility and agency leadership.

B. The student government association shall develop a constitution and bylaws that shall govern the operation of the organization and provide for an election process for student government association officers and representatives.

C. Representatives from the student government association shall meet with the superintendent or the superintendent's designee at least once per month, during which time the representatives shall be given the opportunity to raise matters that concern the residents and to have input into planning, problem-solving, and decision-making in areas of the residential program that affect their lives.

D. In addition to the monthly meetings with the superintendent or the superintendent's designee, the JCC [administration] shall provide regular opportunities for the student government association to meet as a body and with the residents they represent.

E. The facility [administration] shall maintain a current copy of the constitution and bylaws required in subsection B of this section that shall be posted in each housing unit. During orientation, the residents shall receive an overview of the student government association, the constitution, and the bylaws.

6VAC35-71-100. Administration and organization.

Each JCC shall have an organizational chart that includes functions, services, and activities in administrative subunits~~, which~~. The organizational chart shall be reviewed and updated as needed, as determined by the ~~JCC~~ superintendent or the superintendent's designee.

6VAC35-71-110. Organizational communications.

A. The superintendent or the superintendent's designee shall meet, at least monthly, with all facility department heads and key staff members.

B. ~~The superintendent or the assistant superintendent, chief of security, treatment program supervisor, or counseling supervisor, if designated by the superintendent, shall visit the living units and activity areas at least weekly~~ In order to encourage ~~informal~~ contact with employees and residents, ~~and to~~ observe ~~informally~~ the facility's living and working conditions, and enhance the efficacy and success of the therapeutic community within each housing unit, the JCC [administration] shall [~~ensure that~~ establish written procedures that require] the assistant superintendent and the community manager assigned to each specific housing unit [~~shall~~ to] make regular, consistent, and frequent visits to each housing unit under their jurisdiction [~~, in accordance with written procedures established pursuant to subsection D of this section~~]. [The written procedures also shall provide facility rules regarding these visits.]

C. The superintendent shall ~~make such visits, at a minimum, one time~~ visit every housing unit and activity area at least once per month.

[~~D. The JCC shall establish written procedures governing the visits required in subsection B of this section that shall specify the required duration of each visit, the information and activities that should be observed, and the manner in which the visits shall be documented.~~]

6VAC35-71-120. Community relationships.

[~~Each~~ The] JCC [administration] shall designate a community liaison and, if appropriate, a community advisory committee ~~that serves~~ to serve as a link between the facility and the community~~, which~~. The community advisory committee may include facility neighbors, local law enforcement, and local government officials.

6VAC35-71-130. Participation of residents in human research.

~~A.~~ Residents shall not be used as subjects of human research except as provided in 6VAC35-170 and in accordance with Chapter 5.1 (§ 32.1-162.16 et seq.) of Title 32.1 of the Code of Virginia.

~~B. For the purpose of this section, human research means any systematic investigation using human subjects as defined by § 32.1-162.16 of the Code of Virginia and 6VAC35-170. Human research shall not include research prohibited by state or federal statutes or regulations or research exempt from federal regulations or mandated by any applicable statutes or regulations. The~~ Additionally, the testing of medicines or drugs for experimentation or research is prohibited.

6VAC35-71-140. Background checks.

A. Except as provided in subsection B of this section, all persons who (i) accept a position of employment or (ii) provide contractual services directly to a resident on a regular basis and will be alone with a resident in the performance of their duties in a JCC shall undergo the following background checks [~~, in accordance with § 63.2-1726 of the Code of Virginia,~~] to ~~ascertain~~ determine whether there are criminal acts or other circumstances that would be detrimental to the safety of residents in the JCC:

1. A reference check;

2. A criminal history record check;

3. Fingerprint checks with the Virginia State Police and Federal Bureau of Investigation (FBI);

4. A central registry check with Child Protective Services; and

5. A driving record check, if applicable to the individual's job duties.

B. ~~To~~ In order to minimize vacancy time~~,~~ when the fingerprint checks required by subdivision A 3 of this section have been requested, employees may be hired [~~,~~] pending the results of the fingerprint checks, provided:

1. All [~~of the~~] other applicable components of [~~this~~ subsection A of this] section have been completed;

2. The JCC provides the applicant ~~is given~~ with written notice that continued employment is contingent on the fingerprint check results as required by subdivision A 3 of this section; and

3. Employees hired under this exception shall not be allowed to be alone with residents and may work with residents only when the residents are under the direct or active supervision of staff whose background checks have been completed until ~~such time as~~ all the requirements of this section are ~~completed~~ satisfied.

C. ~~Documentation~~ The JCC [administration] shall retain documentation of compliance with this section ~~shall be retained~~.

D. Written procedures shall provide for the supervision of nonemployee persons [~~,~~] who are not subject to the provisions of this section [~~who~~ and] have contact with residents.

6VAC35-71-150. Required initial orientation.

A. Before the expiration of the employee's seventh work day at the facility, each employee shall ~~be provided with~~ receive a basic orientation on the following:

1. The facility;

2. The population served;

3. The basic tenets and objectives of the facility's behavior management program;

4. The facility's organizational structure;

5. Security, population control, emergency preparedness, and evacuation procedures in accordance with 6VAC35-71-460 ~~(emergency and evacuation procedures)~~;

6. The practices of confidentiality;

7. The residents' rights; and

8. The basic requirements of and competencies necessary to perform in ~~their~~ the positions.

~~B. Prior to working with residents while not under the direct supervision of staff who have completed all applicable orientations and training, each direct care staff shall receive a basic orientation on the following:~~

~~1. The facility's program philosophy and services;~~

~~2. The facility's behavior management program;~~

~~3. The facility's behavior intervention procedures and techniques, including the use of least restrictive interventions and physical restraint;~~

~~4. The residents' rules of conduct and responsibilities;~~

~~5. The residents' disciplinary and grievance procedures;~~

~~6. Child abuse and neglect and mandatory reporting;~~

~~7. Standard precautions; and~~

~~8. Documentation requirements as applicable to their duties.~~

~~C.~~ B. Volunteers and interns shall be oriented in accordance with 6VAC35-71-240 ~~(volunteer and intern orientation and training)~~.

C. Contractors shall receive an orientation regarding the expectations of working within a secure environment.

6VAC35-71-160. Required initial training.

A. ~~Each employee~~ JCC employees shall complete initial, ~~comprehensive~~ agency-approved training that is specific to the individual's occupational class~~, is based on the needs of the population served, and ensures that the individual has the competencies to perform the position responsibilities. Contractors shall receive training required to perform their position responsibilities in a correctional environment~~.

B. Direct care ~~staff and~~ employees ~~responsible for the direct supervision of residents shall~~ and security employees, before ~~that employee is~~ being responsible for ~~the direct supervision of~~ supervising a resident, shall complete at least 120 hours of training, which shall include training in the following areas:

~~1. Emergency preparedness and response;~~

~~2.~~ 1. First aid and cardiopulmonary resuscitation, unless the individual is currently certified, with certification required as applicable to their duties;

2. Recognition of signs and symptoms and knowledge of actions required in a medical emergency;

3. The ~~facility's~~ department's behavior management program, as provided in 6VAC35-71-745, including the requirements for sustaining a therapeutic community environment, as required in 6VAC35-71-735. At a minimum, this training shall address (i) the components and basic principles of the behavior management program; (ii) the principles, definitions, and expectations governing a therapeutic community environment; (iii) the main tenets of the department's graduated incentive system; and (iv) the tools available to address noncompliance;

4. The residents' rules of conduct [~~and,~~] the rationale for the rules [, and the disciplinary process in accordance with 6VAC35-71-1110];

5. The ~~facility's~~ department's behavior interventions, ~~with restraint training required as~~ including, if applicable to ~~their~~ the individual's duties, training in the use of physical [~~and~~ restraints,] mechanical restraints [, and protective devices and the mechanical restraint chair], as provided in [~~6VAC35-71-1130 and~~ 6VAC35-71-1175,] 6VAC35-71-1180 [, and 6VAC35-71-1203];

6. Emergency preparedness and response, as provided in 6VAC35-71-460;

7. Standard precautions, as provided in 6VAC35-71-1000;

~~6.~~ 8. Child abuse and neglect;

~~7.~~ 9. Mandatory reporting;

10. Residents' rights, including the prohibited actions provided for in 6VAC35-71-550;

~~8.~~ 11. Maintaining appropriate professional relationships;

~~9.~~ 12. Appropriate interaction among staff and residents;

~~10.~~ 13. Suicide prevention, as provided in 6VAC35-71-805;

~~11. Residents' rights, including but not limited to the prohibited actions provided for in 6VAC35-71-550 (prohibited actions);~~

~~12. Standard precautions;~~

~~13. Recognition of signs and symptoms and knowledge of actions required in medical emergencies;~~

14. Adolescent development;

15. Procedures applicable to the employees' ~~position~~ positions and consistent with their work profiles; and

16. Other topics as required by the department and any applicable state or federal statutes or regulations.

~~C. Administrative and managerial staff shall receive at least 40 hours of training during their first year of employment. Clerical and support staff shall receive at least 16 hours of training.~~

~~D. Employees who administer medication shall, prior to such administration, successfully complete a medication training program approved by the Board of Nursing or be licensed by the Commonwealth of Virginia to administer medication.~~

~~E. Employees providing medical services shall be trained in tuberculosis control practices.~~

C. Direct supervision employees shall complete an initial 80 hours of agency-approved training [~~inclusive of~~, including] the topics enumerated in subsection B of this section before being responsible for the direct supervision of a resident and an additional 40 hours of agency-approved training before the completion of their first year of employment.

D. Employees providing medical services shall complete the following training:

1. An initial 40 hours of agency-approved training, [~~inclusive of~~ including] (i) tuberculosis control practices and (ii) the topics enumerated in subdivisions B 5 through B 16 of this section before they may work directly with a resident; and

2. An additional 80 hours of agency-approved training before the expiration of their first year of employment.

E. Employees who administer medication shall, prior to administration and in accordance with the provisions of § 54.1-3408 of the Code of Virginia, successfully complete a medication management training program approved by the Board of Nursing or be [~~certified~~ licensed] by the Commonwealth of Virginia to administer medication.

F. Administrative and managerial staff shall receive at least 40 hours of training during their first year of employment. Clerical and support staff shall receive at least 16 hours of training.

~~F. When~~ G. If an individual is employed by contract to provide services for which licensure by a professional organization is required, documentation of current licensure shall constitute compliance with this section.

~~G.~~ H. Volunteers and interns shall be trained in accordance with 6VAC35-71-240 ~~(volunteer and intern orientation and training)~~.

I. The department shall develop written procedures that clearly delineate the positions falling under each category identified in this section.

6VAC35-71-170. Retraining.

A. Each employee shall complete retraining that is specific to the individual's occupational class and the position's job description [~~,~~] and [that] addresses any professional development needs.

1. Direct care ~~staff and~~ employees ~~who provide~~, security employees, direct supervision ~~of the residents~~ employees, and employees providing medical services shall complete 40 hours of training annually, [~~inclusive of~~ including] the requirements of this section.

2. Administrative and managerial staff shall receive at least 40 hours of training annually.

3. Clerical and support staff shall receive at least 16 hours of training annually.

~~4. Contractors shall receive retraining as required to perform their position responsibilities in the correctional environment.~~

B. All staff shall complete an annual training refresher on the facility's emergency preparedness and response plan and procedures.

C. All direct care ~~staff and~~ employees ~~who provide~~, security employees, and direct supervision ~~of the residents~~ employees shall complete annual [~~retraining~~ refresher training] in the following areas:

1. The department's behavior management program and the requirements for sustaining a therapeutic community environment, as required [~~in accordance with~~ by] 6VAC35-71-160 B 3;

2. Suicide prevention;

~~2.~~ 3. Maintaining appropriate professional relationships;

~~3.~~ 4. Appropriate interaction among staff and residents;

~~4.~~ 5. Child abuse and neglect;

~~5.~~ 6. Mandatory reporting;

~~6.~~ 7. Resident rights, including ~~but not limited to~~ the prohibited actions provided for in 6VAC35-71-550 ~~(prohibited actions)~~;

~~7.~~ 8. Standard precautions; and

~~8. Behavior management techniques; and~~

9. Other topics as required by the department and any applicable state or federal statutes or regulations.

D. All employees providing medical services shall complete annual retraining in the topics enumerated in subdivisions C 2 through C 9 of this section.

E. All direct care ~~staff~~ employees, security employees, and direct supervision employees shall receive training sufficient to maintain a current certification in first aid and cardiopulmonary resuscitation.

~~E.~~ F. Employees who administer medication shall complete annual refresher training on the administration of medication, which shall [~~, at a minimum,~~] include [at a minimum,] a review of the components required in 6VAC35-71-1070.

~~F. When~~ G. If an individual is employed by contract to provide services for which licensure by a professional organization is required, documentation of the individual's current licensure shall constitute compliance with this section.

~~G.~~ H. All staff approved to apply physical restraints as provided for in [~~6VAC35-71-1130~~ 6VAC35-71-1175]

~~(physical restraint)~~ shall be trained as needed to maintain the applicable current certification.

~~H.~~ I. All staff approved to apply mechanical restraints [, protective devices, or the mechanical restraint chair] shall be retrained annually as required by 6VAC35-71-1180 ~~(mechanical restraints)~~ [and 6VAC35-71-1203].

~~I.~~ J. Staff who have not timely completed required retraining shall not be allowed to have direct care or direct supervision responsibilities pending completion of the retraining requirements.

6VAC35-71-180. Code of ethics.

~~A~~ The facility [administration] shall make available to all employees a written set of rules describing acceptable standards of conduct for all employees ~~shall be available to all employees~~.

6VAC35-71-185. Employee tuberculosis screening and follow-up.

A. On or before the ~~employee's~~ individual's start date at the facility and at least annually thereafter each (i) employee and (ii) contractor who provides services directly to residents on a regular basis shall submit the results of a tuberculosis screening assessment that is no older than 30 days. The documentation shall indicate the screening results as to whether there is an absence of tuberculosis in a communicable form.

B. Each (i) employee~~,~~ and (ii) contractor who provides services directly to residents on a regular basis shall submit evidence of an annual evaluation of freedom from tuberculosis in a communicable form.

C. ~~Employees~~ Each (i) employee and (ii) contractor who provides services directly to residents on a regular basis shall undergo a subsequent tuberculosis screening or evaluation, as applicable, in the following circumstances:

1. The employee or contractor comes into contact with a known case of infectious tuberculosis; or

2. The employee or contractor develops chronic respiratory symptoms of three ~~weeks~~ weeks' duration.

D. Employees and contractors providing services directly to residents on a regular basis, who are suspected of having tuberculosis in a communicable form shall not be permitted to return to work or have contact with staff or residents until a [licensed] physician or [~~health-trained personnel~~ licensed medical provider] has determined that the individual does not have tuberculosis in a communicable form.

E. Any active case of tuberculosis developed by an employee or a resident shall be reported to the local health department in accordance with the requirements of the ~~Virginia~~ State Board of Health Regulations for Disease Reporting and Control (12VAC5-90).

F. Documentation of any screening results shall be retained in a manner that maintains the confidentiality of information.

G. The detection, diagnosis, prophylaxis, and treatment of pulmonary tuberculosis shall be performed ~~consistent~~ in accordance with the current ~~requirements~~ recommendations of the Virginia Department of Health's Division of Tuberculosis Prevention and Control and the federal Department of Health and Human Services Centers for Disease Control and Prevention.

6VAC35-71-215. Physical or mental health of personnel.

If an employee or contractor poses a significant risk of substantial harm to the health and safety of a resident, others at the facility, or the public or is unable to perform essential job-related functions, that individual shall be removed immediately from all duties involved in the supervision of residents. The facility may require a medical or mental health evaluation to determine the individual's fitness for duty prior to returning to duties involving the supervision of residents.

6VAC35-71-220. Selection and duties of volunteers and interns.

A. ~~Any~~ A JCC that uses volunteers or interns shall [~~implement~~ have] written procedures [in place] governing their selection and use. ~~Such~~ The procedures shall provide for the evaluation of persons and organizations in the community who wish to associate with the residents.

B. Volunteers and interns shall have qualifications appropriate for the services provided.

C. The responsibilities of interns and individuals who volunteer on a regular basis shall be ~~clearly~~ defined clearly in writing.

D. Volunteers and interns may not be responsible for the duties of direct care or direct supervision [~~staff. In no event~~ employees, nor] may a volunteer or intern be authorized to be alone with residents.

6VAC35-71-230. ~~Volunteer and intern background~~ Background checks for volunteers and interns.

A. Any individual who ~~(i)~~ volunteers or is an intern on a regular basis in a JCC ~~and (ii) will be alone with a resident in the performance of the position's duties~~ shall be subject to the background check requirements provided for in ~~of~~ 6VAC35-71-140 ~~A (background checks)~~.

B. Documentation of compliance with the background check requirements shall be maintained for each volunteer or intern for whom a background check is required.

C. A JCC that uses volunteers or interns shall implement written procedures for supervising volunteers or interns, on whom background checks are not required or whose background checks have not been completed~~,~~ who have contact with residents.

6VAC35-71-240. Volunteer and intern orientation and training.

A. Any individual who (i) volunteers on a regular basis; (ii) volunteers and has contact with residents or is an intern in a JCC ~~and will be alone with the resident~~; or ~~(ii)~~ (iii) is the designated leader for a group of volunteers shall be provided with a basic orientation on the following:

1. The facility;

2. The population served;

3. The basic objectives of the department;

4. The department and facility organizational structure;

5. Security, population control, emergency preparedness, and evacuation procedures;

6. The practices of confidentiality;

7. ~~The residents'~~ Resident rights, including ~~but not limited to~~ the prohibited actions provided for in 6VAC35-71-550 ~~(prohibited actions)~~; and

8. The basic requirements of and competencies necessary to perform their duties and responsibilities.

B. Volunteers and interns shall be trained within 30 days from their start date at the facility in the following:

~~1. Any procedures that are applicable to their duties and responsibilities; and~~

~~2.~~ 1. Their duties and responsibilities in the event of a facility evacuation as provided in 6VAC35-71-460 ~~(emergency and evacuation procedures)~~; and

2. All other procedures that are applicable to their duties and responsibilities.

6VAC35-71-260. Maintenance of [case] records.

A. A separate written ~~or automated~~ case record shall be maintained for each resident, which shall include all correspondence and documents received by the JCC relating to the care of that resident and documentation of all case management services provided.

B. Separate [health care ~~medical~~] records, including behavioral health records, as applicable, [and medical records] shall be kept on each resident. [Health care ~~Medical~~] records shall be maintained in accordance with 6VAC35-71-1020 ~~(residents' health records)~~ and applicable statutes and regulations. Behavioral [health care ~~medical~~] records may be kept separately from other [~~medical~~ health care] records.

C. ~~Each case record~~ [~~Case records and~~] ~~health care record~~ [~~medical records shall be kept up to date and in a uniform manner in accordance with written procedures.~~] Case records shall be released only in accordance with §§ 16.1-300 and 16.1-309.1 of the Code of Virginia and applicable state and federal laws and regulations.

D. [The department shall have written procedures in place for the maintenance and management of case records in juvenile correctional centers.] The procedures for ~~management of residents'~~ managing resident written records~~, written and automated,~~ shall ~~describe~~ address confidentiality, accessibility, security, and retention of records pertaining to residents, including:

1. Access, duplication, dissemination, and ~~acquiring~~ acquisition of information only [~~to~~ by] persons legally authorized according to federal and state laws;

2. Security measures to protect records from loss, unauthorized alteration, inadvertent or unauthorized access, [and] disclosure of information, and [~~transportation of~~] records [transported] between service sites; and

3. Designation of the person responsible for records management.

E. Active and closed records shall be kept in secure locations or compartments that are accessible only to authorized employees and ~~are~~ shall be protected from unauthorized access, fire, and flood.

F. Each resident's written case and [health care ~~medical~~] records shall be stored separately subsequent to the resident's discharge in accordance with applicable statutes and regulations.

G. Residents' inactive records shall be retained as required by The Library of Virginia.

6VAC35-71-270. Face sheet.

A. At the time of admission, each resident's record shall include, at a minimum, a completed face sheet that contains the following: (i) the resident's full name, last known residence, birth date, birthplace, sex, gender identity, race, social security number or other unique identifier, religious preference, and admission date; and (ii) the names, addresses, and telephone numbers of the resident's legal guardians, supervising agency, emergency contacts, and parents, if appropriate.

B. The face sheet shall be updated when changes occur and maintained [~~in accordance with written procedures~~ as a part of the resident's record].

6VAC35-71-280. Buildings and inspections..

A. All newly constructed buildings, major renovations to buildings, and temporary structures shall be inspected and approved by the appropriate building officials. There shall be a valid, current certificate of occupancy available at each JCC that documents this approval.

B. A current copy of the facility's annual inspection by fire prevention authorities indicating that all buildings and equipment are maintained in accordance with the Virginia Statewide Fire Prevention Code (13VAC5-51) shall be maintained. If the fire prevention authorities have failed to

~~timely~~ inspect the facility's buildings and equipment, the facility [administration] shall maintain documentation of [~~its~~ the] request to schedule the annual inspection, as well as documentation of any necessary follow-up. ~~For this subsection, the definition of annual shall be defined by the Virginia Department of Fire Programs, State Fire Marshal's Office.~~

C. The facility [administration] shall maintain a current copy of [~~its~~ the facility's] compliance with annual inspection and approval by an independent, outside source in accordance with state and local inspection laws, regulations, and ordinances, of the following:

1. General sanitation;

2. The sewage disposal system, if applicable;

3. The water supply, if applicable;

4. Food service operations; and

5. Swimming pools, if applicable.

6VAC35-71-290. Equipment and systems inspections and maintenance.

A. All safety, emergency, and communications equipment and systems shall be inspected, tested, and maintained by designated staff in accordance with the manufacturer's recommendations or instruction manuals or, absent ~~such~~ these requirements, in accordance with a schedule that is approved by the superintendent.

1. The facility [administration] shall maintain a listing of all safety, emergency, and communications equipment and systems and the schedule established for inspections and testing.

2. Testing of ~~such~~ equipment and systems shall~~, at a minimum,~~ be conducted [~~, at a minimum,~~] quarterly [, at a minimum].

B. Whenever safety, emergency, ~~and~~ or communications equipment or ~~a system is found to be~~ systems are determined [to be] defective, immediate steps shall be taken to rectify the situation and to repair, remove, or replace the defective equipment or systems.

6VAC35-71-310. Heating and cooling systems and ventilation.

A. Heat shall be distributed in all rooms occupied by the residents so that a temperature no less than 68°F is maintained, unless otherwise mandated by state or federal authorities.

B. Air conditioning or mechanical ventilating systems, such as electric fans, shall be provided in all rooms occupied by residents when the temperature in those rooms exceeds 80°F, unless otherwise mandated by state or federal authorities.

6VAC35-71-320. Lighting.

A. Sleeping and activity areas shall provide natural lighting.

B. All areas within buildings shall be lighted for safety, and the lighting shall be sufficient for the activities being performed.

C. Night lighting shall be sufficient to observe residents.

D. Operable flashlights or battery-powered lanterns shall be accessible to each security [~~staff~~ employee] and direct care [~~staff~~ employee] on duty.

E. Outside entrances and parking areas shall be lighted.

6VAC35-71-330. Plumbing and water supply; temperature.

A. Plumbing shall be maintained in operational condition, as designed.

B. An adequate supply of hot and cold running water shall be available at all times.

C. Precautions shall be taken to prevent scalding from running water. Hot water temperatures ~~should~~ shall be maintained at 100°F to 120°F.

6VAC35-71-350. Toilet facilities.

A. There shall be toilet facilities available for resident use in all sleeping areas for each JCC constructed after January 1, 1998.

B. There shall be at least one toilet, one hand basin, and one shower or tub for every eight residents for facilities certified on or before December 27, 2007. There shall be one toilet, one hand basin, and one shower or tub for every four residents in any building constructed or structurally modified on or after December 28, 2007.

C. There shall be at least one bathtub in each facility.

D. The maximum number of employees on duty in the ~~living~~ housing unit shall be counted in determining the required number of toilets and hand basins when a separate bathroom is not provided for staff.

6VAC35-71-360. Sleeping areas.

A. ~~Male~~ Generally, male and female residents shall have separate sleeping areas; however, nothing in this chapter shall preclude a facility from making a placement decision based upon a case-by-case analysis [~~, as required in 6VAC35-71-555.~~] of whether a placement would ensure a resident's health and safety or present management or security problems [, as required in 6VAC35-71-555].

B. Beds in all facilities or sleeping areas established, constructed, or structurally modified after July 1, 1981, shall be at least three feet apart at the head, foot, and sides; and [~~double-decker~~ bunk] beds in such facilities shall be at least five feet apart at the head, foot, and sides. Facilities or sleeping

areas established, constructed, or structurally modified before July 1, 1981, shall have a bed placement plan approved by the director or the director's designee.

C. Mattresses shall be fire retardant as evidenced by documentation from the manufacturer, except in buildings equipped with an automated sprinkler system [,] as required by the Virginia Uniform Statewide Building Code (13VAC5-63).

D. Sleeping quarters established, constructed, or structurally modified after July 1, 1981, shall have:

1. At least 80 square feet of floor area in a bedroom accommodating one person;

2. At least 60 square feet of floor area per person in rooms accommodating two or more persons; and

3. Ceilings with a primary height [of] at least 7-1/2 feet [~~in height,~~] exclusive of protrusions, duct work, or dormers.

6VAC35-71-400. Smoking prohibition.

Residents shall be prohibited from using, possessing, purchasing, or distributing [(i)] ~~any~~ tobacco [~~or~~ products,] nicotine vapor products [, or alternative nicotine products as defined in § 18.2-371.2 of the Code of Virginia; (ii) cannabidiol oil or THC-A as defined in § 54.1-3408.3 of the Code of Virginia; or (iii) any substance that is prohibited by state or federal law]. [~~Tobacco products, including cigarettes, cigars, pipes,~~] ~~and~~ [~~bidis, smokeless tobacco, such as chewing tobacco or snuff,~~] ~~shall~~ [~~and vapor products, such as electronic cigarettes, electronic cigars, electronic cigarillo, electronic pipes, or similar products or devices,~~ These products] may not be used by staff, contractors, interns, or visitors in any ~~areas of the facility or its~~ area on the premises ~~where residents may see or smell the tobacco product~~.

6VAC35-71-410. Space utilization.

A. [~~Each~~ The] JCC [administration] shall provide for the following:

1. An indoor recreation area with appropriate recreation materials;

2. An outdoor recreation area with appropriate recreation materials;

3. Kitchen facilities and equipment for the preparation and service of meals;

4. A dining area equipped with tables and seating;

5. Space and equipment for laundry, if laundry is done on site;

6. ~~Space~~ Storage space for ~~the storage of~~ items such as first aid equipment, household supplies, recreational equipment, and other materials;

7. A designated visiting area that permits informal communication and opportunities for [limited, monitored] physical contact between residents and visitors~~, including opportunity for physical contact~~ [~~in accordance with written procedures~~];

8. Space for administrative activities, including~~, as appropriate to the program,~~ confidential conversations and the storage of records and materials; and

9. A central medical ~~room~~ area with medical examination ~~facilities~~ rooms or other spaces designated to ensure privacy of care and equipped in consultation with the health authority.

B. If a school program is operated at the facility, school classrooms shall be designed in consultation with appropriate education authorities to comply with applicable state and local requirements.

C. Spaces or areas may be ~~interchangeably~~ utilized [~~interchangeably~~ for multiple purposes] but shall be in functional condition for the designated purpose.

6VAC35-71-420. Kitchen operation and safety.

A. [~~Each facility~~ The facility administration] shall have a food service operation maintenance plan that addresses the following: (i) food sanitation and safety procedures; (ii) the inspection of ~~all~~ food service, preparation, and dining areas and equipment; (iii) a requirement for sanitary and temperature-controlled storage facilities for food; and (iv) the monitoring of refrigerator and water temperatures.

B. The facility [administration] shall [~~follow~~ have] written procedures governing access to all areas where food or utensils are stored and the inventory and control of culinary equipment to which residents reasonably may be expected to have access.

C. Walk-in refrigerators and freezers shall be equipped to permit emergency exits.

D. Bleach or another sanitizing agent approved by the ~~federal~~ U.S. Environmental Protection Agency to destroy bacteria shall be used in laundering table and kitchen linens.

6VAC35-71-430. Maintenance of the buildings and grounds.

A. The interior and exterior of all buildings and grounds shall be safe, maintained, and reasonably free of clutter and rubbish. This ~~includes but is not limited to~~ requirement applies to all areas of the facility and to items within the facility, including (i) required locks, mechanical devices, indoor and outdoor equipment, and furnishings; and (ii) all areas where residents, staff, and visitors may reasonably be expected to have access.

B. All buildings shall be reasonably free of stale, musty, or foul odors.

C. Each facility shall have a written plan to control pests and vermin. Buildings shall be kept reasonably free of flies,

roaches, rats, and other vermin. ~~Any condition~~ Conditions conducive to harboring or breeding insects, rodents, or other vermin shall be eliminated immediately. [~~Each~~ The] facility [administration] shall document efforts to eliminate ~~such~~ these conditions, as applicable.

6VAC35-71-440. Animals on the premises.

A. Animals maintained on the premises shall be ~~housed~~:

1. [~~Housed at~~ Kept] a reasonable distance from ~~sleeping, living, eating, and~~ [eating and] food preparation areas [,] as well as a safe distance from water supplies~~.~~;

~~B. Animals maintained on the premises shall be tested~~ 2. Tested, inoculated, and licensed as required by law~~.~~; and

3. Provided with clean sleeping areas and adequate food and water.

~~C.~~ B. The premises shall be kept reasonably free of stray domestic animals.

~~D. Pets shall be provided with clean sleeping areas and adequate food and water.~~

[6VAC35-71-450. Fire prevention plan.

~~Each~~ The JCC administration shall develop and implement a fire prevention plan that provides for an adequate fire protection service.]

6VAC35-71-460. Emergency and evacuation procedures.

A. Each JCC shall have a written emergency preparedness and response plan~~. The plan~~, which shall address:

1. Documentation of contact with the local emergency coordinator to determine (i) local disaster risks; (ii) communitywide plans to address different disasters and emergency situations; and (iii) assistance, if any, that the local emergency management office will provide to the facility in an emergency;

2. Analysis of the facility's capabilities and potential hazards, including natural disasters, severe weather, fire, flooding, workplace violence or terrorism, missing persons, severe injuries, or other emergencies that would disrupt the normal course of service delivery;

3. Written emergency management procedures outlining specific responsibilities for (i) provision of administrative direction and management of response activities; (ii) coordination of logistics during the emergency; (iii) communications; (iv) life safety of [residents,] employees, contractors, interns, volunteers, [and] visitors [~~, and residents~~]; (v) property protection; (vi) community outreach; and (vii) recovery and restoration;

4. Written emergency response procedures for (i) assessing the situation; (ii) protecting residents, employees, contractors, interns, volunteers, visitors, equipment, and vital records; and (iii) restoring services shall address:

a. Communicating with employees, contractors, and community responders;

b. Warning and ~~notification of~~ notifying residents;

c. Providing emergency access to secure areas and opening locked doors;

d. Requiring fire and emergency keys that are instantly identifiable by sight and touch;

e. Conducting evacuations to emergency shelters or alternative sites and accounting for all residents;

f. Relocating residents, if necessary;

g. Notifying parents and legal guardians, as applicable and appropriate;

h. Alerting emergency personnel and sounding alarms;

i. Locating and shutting off utilities when necessary; and

j. Providing for a planned, personalized means of effective ~~egress~~ evacuation for ~~residents~~ individuals who use wheelchairs, crutches, canes, or ~~other mechanical devices for assistance in walking~~ require other special accommodations.

5. Supporting documents that would be needed in an emergency, including emergency call lists, building and site maps necessary to shut off utilities, designated ~~escape~~ evacuation routes, and ~~list~~ lists of major resources such as local emergency shelters; and

6. [~~Schedule~~ A schedule] for testing the implementation of the plan and conducting emergency preparedness drills.

B. All employees shall be trained to ensure they are prepared to implement the emergency preparedness plan in the event of an emergency. ~~Such~~ The training shall ~~include~~ be conducted in accordance with 6VAC35-71-160 and 6VAC35-71-170 and shall outline the employees' responsibilities for:

1. Alerting emergency personnel and sounding alarms;

2. Implementing evacuation procedures, including evacuation of ~~residents with~~ individuals who require special ~~needs (i.e., deaf, blind, nonambulatory)~~ accommodations;

3. Using, maintaining, and operating emergency equipment;

4. Accessing emergency information for residents [.] including medical information; and

5. Utilizing community support services.

C. Contractors ~~and~~, volunteers, and interns shall be oriented in their responsibilities in implementing the evacuation plan in the event of an emergency. ~~Such orientation~~ Orientation shall be in accordance with the requirements of 6VAC35-71-150 ~~(required initial orientation)~~, 6VAC35-71-160 ~~(required initial training)~~, and 6VAC35-71-240 ~~(volunteer and intern orientation and training)~~.

D. ~~The~~ [~~A~~ The] JCC [administration] shall document the review of the emergency preparedness plan annually and make

necessary revisions. ~~Such~~ The revisions shall be communicated to employees, contractors, volunteers, ~~and~~ interns, and residents and shall be incorporated into (i) training for employees, contractors, interns, and volunteers; and (ii) orientation of residents to services.

E. [~~In the event of~~ If] a disaster, fire, emergency, or any other condition that may jeopardize the health, safety and welfare of residents [occurs], ~~the~~ facility [administration] shall take appropriate action to protect the health, safety [,] and welfare of the residents and to remedy the [~~conditions~~ condition] as soon as possible.

F. [~~In the event of~~ If] a disaster, fire, emergency, or [~~any~~] other condition that may jeopardize the health, safety, and welfare of residents [occurs], [~~the~~] facility [staff] ~~should~~ first shall respond and stabilize the disaster or emergency. ~~After~~ Once [~~the disaster or emergency is~~] stabilized, [~~the~~] facility [staff] shall [~~(i)~~] report the disaster or emergency and the conditions at the facility to [~~(a)~~ (i)] the [~~parent~~ parents] or legal [~~guardian and (b)~~ guardians of all residents, (ii)] the director or ~~his~~ the director's designee [,] ~~of the conditions at the facility~~ and [~~(ii) report the disaster or emergency to the regulatory authority~~ (iii) the applicable court service units in accordance with 6VAC35-71-60. A report also shall be made to the regulatory authority within the same timeframe]. ~~Such~~ [~~The reporting shall be made as soon as possible but no later than 72 hours after the incident is stabilized.~~]

G. Floor plans showing primary and secondary [~~means of~~] emergency [~~exiting~~ exits] shall be posted on each floor in locations where they ~~can~~ are easily ~~be seen by~~ visible to employees and residents.

H. The responsibilities of the residents in implementing the emergency and evacuation procedures shall be communicated to all residents within seven days following admission or [within seven days of] a substantive change in the procedures.

I. ~~At~~ The facility [administration] shall conduct at least one evacuation drill ~~(the simulation of the facility's emergency procedures) shall be conducted~~ to simulate [~~its~~ the facility's] evacuation procedures each month in each building occupied by residents. During any three consecutive calendar months, at least one evacuation drill shall be conducted during each shift.

J. A record shall be maintained for each evacuation drill and shall include the following:

1. ~~Buildings~~ The buildings in which the drill was conducted;

2. ~~Date~~ The date and time of the drill;

3. ~~Amount~~ The amount of time taken to evacuate the buildings; ~~and~~

4. ~~Specific~~ The specific problems encountered, if applicable;

5. The staff tasks completed, including head counts and practice in notifying emergency authorities; and

6. The name of the staff members responsible for conducting and documenting the drill and preparing the record.

K. ~~Each~~ [~~A~~ The] JCC [administration] shall ~~assign~~ designate at least one employee who shall ensure that all requirements regarding the emergency preparedness and response plan and the evacuation drill program are met.

6VAC35-71-470. Security procedures.

~~Each~~ A JCC shall [~~follow~~ have] written security procedures [in place] related to the following:

1. Post orders or shift duties for each direct care and security post;

2. Population count;

3. A control center that integrates all external and internal security functions and communications, is secured from residents' access, and is staffed 24 hours a day;

4. Control of the perimeter;

5. Actions to be taken regarding any escapes or absences without permission;

6. Searches of the buildings, premises, and persons; and

7. The control, detection, and disposition of contraband.

6VAC35-71-480. Searches of residents.

A. A JCC may conduct a search of a resident only for the purposes of maintaining facility security and controlling contraband [~~and only in a manner that~~ while], to the greatest extent possible, [~~protects~~ protecting] the [resident's] dignity [~~of the resident~~].

B. [~~Written procedures shall govern searches of residents,~~ Staff in the JCC shall adhere to the following requirements when conducting searches of residents,] including patdowns and frisk searches, strip searches, and body cavity searches [~~, and shall include the following~~]:

~~1. Searches of residents' persons shall be conducted only for the purposes of maintaining facility security and controlling contraband while protecting the dignity of the resident.~~

~~2.~~ 1. Searches ~~are~~ shall be conducted only by personnel who have received the required training and are authorized to conduct ~~such~~ searches.

~~3.~~ 2. The resident shall not be touched any more than is necessary to conduct the search.

3. [~~The facility~~ Facility staff] shall not search or physically examine a transgender or intersex resident solely for the purpose of determining the resident's genital status.

~~B.~~ [~~C. Patdown and frisk searches shall be conducted~~] ~~by personnel of the same sex as the resident being searched, except in emergencies~~ [~~in accordance with written procedures.~~]

[C. ~~D.~~] Strip searches and visual inspections of the vagina and anal cavity areas shall be ~~subject to the following:~~ conducted with a staff witness [~~and~~] in an area that ensures privacy [~~in accordance with written procedures~~].

~~1. The search shall be performed by personnel of the same sex as the resident being searched;~~

~~2. The search shall be conducted in an area that ensures privacy; and~~

~~3. Any witness to the search shall be of the same sex as the resident.~~

[D.] ~~Manual and~~ [~~E.~~] Except in exigent circumstances creating a potential threat to the health of a resident, if it is determined that a manual or instrumental ~~searches~~ search of the anal cavity or vagina is necessary, the resident shall be transported to a local medical facility [~~in accordance with written procedures~~. In exigent circumstances creating a potential threat to the resident's health, manual or instrumental searches of the anal cavity or vagina shall be conducted by a qualified medical professional.]~~, not including medical examinations or procedures conducted by medical personnel for medical purposes, shall be:~~

~~1. Performed only with the written authorization of the facility administrator or by a court order;~~

~~2. Conducted by a qualified medical professional;~~

~~3. Witnessed by personnel of the same sex as the resident; and~~

~~4. Fully documented in the resident's medical file~~.

6VAC35-71-490. Communications systems.

A. There shall be at least one continuously operable, nonpay telephone accessible to staff in each building in which residents sleep or participate in programs.

B. There shall be a means [~~for~~ of] communicating between the control center and ~~living~~ housing units.

C. The facility shall be able to provide communications in an emergency.

6VAC35-71-500. Emergency telephone numbers.

~~An~~ A. There shall be an emergency telephone number where a staff person may be contacted 24 hours per day and seven days per week.

B. The emergency telephone number shall be provided to residents and the adults responsible for their care when a resident is away from the facility and not under the supervision of direct care [~~staff~~ employees], security [~~staff~~ employees], or law-enforcement officials.

6VAC35-71-510. Weapons.

No firearms or other weapons shall be permitted on [~~the JCC's~~ JCC] premises ~~and~~ or during JCC-related activities [~~except as~~] ~~provided~~ [~~authorized in written procedures or~~] ~~authorized~~ [~~by the director or the director's designee. Written procedures shall govern any possession, use, and storage of authorized firearms and other weapons on the JCC's premises and during JCC-related activities~~ unless:

1. The weapon belongs to a law-enforcement officer and is (i) secured in a locked cabinet, (ii) secured in the trunk of the officer's vehicle, or (iii) present on the premises in response to a request for law-enforcement intervention in an emergency; or

2. The director or the director's designee authorizes the weapon to be brought on the premises].

[6VAC35-71-520. Equipment inventory.

~~The facility~~ Facility staff shall ~~follow~~ have written procedures in place governing the inventory and control of all of the facility's security, maintenance, recreational, and medical equipment ~~of the facility~~ to which residents reasonably may be expected to have access.

6VAC35-71-530. Power equipment.

The ~~facility~~ JCC administration shall ~~implement~~ have written safety rules in place for use and maintenance of power equipment.]

6VAC35-71-540. Transportation.

A. [~~Each~~ The] JCC [administration] shall have transportation available or make the necessary arrangements for routine and emergency transportation of residents.

[~~B.~~] ~~There shall be~~ [~~A JCC shall follow written safety~~] ~~rules for~~ [~~and security procedures governing transportation of residents and for the use and maintenance of vehicles.~~

~~C.~~ B.] Written ~~procedure~~ procedures shall ~~provide for~~ require [~~the verification of appropriate licensure for staff whose duties involve transporting residents. At a minimum, the procedures shall direct this staff to (i) maintain a valid driver's license and (ii) report to the superintendent or the superintendent's designee any change in their driver's license statuses, including any suspensions, restrictions, or revocations.~~ that facility staff whose duties involve transporting residents offsite do the following:

1. Maintain a valid driver's license and report to the superintendent or the superintendent's designee any change in the individual's driver's license status, including any suspensions, restrictions, or revocations; and

2. Complete all related training.

C. Except when residents are transferred by non-JCC personnel as authorized in subsection D of this section, residents shall be supervised by security employees or direct care employees during routine and emergency vehicle transportation.]

D. [~~Residents shall be supervised by security staff or direct care staff during routine and emergency vehicle transportation.~~ If a person or entity other than personnel in the juvenile correctional center assumes custody of the resident for purposes of transportation, staff shall:

1. Provide the person or entity with a written document that identifies any pertinent information known to the facility concerning the resident's immediate medical needs or mental health condition that reasonably could be considered necessary for the resident's safe transportation and supervision, including the resident's recent suicidal ideations or suicide attempts. Any such information shall be provided in a manner that protects the confidentiality of the information in accordance with § 16.1-300 of the Code of Virginia and applicable rules and regulations regarding confidentiality of juvenile records.

2. Provide the individual transporting the resident with any medication the resident may be required to take during transport or while absent from the facility.]

6VAC35-71-545. Lockdowns.

A JCC may impose a lockdown [~~within a facility~~ only] in accordance [~~with written procedures that require the following~~ with the following requirements]:

1. With the exception of a lockdown to respond to an emergency [~~, as defined in 6VAC35-71-10~~], a lockdown may not be imposed until the superintendent or the superintendent's designee provides approval;

2. [~~In the event of~~ If] an emergency [~~necessitating~~ necessitates] a lockdown, the superintendent shall be notified as soon as practicable;

3. The [~~superintendent's supervisor and the administrator at the next level in the department's reporting chain of command shall be notified~~ facility shall have written procedures in place for notifying administrators above the level of superintendent] of all lockdowns except lockdowns for routine [~~facility~~ contraband] searches;

4. [~~In the event that~~ If] the lockdown extends beyond 72 hours, the lockdown and the steps being planned or taken to resolve the situation shall be reported immediately to the administrator who is two levels above the superintendent in the department's reporting chain-of-command;

5. Whenever residents are confined to a locked room as a result of a lockdown, the staff shall:

a. Check each locked-down resident visually at least every 15 minutes, and more frequently if necessitated by the circumstances;

b. Ensure that each resident has a means of immediate communication with staff, either verbally or electronically, throughout the duration of the confinement period;

c. Ensure that each resident is afforded the opportunity for at least one hour of large muscle exercise outside of the locked room every calendar day unless the resident displays behavior that is threatening or presents an imminent danger to himself or others, or unless the circumstances that required the lockdown justify an exception.

d. Ensure that the superintendent or the superintendent's designee makes personal contact with each resident who is confined every calendar day; and

e. In response to a resident who exhibits self-injurious behavior after being in room confinement, (i) take appropriate action in response to the behavior, (ii) consult with a [~~qualified~~] mental health [~~professional~~ clinician] immediately thereafter and document the consultation, and (iii) monitor the resident in accordance with established protocols, including constant supervision, if appropriate.

6VAC35-71-550. Prohibited actions.

A. Residents shall not be subjected to the following actions:

1. Discrimination in violation of the Constitution of the United States, the Constitution of the Commonwealth of Virginia, [~~executive orders~~], and state and federal statutes and regulations;

2. Deprivation of drinking water or food necessary to meet a resident's daily nutritional needs, except as ordered by a licensed physician or [~~health-trained personnel~~ licensed medical provider] for a legitimate medical or dental purpose and documented in the resident's medical record;

3. Denial of contacts and visits with the resident's attorney, ~~a~~ probation or parole officer, the JCC staff assigned to conduct the resident's due process hearings or resolve the resident's grievance or complaint, the regulatory authority, a supervising agency representative, or representatives of other agencies or groups as required by applicable statutes or regulations;

4. Any action that is humiliating, degrading, abusive, or unreasonably impinges upon the ~~residents'~~ resident's rights, including ~~but not limited to any form of~~ physical abuse, sexual abuse, or sexual harassment, nor shall the [~~residents~~ resident] be subject to retaliation for reporting these actions;

5. Corporal punishment, which is administered through the intentional ~~inflicting~~ infliction of pain or discomfort to the body through actions such as~~, but not limited to~~ (i) striking or hitting with any part of the body or with an implement; (ii) pinching, pulling, or shaking; or (iii) ~~any~~ similar ~~action~~ actions that normally ~~inflicts~~ inflict pain or discomfort;

6. Subjection to unsanitary living conditions;

7. Deprivation of opportunities for bathing or access to toilet facilities, except as ordered by a licensed ~~physician~~ health

care professional for a legitimate medical purpose and documented in the resident's medical record;

8. Denial of health care;

9. Denial of appropriate services, programs, activities, and treatment;

10. Application of aversive stimuli, except as ~~provided in this chapter or~~ permitted pursuant to other applicable state regulations~~. Aversive stimuli means any physical forces (e.g., sound, electricity, heat, cold, light, water, or noise) or substances (e.g., hot pepper, pepper sauce, or pepper spray) measurable in duration and intensity that when applied to a resident are noxious or painful to the individual resident~~;

11. Administration of laxatives, enemas, or emetics, except as ordered by a licensed ~~physician~~ [~~health care professional~~ physician, licensed medical provider,] or poison control center for a legitimate medical purpose and documented in the resident's medical record;

12. Deprivation of opportunities for sleep or rest, except as ordered by a licensed ~~physician~~ health care professional for a legitimate medical or dental purpose and documented in the resident's medical record;

13. Use of pharmacological restraints; and

14. Other constitutionally prohibited actions.

B. Employees shall be trained on the prohibited actions as provided in 6VAC35-71-160 and 6VAC35-71-170 [, as applicable].

6VAC35-71-555. Vulnerable population.

A. The facility [administration] shall implement a procedure for assessing whether a resident is a member of a vulnerable population. [Factors including the resident's height and size, English proficiency, sexual orientation, history of being bullied, or history of self-injurious behavior may be considered in determining whether a resident is a member of a vulnerable population.] The resident's views with respect to his safety shall be given serious consideration.

B. If the assessment determines a resident is a [member of a] vulnerable population, the facility [administration] shall implement any identified additional precautions such as heightened need for supervision, additional safety precautions, or separation from certain other residents. The facility [administration] shall consider on a case-by-case basis whether a placement would ensure the resident's health and safety and whether the placement would present management or security problems.

~~C. For the purposes of this section, vulnerable population means a resident or group of residents who have been assessed to be reasonably likely to be exposed to the possibility of being attacked or harmed, either physically or emotionally (e.g., very young residents; residents who are small in stature; residents who have limited English proficiency; residents who are gay, lesbian, bi sexual, transgender, or intersex; residents with a history of being bullied or of self-injurious behavior).~~

C. Lesbian, gay, bisexual, transgender, or intersex residents shall not be placed in particular housing, bed, or other assignments solely on the basis of this identification or status, nor shall any facility consider lesbian, gay, bisexual, transgender, or intersex identification or status as an indicator of a likelihood of being sexually abusive.

6VAC35-71-560. ~~Residents'~~ Resident mail.

A. A resident's incoming or outgoing mail may be delayed or withheld only in accordance with this section, as permitted by other applicable regulations, or by order of a court.

B. Staff may open and inspect residents' incoming and outgoing nonlegal mail for contraband. When based on legitimate ~~facility~~ interests of facility order and security, nonlegal mail may be [~~read,~~] censored [~~,~~] or rejected [~~in accordance with written procedures and subject to the restrictions in subsection D of this action~~]. The resident shall be notified when incoming or outgoing letters are withheld ~~in part or in full~~ or redacted, as appropriate.

C. In the presence of the resident recipient [~~and in accordance with written procedures~~], staff may open to inspect for contraband~~,~~ but shall not read~~,~~ incoming legal mail [except as authorized in subsection D of this section]. ~~For the purpose of this section, legal mail means a communication sent to or received from a designated class of correspondents, as defined in written procedures, including but not limited to the court, an attorney, and the grievance system or department administrators.~~

D. Staff ~~shall~~ may not read [incoming or] outgoing mail ~~addressed to parents, immediate family members, legal guardian, guardian ad litem, counsel, courts, officials of the committing authority, public officials, or grievance administrators~~ unless (i) permission has been obtained from a court or (ii) the [~~director~~ superintendent] or ~~his~~ the [~~director's~~ superintendent's] designee has determined that there is a reasonable belief that the security of a facility is threatened. [~~When so authorized staff may read~~] ~~such~~ [~~this mail, in accordance with written procedures.~~]

E. Except as otherwise provided, incoming and outgoing letters shall be held for no more than 24 hours [,] and packages shall be held for no more than 48 hours, excluding weekends and holidays.

F. Upon request, each resident shall be given postage and writing materials for all legal [~~correspondence~~ mail] and for at least two other letters per week.

G. Residents shall be permitted to correspond at their own expense with any person or organization provided ~~such~~ this correspondence does not pose a threat to facility order and

security and is not being used to violate or to conspire to violate the law.

H. First class letters and packages received for residents who have been transferred or released shall be forwarded to the resident's last known address.

I. Written [~~procedure~~ procedures] governing correspondence of residents shall be made available to all employees and residents and updated as needed.

6VAC35-71-570. Telephone calls.

~~Telephone~~ [~~Residents shall be permitted to make telephone calls~~] ~~shall be permitted~~ [~~in accordance with written procedures~~] ~~that take into account the need for facility security and order, the resident's behavior, and program objectives~~ [~~.~~]

[A. Residents shall be permitted to call family members or natural supports. Facility staff shall have flexibility in scheduling these calls based on facility security needs and scheduled activities.

B. Resident telephone calls with their legal representatives shall comply with 6VAC35-71-590.

C. The department shall have written procedures in place that address resident contacts.]

6VAC35-71-580. [~~Visitation~~ Resident contacts and visitation].

A. [~~A~~ In order to ensure that residents maintain strong family and community relationships, a] resident's contacts and visits with immediate family members ~~or legal guardians shall~~ and natural supports may not be restricted solely for punitive purposes [~~, nor may they be subject to unreasonable limitations~~]~~, and any~~. Any limitation shall be [~~implemented only as permitted by~~] ~~written procedures, other~~ [~~applicable regulations,~~] ~~or by~~ [~~order of a court, or written visitation procedures that balance~~ documented and based on] (i) the need for facility security and order [~~,~~ and] (ii) the behavior of individual residents and [~~the~~] visitors [~~, and (iii) the importance of helping the resident maintain strong family and community relationships~~].

~~B. Residents shall be permitted to have visitors, consistent with written procedures that take into account (i) the need for facility security and order, (ii) the behavior of individual residents and the visitors, and (iii) the importance of helping the resident maintain strong family and community relationships. Written procedures shall provide for the accommodation of special circumstances.~~

[~~B. A JCC shall provide visitors with occasional opportunities to view the resident's housing unit or room and to interact with staff members unless this access is impracticable or would threaten the safety or security of residents, staff, or other visitors. Written visitation procedures shall outline the parameters governing this access and provide for the accommodation of special circumstances.~~

~~C.~~ B.] Copies of the visitation procedures shall be mailed, either electronically or via first class mail, to the ~~residents'~~ resident's parents or legal guardians, as applicable and appropriate, ~~and other applicable persons~~ no later than the close of the next business day after ~~arrival~~ the resident arrives at the JCC, unless a copy [~~has~~] already [has] been provided to [~~the individual~~ them].

[~~D.~~ C.] Resident visitation at ~~an employee's~~ the home ~~is~~ of an employee, volunteer, intern, or contractor [~~shall be~~ is] prohibited.

6VAC35-71-590. Contact with attorneys, courts, and law enforcement.

A. Residents shall have uncensored, confidential contact with their legal representative in writing, as ~~provided for in~~ required by 6VAC35-71-560 ~~(residents' mail)~~, by telephone, ~~or~~ and in person. Reasonable limits may be placed on ~~such~~ these contacts as necessary to protect the security and order of the facility.

B. Residents shall not be denied access to the courts.

C. Residents shall not be required to submit to questioning by law enforcement, though they may do so voluntarily.

1. A resident must provide written consent [~~prior to~~ before] any contact with law enforcement. Written procedures shall be implemented for obtaining ~~a~~ the resident's consent ~~prior to any contact with law enforcement~~.

2. No employee may coerce a resident's decision to consent to have contact with law enforcement.

[6VAC35-71-610. Showers.

Residents shall have the opportunity to shower daily except ~~as~~ (i) ~~provided in written procedures~~ for the purpose of maintaining facility security or for the special management of maladaptive behavior if approved by the superintendent or designee or a mental health ~~professional~~ clinician or (ii) ~~approved by the regulatory authority~~ when there is a documented emergency.]

6VAC35-71-620. ~~Residents' modesty~~ Resident privacy.

Residents shall be provided a level of ~~modesty~~ privacy from routine sight supervision by staff members of the opposite sex while bathing, dressing, or conducting toileting activities except (i) in exceptional security circumstances or (ii) ~~when~~ if constant supervision is necessary to protect the resident due to mental health issues. This section does not apply to medical personnel performing medical procedures or to staff providing assistance to residents whose physical or mental disabilities dictate the need for assistance with these activities as justified in the resident's medical record.

6VAC35-71-630. Nutrition.

A. Each resident, except as provided in subsection B of this section, shall be provided a daily diet that (i) consists of at least

three nutritionally balanced meals, of which two are hot meals (except in [~~emergency situations~~ emergencies]), and an evening snack; (ii) includes an adequate variety and quantity of food for the age of the resident; and (iii) meets the nutritional requirements of all applicable federal dietary requirements, such as U.S. Department of Agriculture (USDA).

B. Special diets or alternative dietary schedules~~, as applicable,~~ shall be provided in the following circumstances: (i) when prescribed by a ~~physician~~ licensed health care professional; (ii) when necessary to observe the established religious dietary practices of the resident; or (iii) when ~~necessary for the special management of maladaptive behavior or to maintain facility security if~~ food or culinary equipment has been used inappropriately, resulting in a threat to facility security and the special diet or alternative dietary schedule is approved by the superintendent ~~or~~, the superintendent's designee, or a mental health [~~professional~~ clinician]. ~~In such circumstances~~ If a facility provides special diets or alternative dietary schedules, the meals shall meet the minimum nutritional requirements of all applicable federal dietary requirements, such as [the] USDA, and any required approval shall be documented.

C. Menus of actual meals served shall be kept on file ~~for at least six months~~ in accordance with all applicable federal requirements.

D. Staff who eat in the presence of the residents shall be served the same meals as the residents unless a licensed health care professional has prescribed a special diet ~~has been prescribed by a physician~~ for the staff or residents or unless the staff or residents are observing established religious dietary practices.

E. ~~There~~ [~~A~~ The] JCC [administration] shall not ~~be~~ allow more than ~~15~~ 14 hours to pass between the evening meal and breakfast the following day~~, except when the superintendent approves an extension of time between meals on weekends and holidays. When an extension is granted on a weekend or holiday, there shall never be more than 17 hours between the evening meal and breakfast~~.

F. ~~Each~~ [~~A~~ The] JCC [administration] shall ~~assure~~ ensure that food is available to residents who for documented medical or religious reasons need to eat breakfast before the ~~15~~ 14 hours have expired.

[6VAC35-71-650. Religion.

A. Residents shall not be required or coerced to participate in or unreasonably denied participation in religious activities.

B. Residents shall be informed of their rights relating to religious participation during orientation as provided in 6VAC35-71-680 ~~(admission and orientation)~~.]

6VAC35-71-660. Recreation.

A. [~~Each~~ The] JCC [administration] shall implement a recreational program plan ~~that includes~~ developed and supervised by a person trained in recreation or a related field. The plan shall include:

1. Opportunities for individual and group activities;

2. Opportunity for large muscle exercise daily;

3. Scheduling so that activities do not conflict with meals, religious services, or educational programs~~, or other regular events~~; and

4. Regularly scheduled indoor and outdoor recreational activities that are structured to develop skills. Outdoor recreation ~~will~~ shall be available whenever practicable in accordance with the facility's recreation plan. Staff shall document any adverse weather conditions, threat to facility security, or other circumstances preventing outdoor recreation.

B. Each recreational program plan shall (i) address the means by which residents will be medically assessed for any physical limitations or necessary restrictions on physical activities and (ii) provide for the supervision of and safeguards for residents, including when participating in [~~water related~~ water-related] and swimming activities.

6VAC35-71-670. ~~Residents'~~ Resident funds.

~~Residents'~~ A resident's personal funds, including any per diem or earnings, shall be used only for the following: (i) ~~for their~~ [~~activities, services, or goods for~~] the resident's benefit; (ii) ~~for~~ payment of [~~any~~] fines, restitution, costs, or support ordered by a court or administrative judge; or (iii) ~~to pay~~ payment of [~~any~~] restitution for damaged property or personal injury [resulting from an institutional incident,] as determined [~~by disciplinary procedures~~ in accordance with the process established in 6VAC35-71-1110].

6VAC35-71-680. Admission and orientation.

A. Written [~~procedure~~ procedures] governing the admission and orientation of residents to the JCC shall provide for:

1. Verification of legal authority for placement;

2. Search of the resident and the resident's possessions, including inventory and storage or disposition of property, as appropriate and ~~provided for in~~ required by 6VAC35-71-690 ~~(residents' personal possessions)~~;

3. Health screening of the resident as ~~provided for in~~ required by 6VAC35-71-940 ~~(health screening at admission)~~;

4. ~~Notification of~~ Notice to the parent or legal guardian of the resident's admission;

5. Provision to the parent or legal guardian of information on (i) visitation, (ii) how to request information, and (iii) how to register concerns and complaints with the facility;

6. Interview with the resident to answer questions and obtain information;

7. Explanation to the resident of program services and schedules; and

8. Assignment of the resident to a ~~living~~ housing unit~~,~~ and sleeping area~~,~~ or room.

B. The resident shall receive an orientation to the following:

1. The behavior management program as required by 6VAC35-71-745 ~~(behavior management)~~. ~~a.~~ During the orientation, residents shall be given written information describing rules of conduct, the sanctions for rule violations, and the disciplinary process. ~~These~~ Staff shall have the discretion to provide residents who are noncompliant or are displaying maladaptive behavior [at least] one [~~or more opportunities~~ opportunity] to view the written information instead of providing the resident with a copy. The written information shall be explained to the resident and documented by the dated signature of the resident and staff. [~~In the event that~~ If] staff [~~exercises~~ exercise] the discretion not to provide the resident with a written copy, staff must [~~provide~~ give] the resident [~~with~~] a copy of the written information once the resident demonstrates the ability to comply with the rules of the facility.

~~b. Where a language or literacy problem exists that can lead to a resident misunderstanding the rules of conduct and related regulations, staff or a qualified person under the supervision of staff shall assist the resident.~~

2. The grievance procedure as required by 6VAC35-71-80 ~~(grievance procedure)~~.

3. The disciplinary process as required by 6VAC35-71-1110 ~~(disciplinary process)~~.

4. The resident's responsibilities in implementing the emergency procedures as required by 6VAC35-71-460 ~~(emergency and evacuation procedures)~~.

5. The resident's rights, including ~~but not limited to~~ the prohibited actions provided for in 6VAC35-71-550 ~~(prohibited actions)~~.

6. The resident's rights relating to religious participation as required by 6VAC35-71-650 ~~(religion)~~.

C. The facility [administration] shall ensure that all [~~the~~] information provided to the resident pursuant to this section is explained in an age-appropriate or developmentally [~~,~~] appropriate manner and is available in a format that is accessible to all residents, including those who are [~~limited English proficient,~~] deaf, visually impaired, or otherwise disabled [~~,~~] or who have limited reading skills [or limited English proficiency].

D. The facility [administration] shall maintain documentation that the requirements of this section have been satisfied.

6VAC35-71-690. ~~Residents'~~ Resident personal possessions.

A. ~~Each~~ [~~A~~ The] JCC [administration] shall inventory ~~residents'~~ each resident's personal possessions upon admission and document the information in ~~residents'~~ the resident's case records. [~~When a resident arrives at a JCC with items that the resident is not permitted to possess in the facility, staff shall:~~

~~1. Dispose of contraband items in accordance with written procedures;~~

~~2. If the items are nonperishable property that the resident may otherwise legally possess, (i) securely store the property and return it to the resident upon release; or 3.~~] ~~Make~~ [~~(ii) make reasonable, documented efforts to return the property to the~~] ~~resident, or~~ [~~resident's parent or legal guardian.~~]

B. [The department shall have written procedures for the disposition or storage of items that the resident is not permitted to possess in the facility. At a minimum, the procedures shall require that if the items are nonperishable property that the resident may otherwise legally possess, staff shall (i) securely store the property and return it to the resident upon release or (ii) make reasonable, documented efforts to return the property to the resident or the resident's parent or legal guardian.

C.] Personal property that remains unclaimed six months [following a resident's discharge from DJJ and] after a documented attempt to return the property may be disposed of in accordance with § 66-17 of the Code of Virginia [~~and written procedures governing unclaimed personal property~~].

6VAC35-71-700. Classification plan.

A. [~~A~~ The] JCC [administration] shall utilize an objective classification system for determining ~~appropriate security levels the~~ a resident's level of risk, needs, and ~~the~~ most appropriate services ~~of the residents~~ and for assigning ~~them~~ the resident to ~~living units according to their~~ a housing unit based on the resident's needs and existing resources.

B. Residents shall be placed according to their classification levels. ~~Such classification~~ These classifications shall be reviewed as necessary in light of (i) the facility's safety and security and (ii) the resident's needs and progress.

6VAC35-71-710. Resident transfer [and reassignment] between and within JCCs.

A. When a resident is transferred between JCCs, the following shall occur:

1. The resident's case records [~~, including medical records,~~] and [~~behavioral~~] health [care] records~~,~~ shall accompany the resident to the receiving facility; and

2. The resident's parents or legal guardian, if applicable and appropriate, and the court service unit or supervising agency shall be notified within 24 hours of the transfer.

B. ~~When~~ If a resident is [~~transferred~~ reassigned] to a more restrictive unit~~,~~ or program~~, or facility~~ within a JCC or [transferred] between JCCs, the JCC [administration] shall provide due process safeguards for ~~residents~~ the resident prior to ~~their~~ [reassignment or] transfer. [The due process safeguards shall be documented in writing and provided to the resident, both during orientation and when facility staff determine that reassignment or transfer is necessary.]

C. In the case of emergency transfers, ~~such~~ the safeguards and notifications shall be instituted as soon as practicable after transfer.

6VAC35-71-720. ~~Release~~ Discharge [from direct care].

[~~A. Residents shall be~~] ~~released~~ [~~discharged from a JCC in accordance with written procedure.~~

~~B.~~ A.] The case record of each resident [s~~erving an indeterminate commitment, who is not released discharged pursuant to a court order,~~ committed to the department and discharged from direct care] shall contain the following:

[~~1. A discharge plan developed in accordance with written procedures;~~

~~2.~~ 1.] Documentation that the ~~release~~ discharge was discussed with the parent or legal guardian, if applicable and appropriate, the court ~~services~~ service unit, and the resident; and

[~~3.~~ 2.] As soon as possible, but no later than 30 days after ~~release~~ discharge, a comprehensive ~~release~~ discharge summary ~~placed in the resident's record and~~, which also shall be sent to the persons or agency that made the placement. The ~~release~~ discharge summary shall review:

a. Services provided to the resident;

b. The resident's progress toward meeting individual service plan objectives;

c. The resident's continuing needs and recommendations [~~, if any,~~] for further services and care [, if any];

d. The [~~names~~ name] of [~~persons~~ the person] to whom the resident was ~~released~~ discharged;

e. Dates of admission and ~~release~~ discharge; and

f. [~~Date~~ The date] the ~~release~~ discharge summary was prepared and the identification of the person preparing it.

[~~C. The~~ B. In addition to the requirements in subsection A of this section, the] case record of each resident serving a determinate commitment or ~~released~~ discharged pursuant to an order of a court [also] shall contain a copy of the court order.

[~~D.~~ C.] As appropriate and applicable, information concerning current medications, need for continuing therapeutic interventions, educational status, and other items important to the resident's continuing care shall be provided to the legal guardian or legally authorized representative~~, as appropriate and applicable~~.

[~~E.~~ D.] Upon discharge, the (i) date of discharge and (ii) the name of the person to whom the resident was discharged, if applicable, shall be documented in the case record.

6VAC35-71-735. Therapeutic communities in housing units.

A. [~~A~~ The] JCC [administration] shall ensure that each housing unit functions as a therapeutic community that, at a minimum, includes the following components:

1. Designated staff assigned to one housing unit and, to the extent practicable, continued assignment to that unit for the therapeutic benefit of residents;

2. Continued resident assignment to the same housing unit throughout the duration of commitment, unless the continued assignment would threaten facility safety or security or the resident's needs or progress;

3. Daily, structured therapeutic activities provided in accordance with 6VAC35-71-740; and

4. Direction, guidance, and monitoring provided by an interdisciplinary team consisting of designated JCC staff and representatives from the department's mental health, education, and medical units.

B. The department shall establish written procedures governing therapeutic communities in housing units that include these components.

6VAC35-71-740. Structured programming.

A. [~~Each~~ The] facility [administration] shall implement a comprehensive, planned, and structured daily routine~~, including appropriate supervision,~~ designed to:

1. Meet the residents' physical and emotional needs;

2. Provide protection, guidance, and supervision;

3. Ensure the delivery of program services; and

4. Meet the objectives of ~~any~~ the resident's individual service plan.

B. Residents shall be provided the opportunity to participate in programming, as applicable, upon admission to the facility.

6VAC35-71-745. Behavior management [program].

A. ~~Each~~ [~~A~~ The] JCC [administration] shall implement a behavior management program approved by the director or the director's designee ~~Behavior management shall mean those principles and methods employed to help a resident achieve positive behavior and to address and correct a resident's inappropriate behavior in a constructive and safe manner in accordance with written procedures governing program expectations, treatment goals, resident and staff safety and~~

~~security, and the resident's individual service plan.~~ [~~and shall adhere to written procedures governing the behavior management program~~].

B. Written procedures governing this program shall ~~provide the following~~:

1. List the behavioral expectations for the resident;

2. ~~Define and list~~ List and explain techniques that are available or used ~~and available for use~~ to manage behavior, including incidents of noncompliance;

~~3. Specify the staff members who may authorize the use of each technique;~~

~~4.~~ 3. Specify the processes for implementing the program; and

~~5. Means~~ 4. Identify the means of documenting and monitoring ~~of~~ the program's implementation.

C. ~~When~~ If substantive revisions are made to the behavior management program, ~~written information concerning the revisions shall be provided to the residents and direct care staff~~ residents and direct care [~~staff~~ employees] shall be notified of these revisions in writing prior to implementation.

6VAC35-71-747. Behavior support contract.

A. ~~When~~ If a resident exhibits a pattern of behavior indicating a need for behavioral support ~~in addition to that~~ beyond the support provided in the ~~facility's~~ department's behavior management program, a written behavior support contract shall be developed~~, in accordance with written procedures, with the intent of assisting~~ to assist the resident ~~to self-manage~~ in self-managing these behaviors. [~~The support contract shall be developed in accordance with written procedures, which~~] ~~Procedures governing behavior support contracts~~ [~~shall address (i) the circumstances under which such~~ the contracts ~~will be utilized and (ii) the means of documenting and monitoring the contract's implementation.~~]

B. [The facility shall have written procedures in place that address the circumstances under which the contract will be utilized and the means of documenting and monitoring the contract's implementation.

C.] ~~Prior to working alone with an~~ Staff regularly assigned to work with a resident~~, each staff member~~ in a housing unit shall review and be prepared to implement the resident's behavior support contract.

6VAC35-71-750. Communication with court service unit staff.

A. ~~Each~~ A resident's probation or parole officer shall be provided with the contact information for an individual at the facility to whom inquiries on assigned resident cases may be addressed.

B. The resident's probation or parole officer shall be invited to participate in any scheduled classification and staffing team ~~meetings at RDC and any scheduled~~ and treatment team meetings.

6VAC35-71-760. Communication with parents.

A. Each resident's parent or legal guardian, as appropriate and applicable, shall be provided with the contact information for an individual at the facility to whom inquiries regarding the resident may be addressed.

B. The resident's parent or legal guardian, as appropriate and applicable, shall be provided written notice of and the opportunity to participate in [~~any~~] scheduled classification and staffing team ~~meetings at RDC~~ and ~~any scheduled~~ treatment team meetings.

6VAC35-71-765. Family engagement.

To the extent practicable [~~and in accordance with written procedures, a~~ the] JCC [administration] shall adhere to the following in order to ensure the inclusion and involvement of immediate family members and natural supports during a resident's commitment to the department:

1. Permit the resident [~~a specified number of weekly~~ telephone] calls [~~, as identified in written procedures,~~] to immediate family members or natural supports [in accordance with 6VAC35-71-570)];

2. Ensure [~~the periodic arrangement of~~] events and activities [~~, as specified in written procedures,~~] in which family members will be invited to participate;

3. Ensure that a designated visiting area is available that is conducive to family visits in accordance with 6VAC35-71-410; and

4. Maximize involvement of immediate family members and natural supports in the resident treatment process [~~, as prescribed in written procedures~~].

6VAC35-71-770. Case management services.

A. The facility [administration] shall [~~implement~~ have] written procedures [in place] governing case management services~~, which~~ that shall address:

1. The resident's adjustment to the facility, group living, and separation from the resident's family;

2. Supportive counseling, as needed;

3. Transition and community ~~reintegration~~ reentry planning and preparation; and

4. ~~Communicating~~ Communication with (i) staff at the facility; (ii) the parents or legal guardians, as appropriate and applicable; (iii) the court service unit; and (iv) community resources, as needed.

B. The provision of case management services shall be documented in the case record.

6VAC35-71-790. Individual service plans.

A. An individual service plan shall be developed and placed in the resident's record within 30 days following arrival at the facility and implemented immediately thereafter. ~~This section does not apply to residents who are housed at RDC for 60 days or less. If a resident remains at RDC for longer than 60 days, an individual plan shall be developed at that time, placed in the resident's record, and implemented immediately thereafter.~~

B. Individual service plans shall describe in measurable terms the:

1. Strengths and needs of the resident;

~~2. Resident's current level of functioning;~~

~~3. Goals~~ 2. Short-term and long-term goals, objectives, ~~and~~ strategies ~~established for the resident~~, and timeframes for reaching those goals, and the individuals responsible for carrying out the service plan;

~~4.~~ 3. Projected family involvement;

~~5.~~ 4. Projected date for accomplishing each objective; and

~~6.~~ 5. Status of the projected release plan and estimated length of stay except that this requirement shall not apply to residents who are determinately committed to the department.

~~C. Each individual service plan shall include the date it was developed and the signature of the person who developed it.~~

~~D.~~ C. The resident and facility staff shall participate in the development of the individual service plan.

~~E.~~ D. The supervising agency and resident's parents, legal guardian, or legally authorized representative, if appropriate and applicable, shall be given the opportunity to participate in the development of the resident's individual service plan.

E. The individual service plan shall include the date it was developed and the signature of the person who developed it.

F. Copies of the individual service plan shall be provided to the (i) resident; (ii) resident's parents or legal guardians, as appropriate and applicable; and (iii) placing agency.

G. The individual service plan shall be reviewed within 60 days of ~~the development of the individual service plan~~ its development and within each 90-day period thereafter.

H. The individual service plan shall be updated annually and revised as necessary. ~~Any changes~~ Changes to the plan shall be made in writing. All participants shall receive copies of the revised plan.

6VAC35-71-800. Quarterly reports.

A. The resident's progress toward meeting [~~his~~] individual service plan goals shall be reviewed, and a progress report shall be prepared within 60 days of the development of the individual service plan and within each 90-day period thereafter. The report shall review the status of the following:

1. Resident's progress toward meeting the plan's objectives;

2. Family's involvement;

3. Continuing needs of the resident;

4. Resident's progress towards discharge; and

5. Status of discharge planning.

B. Each quarterly progress report shall include the date it was developed and the signature of ~~the person who developed it~~ its author.

C. All quarterly progress reports shall be reviewed with the resident and distributed to the resident's parents, legal guardian, or legally authorized representative; the supervising agency; and appropriate facility staff.

6VAC35-71-805. Suicide prevention.

Written procedure shall ~~provide~~ require that (i) there is a suicide prevention and intervention program developed in consultation with a qualified medical [professional] or mental health [~~professional~~ clinician] and (ii) all direct care ~~staff~~ employees, direct supervision employees, security employees, and employees providing medical services are trained and retrained in the implementation of the program, in accordance with 6VAC35-71-160 and 6VAC35-71-170 [, as applicable].

6VAC35-71-810. Behavioral health services.

Behavioral health services, if provided, shall be ~~provided~~ furnished by an individual (i) licensed by the Department of Health Professions or (ii) who is working under the supervision of a licensed clinician.

6VAC35-71-815. Daily housing unit log.

A. A daily housing unit log shall be maintained in each housing unit [~~, in accordance with written procedures,~~] to inform staff of significant ~~happenings~~ incidents or problems experienced by residents, including ~~but not limited to~~ health and dental complaints and injuries.

B. Each entry in the daily housing unit log shall contain (i) the date of the entry, (ii) the name of the individual making the entry, and (iii) the time each entry is made.

C. If the daily housing unit log is electronic, all entries shall be made in accordance with subsection B of this section. The computer program shall possess the functionality to prevent previous entries from being overwritten.

6VAC35-71-820. Staff supervision of residents.

A. [~~Staff~~ Direct care employees] shall provide 24-hour awake supervision seven days a week.

B. No [~~member of the~~] direct care [~~staff~~ employee] shall be on duty more than six consecutive days without a rest day, except in an emergency. ~~For the purpose of this section, a rest day means a period of not less than 24 consecutive hours during which the direct care staff person has no responsibility to perform duties related to the operation of a JCC.~~

C. Direct care [~~staff~~ employees] shall be scheduled with an average of at least two rest days per week in any four-week period.

D. Direct care [~~staff~~ employees] shall not be on duty more than 16 consecutive hours, except in an emergency.

E. There shall be at least one trained direct care [~~staff~~ employee] on duty and actively supervising residents at all times ~~that~~ in areas of the premises in which one or more residents are present.

F. Notwithstanding the requirement in subsection E of this section, [~~a staff member~~ an employee] who meets the definition of a direct supervision employee and who satisfies the following additional requirements shall be authorized to be alone with a resident outside the active supervision of [a] direct care [~~staff~~ employee]:

1. The direct supervision employee completes the training required by 6VAC35-71-160 C and satisfies any additional retraining requirements provided for in 6VAC35-71-170;

2. The [~~staff~~ employee] completes agency-approved training for direct supervision employees on safety and security including training on the supervision of residents, verbal de-escalation techniques, personal protection techniques, and emergency intervention [~~prior to~~ before] being alone with residents outside of the active supervision of [~~security series staff~~ direct care employees];

3. The direct supervision [~~staff~~ employee] passes an assessment demonstrating the ability to perform all physical requirements related to personal protection;

4. During any period in which the resident is not actively supervised by direct care employees, the direct supervision employee has the ability to communicate immediately with a direct care employee through a two-way radio or by other means [~~provided in written procedures~~]; and

5. The direct supervision employee notifies the direct care employee immediately [~~prior to~~ before] and immediately [~~following~~ after] meeting with [the] resident.

~~F.~~ G. The facility [administration] shall [~~implement~~ have] written procedures [in place] that address staff supervision of residents, including contingency plans for resident illnesses, emergencies, and off-campus activities. These procedures shall be based on the:

1. Needs of the population served;

2. Types of services offered;

3. Qualifications of staff on duty; and

4. Number of residents served.

~~G. [H. Staff shall regulate the movement of residents within the facility in accordance with written procedures.~~

H. ~~I. No~~ The] JCC [~~shall~~ administration may not] permit an individual resident or group of residents to exercise control or authority over other residents except when practicing leadership skills as part of an approved program under the direct and immediate supervision of staff.

6VAC35-71-830. Staffing pattern.

A. During the hours that residents are scheduled to be awake, there shall be at least one direct care [~~staff member~~ employee] awake, on duty, and responsible for supervision of every ~~10~~ eight residents, or portion thereof, ~~on the premises or participating in~~ wherever [~~there are~~] youth [are] present in the facility, as well as wherever residents are attending off-campus, facility-sponsored activities. [~~However, pursuant~~ Pursuant] to 6VAC35-71-540, [however,] security [~~staff~~ employees] shall be authorized to transport residents for routine or emergency purposes, such as for work release programs or in response to an injury, without the presence of direct care [~~staff~~ employees], provided the same staffing ratios are maintained as required in this subsection.

B. During the hours that residents are scheduled to sleep, there shall be ~~no less than~~ at least one direct care [~~staff member~~ employee] awake, on duty, and responsible for supervision of every 16 residents, or portion thereof, ~~on the premises~~ wherever [~~there are~~] youth [are] present in the facility.

C. [~~There shall be at~~ At] least one direct care [~~staff member~~ employee shall be] on duty and responsible for the supervision of residents in each building or ~~living~~ housing unit where residents are sleeping.

[D. Notwithstanding the requirements in this section, residents may be supervised by security employees or direct care employees while assigned to or receiving health care services in the infirmary or nurse's station.]

6VAC35-71-840. Outside personnel.

A. JCC staff shall ~~monitor~~ supervise all situations in which outside personnel perform any kind of work in the immediate presence of residents.

B. ~~Adult inmates~~ Adults who are confined in a public or [~~privately operated~~ privately operated] prison or a local jail shall not work in the immediate presence of any resident and shall be ~~monitored~~ supervised in a ~~way~~ manner that ~~there shall~~

~~be no~~ prohibits direct contact between or interaction among ~~adult inmates~~ these individuals and residents.

6VAC35-71-850. Facility work assignments.

A. Work assignments, whether paid or unpaid, shall be in accordance with the age, health, and ability~~, and service plan~~ of the resident.

B. Work assignments shall not interfere with school programs, study periods, meals, or sleep.

6VAC35-71-860. Agreements governing juvenile industries work programs.

A. If the [~~department~~ director] enters into an agreement with a public or private entity for the operation of a work program pursuant to § 66-25.1 of the Code of Virginia, the agreement shall:

1. Comply with all applicable federal and state laws and regulations, including ~~but not limited to~~ the Fair Labor Standards Act (29 USC § 201 et seq.), child labor laws, and workers' compensation insurance laws;

2. State the ~~length~~ duration of the agreement and the criteria by which it may be extended or terminated;

3. Specify where residents will work and, if not at a ~~juvenile correctional center~~ JCC, the security arrangements at the work site; and

4. Summarize the educational~~, vocational, or job training~~ and career and job-readiness benefits to residents.

B. The agreement shall address how residents will be hired and supervised, including:

1. The application and selection process;

2. The qualifications required of residents;

3. A requirement that there be a job description for each resident's position;

4. ~~Evaluation~~ A requirement that there be an evaluation of each resident's job-related behaviors and attitudes, attendance, and quality of work; and

5. Whether and how either party may terminate a resident's participation.

C. The agreement shall address ~~resident's~~ resident compensation including:

1. The manner by which and through what funding source residents are to be paid; and

2. If applicable, whether any deductions shall be made from the resident's compensation for subsistence payments, restitution to victims, ~~etc~~ fines, or other similar deductions.

D. As applicable, the agreement shall specify:

1. ~~That accurate records be kept of the work program's finances, materials inventories, and residents' hours of work,~~ How records of the work program's finances, materials inventories, and residents' hours of work shall be maintained and that ~~such~~ these records ~~be~~ are subject to inspection by either party and by an independent auditor;

2. How the project's goods or services will be marketed;

3. How proceeds from the project will be collected and distributed to the parties; and

4. Which party is responsible for providing:

a. The materials to be worked on;

b. The machinery to be used;

c. Technical training and supervision in the use of equipment or processes;

d. Utilities;

e. Transportation of raw materials and finished goods;

f. Disposal of waste generated in the work project; and

g. Safety and other special equipment and clothing.

E. Prior to execution of the agreement, the director or the director's designee shall review the agreement for compliance with the requirements of this section. Except upon explicit authorization by the board, the director and the director's designee shall be prohibited from executing any agreement that is missing one or more elements enumerated in this section.

6VAC35-71-880. ~~Local health~~ Health authority.

[~~A~~ The] JCC [administration] shall ensure that a [licensed] physician, health administrator, government authority, health care contractor, supervising registered nurse or head nurse, or health agency ~~shall be~~ is designated to serve as the ~~local~~ health authority responsible for organizing, planning, and monitoring the timely provision of appropriate health care services in that facility, including ~~arrangements~~ arranging for all levels of health care and ~~the~~ ensuring ~~of~~ the quality and accessibility of all ~~health services, including~~ medical, nursing, dental, and mental health care services, consistent with applicable statutes, prevailing community standards, and medical ethics. All medical, psychiatric, dental, and nursing matters are the province of the physician, psychiatrist, dentist, and nurse, respectively.

6VAC35-71-890. Provision of health care services.

~~A. The health care provider shall be guided by recommendations of the American Academy of Family Practice or the American Academy of Pediatrics, as appropriate, in the direct provision of health care services.~~

~~B. Treatment by nursing personnel~~ A. Licensed health care professionals shall ~~be performed~~ provide treatment pursuant to the laws and regulations governing the applicable practice ~~of nursing~~ within the Commonwealth.

B. Other [~~health-trained~~ health-trained] personnel shall provide care within their level of training and certification and shall not administer health care services for which they are not qualified or specifically trained.

C. The facility [administration] shall retain documentation of the training received by [~~health-trained~~ health-trained] personnel necessary to perform any designated health care services. Documentation of applicable, current licensure or certification shall constitute compliance with this section.

6VAC35-71-900. Health care procedures.

A. The department shall have [~~and implement~~] written procedures [in place] for promptly:

1. Providing or arranging for the provision of medical and dental services for health problems identified at admission;

2. Providing or arranging for the provision of routine ongoing and follow-up medical and dental services after admission;

3. Providing emergency services for each resident who has reached 18 years of age and consents to these services or for any other resident, as provided by statute ~~or by the agreement with the resident's legal guardian, if under the age of 18, or the resident, if over the age of 18~~;

4. Providing emergency services and ongoing treatment, as appropriate and applicable, for any resident experiencing or showing signs of suicidal or homicidal thoughts, symptoms of mood or thought disorders, or other mental health problems; and

5. Ensuring that the required information in subsection B of this section is accessible and up to date.

B. The following written information concerning each resident shall be readily accessible to designated staff who may have to respond to a medical or dental emergency:

1. The name, address, and telephone number of the [licensed] physician or dentist to be contacted;

2. ~~Name,~~ The name, address, and telephone number of ~~a relative or other person~~ the parent, legal guardian, or supervising agency, as applicable, to be notified; and

3. Information concerning:

a. Use of medication;

b. ~~All allergies,~~ Allergies, including medication allergies;

c. Substance abuse and use; and

d. Significant past and present medical problems.

~~C. Other health trained personnel shall provide care as appropriate to their level of training and certification and shall not administer health care services for which they are not qualified or specifically trained.~~

~~D. The facility shall retain documentation of the training received by health trained personnel necessary to perform any designated health care services. Documentation of applicable, current licensure or certification shall constitute compliance with this section.~~

6VAC35-71-930. Consent to and refusal of health care services.

A. ~~The~~ An [~~appropriately trained~~ appropriately trained] medical professional shall advise the resident ~~or~~ and parent or legal guardian, as applicable and appropriate, ~~shall be advised by an appropriately trained medical professional~~ of (i) the material facts regarding the nature, consequences, and risks of the proposed treatment, examination, or procedure; and (ii) the alternatives to ~~it~~ the proposed treatment, examination, or procedure.

B. ~~Health~~ Consent to health care services, as defined in 6VAC35-71-10 ~~(definitions)~~, shall be provided in accordance with § 54.1-2969 of the Code of Virginia.

C. Residents may refuse, in writing, [~~medical~~ health care and] treatment [~~and care~~]. This subsection does not apply to medication refusals that are governed by 6VAC35-71-1070 ~~(medication)~~.

D. When health care is rendered against the resident's will, it shall be in accordance with applicable laws and regulations.

6VAC35-71-950. Tuberculosis screening.

A. Within seven days of ~~placement~~ arrival at a JCC, each resident, excluding residents transferred from another JCC shall have ~~had~~ undergone a screening or assessment for tuberculosis. The screening or assessment ~~can~~ shall be no older than 30 days.

B. A screening or assessment for tuberculosis shall be completed annually on each resident.

C. The facility's screening practices shall be performed in a manner that is consistent with the current ~~requirements~~ recommendations of the Virginia Department of Health, Division of Tuberculosis Prevention and Control and the federal Department of Health and Human Services Centers for Disease Control and Prevention~~,~~ for the detection, diagnosis, prophylaxis, and treatment of pulmonary tuberculosis.

6VAC35-71-960. Medical examinations.

A. Within five days of ~~arrival~~ an initial intake at a JCC, all residents ~~who are not directly transferred from another JCC~~ shall be medically examined by a [licensed] physician or a [~~qualified~~ licensed] health care practitioner operating under the supervision of a [licensed] physician to determine if the resident requires medical attention or poses a threat to the health of staff or other residents. This examination shall include the following:

1. Complete medical, immunization, and psychiatric history;

2. Recording of height, weight, ~~body mass index,~~ temperature, pulse, respiration, and blood pressure;

3. Reports of medical laboratory testing and clinical testing results, as deemed medically appropriate, to determine both clinical status and freedom from communicable disease;

4. ~~Medical~~ Physical examination, including gynecological assessment of females, when appropriate;

5. Documentation of immunizations administered; and

6. A plan of care, including initiation of treatment, as appropriate.

B. ~~For residents~~ Residents transferring ~~from one~~ to the JCC ~~to another, shall be acceptable~~ from a direct care placement may submit the report of a medical examination conducted within the preceding 13 months at the discretion of the health care provider, upon review of the health screening at admission and prior medical examination report.

C. Each resident shall have an annual physical examination by or under the direction of a licensed physician.

6VAC35-71-970. Dental examinations.

A. Within ~~seven~~ 14 days of ~~arrival~~ an initial intake at a JCC, all residents ~~who are not directly transferred from another JCC~~ shall undergo a dental examination conducted by a dentist.

B. For residents transferring ~~from one~~ to the JCC ~~to another~~ from a direct care placement, the report of a dental examination within the preceding 13 months ~~shall~~ may be acceptable at the discretion of the dentist upon review of the dental examination documentation.

C. Each resident shall have an annual dental examination by a dentist and routine prophylactic treatment.

6VAC35-71-990. Health screening for intrasystem transfers.

A. All residents transferred between JCCs shall receive a medical, dental, and mental health screening by [~~health trained~~ health-trained] or qualified health care personnel upon arrival at the facility. The screening shall include:

1. A review of the resident's [health care ~~medical~~] record;

2. Discussion with the resident on his medical status; and

3. Observation of the resident.

B. All findings shall be documented [,] and the resident shall be referred for follow-up care as appropriate.

6VAC35-71-1000. Infectious or communicable diseases.

A. A resident with a known communicable disease that can be transmitted person-to-person shall not be housed in the general population unless a licensed ~~physician~~ health care professional certifies that:

1. [The facility is aware of the required treatment for the resident and the procedures to protect residents and staff; and

2.] The facility is capable of providing care to the resident without jeopardizing residents and staff [~~; and~~

~~2. The facility is aware of the required treatment for the resident and the procedures to protect residents and staff~~].

B. The facility [administration] shall [~~implement~~ have] written procedures [in place], approved by [~~a medical professional~~ the health authority], that:

1. Address staff (i) interactions with residents with infectious, communicable, or contagious medical conditions; and (ii) use of standard precautions;

2. Require staff training in standard precautions, initially and annually thereafter as required in 6VAC35-71-160 and 6VAC35-71-170; and

3. Require staff to follow procedures for dealing with residents who have infectious or communicable diseases.

C. Employees providing medical services shall be trained in tuberculosis control practices as required in 6VAC35-71-160.

6VAC35-71-1020. ~~Residents' health~~ Resident [~~medical~~ health care] records.

A. Each resident's ~~health~~ [~~medical~~ health care] record shall include written documentation of (i) the initial physical examination, (ii) an annual physical examination by or under the direction of a licensed physician including any recommendation for follow-up care, and (iii) ~~documentation of~~ the provision of follow-up medical care recommended by the physician or [~~as~~] indicated by the needs of the resident.

B. Each initial physical examination report shall include:

1. Information necessary to determine the health and immunization needs of the resident, including:

a. Immunizations administered at the time of the exam;

b. ~~Vision exam~~ Hearing and vision exams [~~,~~] conducted [~~,~~] at a minimum [~~,~~] on students in grades three, seven, [~~eight,~~] and 10 [,] pursuant to 8VAC20-250-10 [, unless any of the exceptions listed in § 22.1-273 of the Code of Virginia apply];

~~c. Hearing exam;~~

~~d. General~~ c. A statement of the resident's general physical condition~~, including~~ and documentation of ~~apparent freedom from~~ communicable disease status, including tuberculosis;

d. Current medical conditions or concerns;

e. Allergies, chronic conditions, and ~~handicaps,~~ disabilities, if any;

f. Nutritional requirements, including special diets, if any;

g. Restrictions on physical activities, if any; and

h. Recommendations for further treatment, immunizations, and other examinations indicated.

2. Date of the physical examination; and

3. Signature of a licensed physician, the physician's designee, or an official of a local health department.

C. ~~Each~~ A resident's [health ~~medical~~ care] record shall include written documentation of (i) an annual examination by a licensed dentist and (ii) ~~documentation of~~ follow-up dental care recommended by the dentist based on the needs of the resident.

D. ~~Each~~ A resident's [health ~~medical~~ care] record shall include notations of health and dental complaints and injuries and ~~shall summarize~~ a summary of the resident's symptoms and [~~treatment~~ treatments] given.

E. ~~Each~~ A resident's [health ~~medical~~ care] record shall include [~~,~~] or document the facility's efforts to obtain [~~,~~] treatment summaries of ongoing psychiatric or other mental health treatment and reports, if applicable.

F. Written [~~procedure~~ procedures] shall provide that ~~residents'~~ each resident's active [health ~~medical~~ care] records shall be:

1. Kept confidential from unauthorized persons and in a file separate from the case record;

2. Readily accessible in case of emergency; and

3. ~~Made available~~ Available to authorized staff consistent with applicable state and federal laws.

G. ~~Residents'~~ A resident's inactive health records shall be retained and disposed of as required by The Library of Virginia.

6VAC35-71-1030. First aid kits.

A. ~~Each facility~~ [~~A~~ The] JCC [administration] shall ~~have~~ maintain first aid kits ~~that shall be maintained~~ within the facility, as well as in facility vehicles used to transport residents [~~.~~ ~~in accordance with~~ The facility shall have] written procedures [~~that shall address~~ in place addressing] the (i) contents; (ii) location; and (iii) method of restocking [first aid kits].

B. The first aid kit shall be readily accessible for minor injuries and medical emergencies.

6VAC35-71-1040. Sick call.

A. All residents shall have the opportunity daily to request health care services.

B. Resident requests for health care services shall be documented, reviewed for the immediacy of need and the intervention required, and responded to daily by qualified medical staff. Residents shall be referred to a [licensed] physician consistent with established protocols and written or verbal orders issued by personnel authorized by law to give ~~such~~ these orders.

C. The frequency and duration of sick call shall be sufficient to meet the health needs of the facility population. ~~For the purpose of this section, sick call shall mean the evaluation and treatment of a resident in a clinical setting, either on or off site, by a qualified health care professional.~~

6VAC35-71-1050. Emergency medical services.

A. ~~Each~~ [~~A~~ The] JCC [administration] shall ~~have~~ ensure that residents have access to 24-hour emergency medical, mental health, and dental services for the care of an acute illness or unexpected health care need that cannot be deferred until the next scheduled sick call.

B. Procedures shall include arrangements for the following:

1. Utilization of 911 emergency services;

2. Emergency transportation of residents from the facility;

3. Security procedures for the immediate transfer of residents when appropriate;

4. Use of one or more designated hospital emergency departments or other appropriate facilities consistent with the operational procedures of local supporting rescue squads;

5. Response by on-call health care providers to include provisions for telephonic consultation, guidance, or direct response as clinically appropriate; and

6. ~~On site~~ Onsite first aid and crisis intervention.

C. Staff who respond to medical or dental emergencies shall do so [~~in accordance with written procedures~~ within the scope of their training and certifications].

6VAC35-71-1060. Hospitalization and other outside medical treatment of residents.

A. ~~When~~ If a resident needs hospital care or other medical treatment outside the facility:

1. The resident shall be transported ~~safely and~~ [~~in accordance with applicable~~ safety and security procedures ~~that are applied consistent with the severity of the medical condition; and~~ in accordance with 6VAC35-71-540.]

2. Staff shall escort and supervise residents when outside the facility for hospital care or other medical treatment [~~,~~] until appropriate security arrangements are made. This subdivision shall not apply to the transfer of residents under the Psychiatric Inpatient Treatment of Minors Act ([~~§ 16.1-355~~ § 16.1-335] et seq. of the Code of Virginia).

[3. Any exceptions to subdivisions 1 and 2 of this subsection shall be made in accordance with the resident's medical condition.]

B. [~~In accordance with applicable laws and regulations, the~~ The] parent or legal guardian, as appropriate and applicable, shall be informed that the resident was taken outside the facility for [~~medical attention as soon as is practicable~~ health care in accordance with 6VAC35-71-60].

6VAC35-71-1070. Medication.

A. All medication shall be properly labeled consistent with the requirements of the Virginia Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia). Medication prescribed for individual use shall be so labeled.

B. All medication shall be securely locked, except when otherwise ordered by a [licensed] physician [or licensed health care provider] on an individual basis for keep-on-person or equivalent use.

C. All staff responsible for medication administration who do not hold a license issued by the Virginia Department of Health Professions authorizing the administration of medications shall successfully complete a medication training program approved by the Board of Nursing and receive required annual refresher training ~~as required~~ before they ~~can~~ may administer medication.

D. Staff authorized to administer medication shall be informed of any known side effects of the medication and the symptoms of the effects.

E. A program of medication~~, including procedures regarding the use of over-the-counter medication pursuant to written or verbal orders signed by personnel authorized by law to give such orders,~~ shall be initiated for a resident only when prescribed in writing by a person authorized by law to prescribe medication. This includes over-the-counter medication administered pursuant to a written or verbal order that is issued by personnel authorized by law to give these orders.

F. All medications shall be administered in accordance with the physician's or other prescriber's instructions and consistent with the requirements of ~~§ 54.2-2408~~ § 54.1-3408 of the Code of Virginia and the Virginia Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia).

G. A medication administration record shall be maintained ~~of~~ that identifies all medicines received by each resident and ~~shall include~~ that includes [the]:

1. Date the medication was prescribed or most recently refilled;

2. Drug name;

3. Schedule for administration, to include notation of each dose administered or refused;

4. Strength;

5. Route;

6. Identity of the individual who administered the medication; and

7. ~~Dates~~ Date the medication was discontinued or changed.

H. [~~In the event of~~ If] a medication incident or an adverse drug reaction [occurs], first aid shall be administered if indicated. As addressed in the physician's standing orders, staff shall promptly contact a poison control center, hospital, pharmacist, nurse, or physician~~, nurse, pharmacist, or poison control center~~ and shall take actions as directed. If the situation is not addressed in standing orders, the attending physician shall be notified as soon as possible and the actions taken by staff shall be documented. ~~A medical incident shall mean an error made in administering a medication to a resident including the following: (i) a resident is given incorrect medication; (ii) medication is administered to the incorrect resident; (iii) an incorrect dosage is administered; (iv) medication is administered at a wrong time or not at all; and (v) the medication is administered through an improper method. A medication incident does not include a resident's refusal of appropriately offered medication.~~

I. Written procedures shall ~~provide for~~ require (i) the documentation of medication incidents, (ii) the review of medication incidents and reactions and ~~making~~ implementation of [~~any~~] necessary improvements, (iii) the storage of controlled substances, and (iv) the distribution of medication off campus. The procedures must be approved by ~~a~~ the department's health ~~administrator~~ services director. Documentation of this approval shall be retained.

J. Medication refusals and actions taken by staff shall be documented ~~including action taken by staff~~. The facility [administration] shall [~~follow~~ have] procedures for managing ~~such~~ these refusals~~, which~~ that shall address:

1. ~~Manner~~ The manner by which medication refusals are documented; and

2. Physician follow-up, as appropriate.

K. Disposal and storage of unused, expired, and discontinued medications [and medical implements] shall be in accordance with applicable laws and regulations.

L. The telephone number of a regional poison control center and other emergency numbers shall be posted on or next to each [~~nonpay~~ non-pay] telephone that has access to an outside line in each building in which residents sleep or participate in programs.

M. Syringes and other medical implements used for injecting or cutting skin shall be locked and inventoried [~~in accordance with facility procedures~~].

6VAC35-71-1080. Release physical.

Each resident shall be medically examined by a [licensed] physician or qualified health care practitioner [~~operating under the supervision of a physician~~] within 30 days [~~prior to~~

before] release [~~,~~] unless exempted by the responsible physician based on a ~~sufficiently recent~~ full medical examination conducted within 90 days prior to release.

[Article 1

Behavior, Discipline, and Room Confinement]

6VAC35-71-1110. Disciplinary process.

A. [~~A~~ The] JCC [administration] shall ensure that, to the extent practicable, resident behavioral issues are addressed (i) in the context of a therapeutic community; (ii) in a manner that is consistent with the department's behavior management program; (iii) with consideration of the safety and security of the residents, staff, and others in the facility; and (iv) with the goal of rehabilitating [~~,~~] rather than punishing the resident.

B. [~~Each~~ The] JCC [administration] shall [~~follow written procedures for handling~~ address] (i) minor resident misbehavior through an informal process and (ii) instances when a resident is charged with a violation of the rules of conduct through the formal process outlined ~~below~~ in subsections C, D, and E of this section. ~~Such~~ [~~The procedures shall provide for (i) graduated sanctions and (ii) staff and resident orientation and training on the procedures.~~]

~~B. When~~ C. If staff have reason to believe a resident has committed a rule violation that cannot be resolved through the facility's informal process, staff shall prepare a disciplinary report detailing the alleged rule violation. A written copy of the report shall be maintained by the housing unit staff. The resident shall be given a written copy of the report within 24 hours of the alleged rule violation; however, staff shall have the discretion to provide residents who are noncompliant or are displaying maladaptive behavior [at least] one [~~or more opportunities~~ opportunity] to view the written report instead of providing a copy to the resident within 24 hours of the alleged rule violation. [~~In the event that staff exercises~~ If staff exercise] this option, a copy of the written report shall be provided to the resident once the resident demonstrates that the resident is able to comply with the rules of the facility.

~~C.~~ D. After the resident receives notice of an alleged rule violation, the resident shall be provided the opportunity to admit or deny the charge.

1. The resident may admit to the charge in writing to a superintendent or the superintendent's designee who was not involved in the incident, accept the sanction prescribed for the offense, and waive his right to any further review.

2. If the resident denies the charge or there is reason to believe that the resident's admission is coerced or that the resident does not understand the charge or the implication of the admission, the formal process for resolving the matter detailed in subsection ~~D~~ E of this section shall be followed.

~~D.~~ E. The formal process for resolving rule violations shall provide the following:

1. A disciplinary hearing to determine if substantial evidence exists to find the resident guilty of the rule violation shall be scheduled to occur no later than seven days [~~, excluding weekends and holidays,~~] after the rule violation [, excluding weekends and holidays]. The hearing may be postponed with the resident's consent.

2. The resident alleged to have committed the rule ~~violations~~ violation shall be given at least 24 ~~hours~~ hours' notice of the time and place of the hearing~~, but~~; however the hearing may be held within 24 hours with the resident's written consent.

3. The disciplinary hearing on the alleged rule violation shall:

a. Be conducted by an impartial and objective ~~staff~~ employee who shall determine (i) what evidence is admissible, (ii) the guilt or innocence of the resident, and (iii) if the resident is found guilty of the rule violation, what sanctions shall be imposed;

b. Allow the resident to be present throughout the hearing, unless the resident waives the right to attend, his behavior justifies exclusion, or another resident's testimony must be given in confidence. The reason for the resident's absence or exclusion shall be documented;

c. Permit the resident to make a statement ~~and~~, present evidence, and ~~to~~ request relevant witnesses on his behalf. The reasons for denying ~~such~~ these requests shall be documented;

d. Permit the resident to request a staff member to represent him and question the witnesses. A staff member shall be appointed to help the resident when it is apparent that the resident is not capable of effectively collecting and presenting evidence on his own behalf; and

e. Be documented, with a record of the proceedings kept for [~~six months~~ three years].

4. A written record shall be made of the hearing disposition and supporting evidence. The hearing record shall be kept on file at the JCC.

5. The resident shall be informed in writing of the disposition and, if found guilty of the rule violation, the reasons supporting the disposition and the right to appeal.

6. If the resident is found guilty of the rule violation, a copy of the disciplinary report shall be placed in the resident's case record.

7. The superintendent or the superintendent's designee shall review all disciplinary hearings and dispositions to ensure conformity with [~~procedures and regulations~~ this chapter].

8. The resident shall have the right to appeal the disciplinary hearing decision to the superintendent or the superintendent's designee within 24 hours of receiving the decision. The appeal shall be decided within 24 hours of its receipt, and the resident shall be notified in writing of the

results within three days. These ~~time frames~~ timeframes do not include weekends and holidays.

~~E. When it is necessary to place the resident in confinement to protect the facility's security or the safety of the resident or others, the charged resident may be confined pending the formal hearing for up to 24 hours. Confinement for longer than 24 hours must be reviewed at least once every 24 hours by the superintendent or designee who was not involved in the incident. For any confinement exceeding 72 hours, notice shall be made in accordance with 6VAC35-71-1140 D (room confinement).~~

6VAC35-71-1120. Timeout.

A. Facilities that use ~~a systematic behavior management technique program component designed to reduce or eliminate inappropriate or problematic behavior by having a staff require a resident to move to a specific location that is away from a source of reinforcement for a specific period of time or until the problem behavior has subsided (timeout)~~ timeout shall [~~implement~~ have] written procedures [in place] ~~governing~~ that provide the following:

~~1. The conditions, based on the resident's chronological and developmental level, under which a resident may be placed in timeout;~~

~~2. The maximum period of timeout based on the resident's chronological and developmental level; and~~

~~3. The area in which a resident is placed.~~

[~~1. A resident may be placed in timeout only after less restrictive alternatives have been applied;~~

~~2.~~ 1.] Timeout may be imposed only to address minor [~~behavior infractions~~ inappropriate or problematic behavior], such as talking back or failing to follow instructions [~~, and shall not be applied to address any chargeable offenses as designated in written procedures or any aggressive behaviors~~];

[~~3.~~ 2.] A resident shall be released from the timeout period when the resident demonstrates the ability to rejoin the group activity and comply with [~~the~~] expectations that are in place; and

[~~4.~~ 3.] Staff shall be authorized to determine the area in which a resident is placed for timeout on a case-by-case basis.

B. A resident in timeout shall ~~be able to communicate~~ have a means of immediate communication with staff, either verbally or electronically.

C. Staff shall ~~check on~~ monitor the resident in the timeout area at least every 15 minutes and more often depending on the nature of the resident's ~~disability,~~ condition~~, and~~ or behavior.

D. Use of timeout and staff checks on the residents shall be documented.

EDITOR'S NOTE: 6VAC35-71-1130 was amended in proposed stage. See amendments at 36:3 VA.R. 211-248 September 30, 2019.

6VAC35-71-1130. [~~Physical restraint.~~ (Repealed.)

~~A. Physical restraint shall be used as a last resort only after less restrictive behavior intervention techniques have failed or to control residents whose behavior poses a risk to the safety of the resident, others, staff, or the public others.~~

~~1. Staff shall use the least force deemed reasonably necessary to eliminate the risk or to maintain security and order and shall never use physical restraint as punishment or with intent to inflict injury.~~

~~2. Trained staff members may physically restrain a resident only after less restrictive behavior interventions have failed or when failure to restrain would result in harm to the resident or others.~~

~~3. 2. Physical restraint may be implemented, monitored, and discontinued only by staff who have been trained in the proper and safe use of restraint in accordance with the requirements in 6VAC35-71-160 and 6VAC35-71-170.~~

~~4. For the purpose of this section, physical restraint shall mean the application of behavior intervention techniques involving a physical intervention to prevent an individual from moving all or part of that individual's body.~~

~~B. Each JCC shall implement written procedures governing use of physical restraint that shall include:~~

~~1. A requirement for Require training in crisis prevention and behavior intervention techniques that staff may use to control residents whose behaviors pose a risk;~~

~~2. The Identify the staff position who that will write the report and time frame for completing the report;~~

~~3. The Identify the staff position who that will review the report for continued staff development for performance improvement and the time frame for this review; and~~

~~4. Methods Identify the methods to be followed should physical restraint, less intrusive behavior interventions, or measures permitted by other applicable state regulations prove unsuccessful in calming and moderating the resident's behavior; and~~

~~5. Identification of control techniques that are appropriate for identified levels of risk.~~

~~C. Each application of physical restraint shall be fully documented in the resident's record including.~~

~~1. Date and time of the incident;~~

~~2. Staff involved in the incident;~~

~~3. Justification for the restraint;~~

~~4. Less restrictive behavior interventions that were unsuccessfully attempted prior to using physical restraint;~~

~~5. Duration of the restraint;~~

~~6. Description of the method or methods of physical restraint techniques used;~~

~~7. Signature of the person completing the report and date; and~~

~~8. Reviewer's signature and date.~~]

6VAC35-71-1140. Room confinement.

A. Written procedures ~~shall govern how and when residents may be confined to a locked~~ governing room confinement shall address the following issues:

1. The actions or behaviors that may result in room confinement;

2. The factors, such as age, developmental level, or disability, that should be considered prior to placing a resident in room confinement;

3. The process for determining whether the resident's behavior threatens the safety and security of the resident, others, or the facility; the protocol for determining whether the threat necessitating room confinement has [~~been~~] abated; and the necessary steps for releasing the resident [~~to a less restrictive setting~~ from room confinement] after the threat [~~is~~ has] abated; and

4. The circumstances under which a debriefing with the resident should occur after the resident is released from confinement; the party that should conduct the debriefing; and the topics that should be discussed in the debriefing, including the cause and impact of the room confinement and the appropriate measures post-confinement to support positive resident outcomes.

~~B. Whenever a resident is confined to a locked room, including but not limited to being placed in isolation, staff shall check the resident visually at least every 30 minutes and more frequently if indicated by the circumstances.~~

~~C. Residents who are confined to a locked room, including but not limited to being placed in isolation, shall be afforded the opportunity for at least one hour of physical exercise, outside of the locked room, every calendar day unless the resident's behavior or other circumstances justify an exception. The reasons for any such exception shall be approved in accordance with written procedures and documented~~

B. If a resident is placed in room confinement, regardless of the duration of the confinement period or the rationale for the confinement, staff shall take measures to ensure the continued health and safety of the confined resident. At a minimum, the following measures shall be [~~applied~~ taken]:

1. Staff shall monitor the resident visually at least every 15 minutes and more frequently if indicated by the circumstances. If a resident is placed on suicide precautions, staff shall [~~make~~ conduct] additional visual checks as determined by the [~~qualified~~] mental health [~~professional~~ clinician].

2. A qualified medical [~~or mental~~] health professional [or mental health clinician] shall [~~, at least once daily,~~] visit with the resident [at least once daily] to assess the resident's medical and mental health status.

3. The resident shall have a means of immediate communication with staff, either verbally or electronically, throughout the duration of the confinement period.

4. The resident shall be afforded the opportunity for at least one hour of large muscle activity outside of the locked room every calendar day unless the resident displays behavior that is threatening, presents an imminent danger to himself or others, or [~~otherwise justifies an exception or unless~~] other circumstances [~~, such as lockdown or power failure,~~] prevent the activity. The reasons for the exception shall be approved [by the superintendent or the superintendent's designee] and documented [~~in accordance with written procedures~~].

5. If the resident [~~, while placed in room confinement,~~] exhibits self-injurious behavior [while in room confinement], staff shall (i) take appropriate action in response to the behavior [to prevent further injury and to notify supervisory staff]; (ii) consult with a [~~qualified~~] mental health [~~professional~~ clinician] immediately after the threat [~~is~~ has] abated and document the consultation; and (iii) [~~monitor the resident in accordance with established protocols, including constant supervision, if appropriate~~ adjust the frequency of face-to-face checks, as needed, never allowing more than 15 minutes to pass between checks].

C. A resident shall never be placed in room confinement as a sanction for noncompliance or as a means of punishment. Room confinement may be imposed only in response to the following situations:

1. If a resident's actions threaten facility security or the safety and security of residents, staff, or others in the facility; or

2. In order to prevent damage to real or personal property when the damage is committed with the intent of fashioning an object or device that may threaten facility security or the safety and security of residents, staff, or others in the facility.

D. Room confinement may be imposed only after less restrictive measures have been exhausted or cannot be employed successfully. Once the threat necessitating the confinement [~~is~~ has] abated, staff shall initiate the process for releasing the resident from confinement [~~and returning him to a lesser restrictive setting~~].

E. [~~In the event that~~ If] a resident is placed in room confinement, the resident shall be [~~afforded the same opportunities as other residents in the housing unit, including treatment, education, and as much time out of the resident's room as security considerations allow~~ provided medical and mental health treatment, as applicable, education, daily nutrition in accordance with 6VAC35-71-630, and daily opportunities for bathing in accordance with 6VAC35-71-550].

F. Within the first three hours of a resident's placement in room confinement, a designated staff member shall communicate with the resident to explain (i) the reasons for which the resident has been placed in confinement; (ii) the expectations governing behavior while [~~placed~~] in room confinement; and (iii) the steps necessary [~~in order~~] for [~~a~~ the] resident to be released from room confinement.

G. A resident confined for six or fewer waking hours shall be afforded the opportunity at least once during the confinement period to communicate [~~with a staff member,~~] wholly apart from the communications required in subsection F of this section, [with a staff member] regarding his status or the impact of the room confinement. A resident confined for a period that exceeds six waking hours shall be afforded an opportunity twice daily during waking hours for these communications.

H. The superintendent or the superintendent's designee shall make personal contact with every resident who is placed in room confinement each day of confinement.

~~D.~~ I. If a resident is ~~confined to a locked~~ placed in room confinement for ~~more than~~ 24 hours, the superintendent or the superintendent's designee shall be notified and shall provide written approval for any continued room confinement beyond the 24-hour period.

~~E. If the confinement extends to more than 72 hours, the (i) confinement and (ii) the steps being taken or planned to resolve the situation shall be immediately reported to the department staff, in a position above the level of superintendent, as designated in written procedures. If this report is made verbally, it shall be followed immediately with a written, faxed, or secure email report in accordance with written procedures.~~

~~F. The superintendent or designee shall make personal contact with each resident who is confined to a locked room each day of confinement.~~

~~G. When confined to a room, the resident shall have a means of communication with staff, either verbally or electronically.~~

~~H. If the resident, after being confined to a locked room, exhibits self injurious behavior (i) staff shall immediately consult with, and document that they have consulted with, a mental health professional; and (ii) the resident shall be monitored in accordance with established protocols, including constant supervision, if appropriate.~~

J. The facility superintendent's supervisor shall provide written approval before any room confinement may be extended beyond 48 hours.

K. The administrator who is two levels above the superintendent in the department's reporting chain-of-command shall provide written approval before any room confinement may be extended beyond 72 hours. The administrator's approval shall be contingent upon receipt of a written report outlining the steps being taken or planned to resolve the situation. The facility [administration] shall convene a treatment team consisting of stakeholders involved in the resident's treatment to develop this plan. The department shall establish written procedures governing the development of this plan.

L. Room confinement periods that exceed five days shall be subject to a case management review [~~process in accordance with written procedures~~] that [~~provide~~ adheres to] the following [requirements]:

1. A facility-level review committee shall conduct a [~~case management~~ case management] review at the committee's next scheduled meeting immediately following expiration of the five-day period.

2. If the facility-level case management review determines a need for the resident's continued confinement, the case shall be referred for a case management review at the division-level [~~committee's next scheduled meeting immediately following the meeting for the facility level review~~ committee meeting, which shall occur no later than seven business days following the referral].

3. Upon completion of the initial reviews in subdivisions L 1 and L 2 of this section, any additional time that the resident remains in room confinement shall be subject to a recurring review by the facility-level review committee and the division-level review committee, as applicable, until either committee recommends the resident's release from room confinement. [~~However, upon~~ Upon] written request of the division-level review committee, the administrator who is two levels above the superintendent in the department's reporting chain-of-command shall be authorized to reduce the frequency of or waive the division-level reviews [~~in accordance with written procedures~~. The rationale for the waiver shall be documented and placed in the resident's record].

[~~M. The provisions of this section shall become effective (insert effective date of this regulation).~~]

6VAC35-71-1150. ~~Isolation.~~ (Repealed.)

~~A. When a resident is confined to a locked room for a specified period of time as a disciplinary sanction for a rule~~

~~violation (isolation), the provisions of 6VAC35-71-1140 (room confinement) apply.~~

~~B. Room confinement during isolation shall not exceed five consecutive days.~~

~~C. During isolation, the resident is not permitted to participate in activities with other residents and all activities are restricted, with the exception of (i) eating, (ii) sleeping, (iii) personal hygiene, (iv) reading, (v) writing, and (vi) physical exercise as provided in 6VAC35-71-1140 (room confinement).~~

~~D. Residents who are placed in isolation shall be housed no more than one to a room.~~

6VAC35-71-1160. ~~Administrative segregation.~~ (Repealed.)

~~A. Residents who are placed in administrative segregation units shall be housed no more than two to a room. Single occupancy rooms shall be available when indicated for residents with severe medical disabilities, residents suffering from serious mental illness, sexual predators, residents who are likely to be exploited or victimized by others, and residents who have other special needs for single housing.~~

~~B. Residents who are placed in administrative segregation units shall be afforded basic living conditions approximating those available to the facility's general population and as provided for in written procedures. Exceptions may be made in accordance with written procedures when justified by clear and substantiated evidence. If residents who are placed in administrative segregation are confined to a room or placed in isolation, the provisions of 6VAC35-71-1140 (room confinement) and 6VAC35-71-1150 (isolation) apply, as applicable.~~

~~C. For the purpose of this section, administrative segregation means the placement of a resident, after due process, in a special housing unit or designated individual cell that is reserved for special management of residents for purposes of protective custody or the special management of residents whose behavior presents a serious threat to the safety and security of the facility, staff, general population, or themselves. For the purpose of this section, protective custody shall mean the separation of a resident from the general population for protection from or of other residents for reasons of health or safety.~~

[Article 2
Physical Restraints

6VAC35-71-1175. Physical restraints.

A. Physical restraint shall be used as a last resort only after less restrictive behavior intervention techniques have failed or to control residents whose behavior poses a risk to the safety of the resident, staff, or others.

1. Staff shall use the least force deemed reasonably necessary to eliminate the risk or to maintain security and order and shall never use physical restraint as punishment or with intent to inflict injury.

2. Physical restraint may be implemented, monitored, and discontinued only by staff trained in the proper and safe use of restraint in accordance with the requirements in 6VAC35-71-160 and 6VAC35-71-170.

B. The JCC administration shall implement written procedures governing use of physical restraint that shall:

1. Require training in crisis prevention and behavior intervention techniques that staff may use to control residents whose behaviors pose a risk;

2. Identify the staff position that will write the report and timeframe for completing the report;

3. Identify the staff position that will review the report for continued staff development for performance improvement and the timeframe for this review; and

4. Identify the methods to be followed should physical restraint, less intrusive behavior interventions, or measures permitted by other applicable state regulations prove unsuccessful in calming and moderating the resident's behavior.

C. Each application of physical restraint shall be fully documented in the resident's record. The documentation shall include:

1. Date and time of the incident;

2. Staff involved in the incident;

3. Justification for the restraint;

4. Less restrictive behavior interventions that were unsuccessfully attempted before using physical restraint;

5. Duration of the restraint;

6. Description of the method of physical restraint techniques used;

7. Signature of the person completing the report and date; and

8. Reviewer's signature and date.

Article 3
Mechanical Restraints and Protective Devices]

6VAC35-71-1180. Mechanical restraints [and protective devices].

[~~A. Written procedure shall govern the use of mechanical restraints and shall specify:~~

~~1. The conditions under which~~] ~~handcuffs, waist chains, leg irons, disposable plastic cuffs, leather restraints, and mobile restraint chair~~ [~~mechanical restraints may be used;~~]

2. That the superintendent or designee shall be notified immediately upon using restraints in an emergency situation;

3. [2. That mechanical restraints shall never be applied as punishment;

3. That mechanical restraints shall not be applied for routine on-campus transportation unless (i) there is a heightened need for additional security as identified in written procedures or (ii) the resident is noncompliant and needs to be moved for the resident's own safety or security;

4. That] residents [a resident shall not be restrained to a fixed object or restrained in an unnatural position;

5. That each use of mechanical restraints, except when used to transport a resident off campus, shall be recorded in the resident's case] file or [record and in a central log book; and

6. That the facility maintains a written record of routine and emergency distribution of restraint equipment.

B. If a JCC uses mechanical restraints, written procedure shall provide that (i) all staff who are authorized to use restraints shall receive department-approved training in their use,] including [which training shall address procedures for checking the] resident's [resident for signs of circulation and] checking [for injuries; and (ii) only properly trained staff shall use restraints.

C.] For the purpose of this section, mechanical restraint shall mean the use of an approved mechanical device that involuntarily restricts the freedom of movement or voluntary functioning of a limb or portion of an individual's body as a means to control his physical activities when the individual being restricted does not have the ability to remove the device. [A JCC shall be authorized to use a mobile restraint chair for the sole purpose of controlled movement of a resident from one area of the facility to another and shall observe the following when utilizing the chair:

1. Staff shall be authorized to utilize the mobile restraint chair only after less restrictive interventions have been unsuccessful in moving a resident from one area of the facility to another or when use of the restraint chair is the least restrictive intervention available to move the resident.

2. Staff shall remove the resident from the restraint chair immediately upon reaching the intended destination. In no event shall a resident who is not being moved from one area of the facility to another be confined to a restraint chair for any period of time.

A. Mechanical restraints and protective devices may be used for the following purposes subject to the restrictions enumerated in this section: (i) to control residents whose behavior poses an imminent risk to the safety of the resident, staff, or others; (ii) for purposes of controlled movement, either from one area of the facility to another or to a destination outside the facility; and (iii) to address emergencies.

B. A JCC that uses mechanical restraints or protective devices shall observe the following general requirements:

1. Mechanical restraints and protective devices shall be used only for as long as necessary to address the purposes established in subsection A of this section. Once the imminent risk to safety has abated, the resident has reached [his the] intended destination within the facility or has returned to the facility from a destination offsite, or the emergency has been resolved, the mechanical restraint or protective device shall be removed.

2. The superintendent or the superintendent's designee shall be notified immediately upon using mechanical restraints or protective devices in an emergency.

3. The facility administration may not use mechanical restraints or protective devices as a punishment or a sanction.

4. Residents shall not be restrained to a fixed object or restrained in an unnatural position.

5. A mental health clinician or other qualifying licensed medical professional may order termination of a mechanical restraint or protective device at any time upon determining that the item poses a health risk.

6. Each use of a mechanical restraint or protective device, except when used to transport a resident or during video court hearing proceedings, shall be recorded in the resident's case record and in the daily housing unit log.

7. A written system of accountability shall be in place to document routine distribution of mechanical restraints and protective devices.

8. All staff who are authorized to use mechanical restraints or protective devices shall receive training in such use in accordance with 6VAC35-71-160 and 6VAC35-71-170, as applicable; and only trained staff shall use restraint or protective devices.

C. If staff in a JCC use a mechanical restraint to control a resident whose behavior poses a safety risk in accordance with clause (i) of subsection A of this section, they shall notify a qualified health care professional and a mental health clinician before continuing to use the restraint and, if applicable, the accompanying protective device, if the imminent risk has abated, but staff determine that continued use of the mechanical restraint is necessary to maintain security due to the resident's ongoing credible threat of self-injury or injury to others. This may include instances in which the resident verbally expresses the intent to continue the actions that required the restraint.

D. Staff in a juvenile correctional center may not use a protective device unless the use is in connection with a restraint and shall remove the device when the resident is released from the restraint.

E. In addition to the requirements in subsections A through D of this section, if staff in a juvenile correctional center use a spit guard to control resident behavior, they shall observe the following requirements:

1. Staff may not use a spit guard unless it possesses the following characteristics:

a. The spit guard's design may not inhibit the resident's ability to breathe;

b The spit guard must be constructed to allow for visibility; and

c. The spit guard must be manufactured and sold specifically for the prevention of biting or spitting.

2. The spit guard may be used only on a resident who (i) previously has bitten or spit on a person at the facility, or (ii) in the course of a current restraint, threatens or attempts to spit on or bite or actually spits on or bites a staff member.

3. The spit guard must be applied in a manner that will not inhibit the resident's ability to breathe.

4. While the spit guard remains in place, staff shall provide for the resident's reasonable comfort and ensure the resident's access to water and meals, as applicable.

5. Staff must employ constant supervision of the resident while the spit guard remains in place to observe whether the resident exhibits signs of respiratory distress. If any sign of respiratory distress is observed, staff shall take immediate action to prevent injury and to notify supervisory staff.

6. Staff may not use a spit guard on a resident who is unconscious, vomiting, or in obvious need of medical attention.]

6VAC35-71-1190. Monitoring residents placed in mechanical restraints.

A. Written [~~procedure~~ procedures] shall provide that ~~when~~ if a resident is placed in mechanical restraints, [except when being transported offsite,] staff shall:

1. Provide for the resident's reasonable comfort and ensure the resident's access to water, meals, and toilet; and

2. ~~Make~~ Conduct a ~~direct personal~~ [~~visual~~ face-to-face] check on the resident at least every 15 minutes and more often if the resident's behavior warrants. [During each check, a staff member shall monitor the resident for signs of circulation and for injuries.

3. Attempt to engage verbally with the resident during each periodic check. These efforts may include explaining the reasons for which the resident is being restrained or the steps necessary to be released from the restraint or otherwise attempting to deescalate the resident.]

B. [If a resident remains in a mechanical restraint for a period of two hours or more, except during transportation of residents offsite:

1. The resident shall be permitted to exercise the resident's limbs for a minimum of 10 minutes every two hours in order to prevent blood clots; and

2. A medical staff member shall conduct a check on the resident at least once every two hours.

C.] When a resident is placed in mechanical restraints for more than ~~two hours cumulatively~~ one [~~consecutive~~ continuous] hour in a 24-hour period, with the exception of use in routine off-campus transportation of residents, staff shall ~~immediately~~ consult with a [~~qualified~~] mental health [~~professional~~ clinician]. This consultation shall be documented.

[~~C.~~ D.] If the resident, after being placed in mechanical restraints [~~,~~] exhibits self-injurious behavior, ~~(i)~~ staff shall (i) take appropriate action in response to the behavior [to prevent further injury and to notify supervisory staff]; (ii) consult with a [~~qualified~~] mental health [~~professional~~ clinician and medical staff] immediately ~~consult with,~~ thereafter and document ~~that they have consulted with, a mental health professional~~ the consultation; and [~~(ii) monitor the resident~~] ~~shall be monitored~~ [~~in accordance with established protocols, including constant supervision, if appropriate~~ (iii) adjust the frequency of face-to-face checks as needed] ~~Any such~~ [~~The protocols shall~~] ~~be in compliance~~ [~~comply with the written procedures required by 6VAC35-71-1200~~] ~~(restraints for medical and mental health purposes)~~.

[6VAC35-71-1195. Written procedures regarding mechanical restraints and protective devices.

The department shall develop written procedures approved by the director that reflect the requirements established in this article.]

EDITOR'S NOTE: 6VAC35-71-1200 was amended in proposed stage. See amendments at 36:3 VA.R. 211-248 September 30, 2019.

[6VAC35-71-1200. ~~Restraints for medical and mental health purposes.~~ (Repealed.)

~~Written procedure shall govern the use of restraints for medical and mental health purposes. Written procedure should shall identify (i) the authorization needed; (ii) when, where, and how restraints may be used; (iii) for how long restraints may be applied; and (iv) what type of restraint may be used.~~]

[Article 4
Mechanical Restraint Chair

6VAC35-71-1203. Mechanical restraint chair; general provisions.

If staff in a JCC utilize a mechanical restraint chair, they shall observe the following requirements, regardless of whether the

chair is used for purposes of controlled movement in accordance with 6VAC35-71-1204 or for other purposes in accordance with 6VAC35-71-1205:

1. The restraint chair shall never be applied as punishment or as a sanction.

2. All staff authorized to use the restraint chair shall receive training in such use in accordance with 6VAC35-71-160 and 6VAC35-71-170.

3. Prior to placement in the chair, the health authority or the health authority's designee shall ensure that the resident's medical and mental health condition are assessed to determine whether the restraint is contraindicated based on the resident's physical condition or behavior and whether other accommodations are necessary.

4. The superintendent or the superintendent's designee shall provide approval before a resident may be placed in the restraint chair.

5. Staff shall notify the health authority or designee immediately upon placing the resident in the restraint chair. The health authority or designee also shall ensure that a mental health clinician conducts an assessment to determine whether, on the basis of serious danger to self or others, the resident should be in a medical or mental health unit for emergency involuntary treatment. The requirements of this subdivision shall not apply when the restraint chair is requested by a resident for whom such voluntary use is part of an approved plan of care by a mental health clinician in accordance with subsection C of 6VAC35-71-1205.

6. If the resident exhibits self-injurious behavior after being placed in the mechanical restraint chair, staff shall (i) take appropriate action in response to the behavior to prevent further injury and to notify supervisory staff, and (ii) consult a mental health clinician immediately thereafter and obtain approval for continued use of the restraint chair.

7. The health authority or the health authority's designee, a mental health clinician, or other qualifying licensed medical professional may order termination of restraint chair use at any time upon determining that use of the chair poses a health risk.

8. Each use of the restraint chair shall constitute a serious incident to which the provision of 6VAC35-71-60 shall apply.

9. Each use of the restraint chair shall be documented in the resident's case record and in the daily housing unit log. The documentation shall include:

a. Date and time of the incident;

b. Staff involved in the incident;

c. Justification for the restraint;

d. Less restrictive interventions that were attempted or an explanation of why the restraint chair is the least restrictive intervention available to ensure the resident's safe movement.

e. Duration of the restraint;

f. Signature of the person documenting the incident and date;

g. Indication that all applicable approvals required in this article have been obtained; and

h. Reviewer's signature and date.

10. Staff involved in the use of the chair, together with supervisory staff, shall conduct a debriefing after each use of the restraint chair.

6VAC35-71-1204. Mechanical restraint chair use for controlled movement; conditions.

A. JCC staff shall be authorized to use a mechanical restraint chair for purposes of controlled movement of a resident from one area of the facility to another, provided the following conditions are satisfied:

1. The resident's refusal to move from one area of the facility to another poses a direct and immediate threat to the resident or others or interferes with required facility operations, and

2. Use of the restraint chair is the least restrictive intervention available to ensure the resident's safe movement.

B. When facility staff utilize the restraint chair in accordance with this section, staff shall remove the resident from the chair immediately upon reaching the intended destination. If staff, upon reaching the intended destination, determine that continued restraint is necessary, staff shall consult with a mental health clinician for approval of the continued restraint.

6VAC35-71-1205. Mechanical restraint chair use for purposes other than controlled movement; conditions for use.

A. JCC staff shall be authorized to use a mechanical restraint chair for purposes other than controlled movement provided the following conditions are satisfied:

1. The resident's behavior or actions present a direct and immediate threat to the resident or others;

2. Less restrictive alternatives were attempted but were unsuccessful in bringing the resident under control or abating the threat;

3. The resident remains in the restraint chair only for as long as necessary to abate the threat or help the resident gain self-control.

B. Once the direct threat is abated, if staff determine that continued restraint is necessary to maintain security due to the resident's ongoing credible threat to injure the resident or others, staff shall consult a mental health clinician for approval of the continued restraint. The ongoing threat may include

instances in which the resident verbally expresses the intent to continue the actions that required the restraint.

C. JCC staff shall be excused from the requirements in subsections A and B of this section when the restraint chair is requested by a resident for whom such voluntary use is part of an approved plan of care by a mental health clinician.

D. Whenever a resident is placed in a restraint chair for purposes other than controlled movement, staff shall observe the following monitoring requirements:

1. Employ constant, one-on-one supervision until the resident is released from the chair;

2. Attempt to engage verbally with the resident during the one-on-one supervision. These efforts may include explaining the reasons for which the resident is being restrained or the steps necessary to be released from the restraint or otherwise attempting to deescalate the resident.

3. Ensure that a medical professional monitors the resident for signs of circulation and for injuries at least once every 15 minutes; and

4. Ensure that the resident is reasonably comfortable and has access to water, meals, and toilet.

6VAC35-71-1206. Monitoring residents placed in mechanical restraints.

A. If a resident remains in the restraint chair for a period that exceeds two hours, the resident shall be permitted to exercise the resident's limbs for a minimum of 10 minutes every two hours to prevent blood clots.

B. The JCC administration shall ensure that a video record of the following is captured and retained for a minimum of three years in accordance with 6VAC35-71-30:

1. The placement of a resident in a restraint chair when a resident is restrained for purposes of controlled movement;

2. The entire restraint, from the time the resident is placed in the restraint chair until the resident's release, when restrained in the chair for purposes other than controlled movement. The JCC administration may satisfy this requirement by positioning the restraint chair within direct view of an existing security camera.

6VAC35-71-1207. Department monitoring visits; annual reporting; board review.

A. If staff in a JCC use a mechanical restraint chair to restrain a resident, regardless of the purpose or duration of the use, the JCC shall be subject to a monitoring visit conducted by the department pursuant to the authority provided in 6VAC35-20-60. The purpose of the monitoring visit shall be to assess staff compliance with the provisions of this article.

B. Upon completion of the monitoring visit, the department shall provide the JCC administration with a written report of its findings in accordance with 6VAC35-20-90.

C. The department shall document each monitoring visit conducted pursuant to subsection A of this section and provide a written report to the board annually that details, at a minimum, the following information regarding each separate incident in which the restraint chair is used:

1. The facility in which the chair is used;

2. The date and time of the use;

3. A brief description of the restraint, including the purpose for which the restraint was applied, the duration of the restraint, and the circumstances surrounding the resident's release from the restraint;

4. The extent to which the JCC complied with this article; and

5. The plans identified to address findings of noncompliance, if applicable.

D. The annual report shall be placed on the agenda for the next regularly scheduled board meeting for the board's consideration and review.

6VAC35-71-1208. Written procedures regarding mechanical restraint chairs.

Department staff shall develop written procedures approved by the director that reflect the requirements established in this article.

Article 5
Limitations on Restraints

6VAC35-71-1209. Pregnant residents; limitations on use of physical restraints, mechanical restraints, and the mechanical restraint chair.

A. Staff in a juvenile correctional center may not use physical restraints, mechanical restraints, protective devices, or the mechanical restraint chair on a resident known to be pregnant during labor, delivery, or post-partum recovery unless credible, reasonable grounds exist to believe the resident presents an immediate and serious threat of self injury, injury to staff, or injury to others.

B. Abdominal restraints, leg and ankle restraints, wrist restraints behind the back, and four-point restraints may not be used on a resident known to be pregnant unless (i) credible reasonable grounds exist to believe the resident presents an immediate and serious threat of self injury, injury to staff, or injury to others; or (ii) reasonable grounds exist to believe the resident presents an immediate and credible risk of escape that cannot be reasonably minimized through any other method.

C. This section shall not apply to orthopedically prescribed devices, surgical dressings or bandages, protective helmets, or

any other devices or methods that involve physically holding a resident for purposes of conducting routine physical examinations or tests, protecting the resident from falling out of bed, or permitting the resident to participate in activities without the risk of physical harm.]

6VAC35-71-1210. Private contracts for JCCs.

A. ~~Each~~ [~~A~~ The administration for] privately operated [~~JCC~~ JCCs] shall abide by the ~~requirement~~ requirements of (i) the Juvenile Corrections Private Management Act (§ 66-25.3 et seq. of the Code of Virginia), (ii) [~~its~~ the] governing contract [with the department], [and] (iii) this chapter [~~, and (iv) applicable department procedures, including~~] ~~but not limited to~~ [~~procedures relating to case management, the use of physical restraint and mechanical restraints, confidentiality, visitation, community relationships, and media access~~].

B. ~~Each~~ [~~A~~ The administration for] privately operated [~~JCC~~ JCCs] shall develop procedures, approved by the ~~department~~ director or the director's designee, to facilitate the transfer of the [facility's] operations [~~of the facility~~] to the department [~~in the event of~~ if] the [~~termination of the~~] contract terminates.

[~~Part X~~
~~Boot Camps~~]

6VAC35-71-1230. ~~Physical restraints.~~ (Repealed.)

~~For the purpose of this chapter, a boot camp shall mean a short-term secure or nonsecure juvenile residential program that includes aspects of basic military training, such as drill and ceremony. Such programs utilize a form of military style discipline whereby employees are authorized to respond to minor institutional offenses, at the moment they notice the institutional offenses being committed, by imposing immediate sanctions that may require the performance of some physical activity, such as pushups or some other sanction, as provided for in the program's written procedures.~~

[6VAC35-71-1240. ~~Staff physical and psychological qualifications.~~ (Repealed.)

~~The boot camp shall include in the qualifications for staff positions a statement of:~~

~~1. The physical fitness level requirements for each staff position; and~~

~~2. Any psychological assessment or evaluation required prior to employment.~~]

EDITOR'S NOTE: 6VAC35-71-1250, 6VAC35-71-1260, and 6VAC35-71-1270 were amended in proposed stage. See amendments at 36:3 VA.R. 211-248 September 30, 2019.

[6VAC35-71-1250. ~~Residents' physical qualifications.~~ (Repealed.)

~~The boot camp shall have written procedures that govern:~~

~~1. Admission, including a required which shall require a written statement from (i) a physician that the resident meets the American Pediatric Society's guidelines is cleared to participate in contact sports; and (ii) from a licensed qualified mental health professional that the resident is an appropriate candidate for a boot camp program; and~~

~~2. Discharge, should a resident be physically unable to keep up with continue the program.~~

6VAC35-71-1260. ~~Residents' nonparticipation.~~ (Repealed.)

~~The boot camp shall have written procedures approved by the department director for dealing with addressing residents who are do not complying comply with boot camp program requirements.~~

6VAC35-71-1270. ~~Program description.~~ (Repealed.)

~~The boot camp shall have a written program description that states specifies:~~

~~1. How residents' physical training, work assignment assignments, education and vocational career readiness training, and treatment program participation will be interrelated;~~

~~2. The length duration of the boot camp program and the kind and duration of treatment and supervision that will be provided upon the resident's release from the residential program;~~

~~3. That any juvenile boot camp program established by or as a result of a contract with the department shall require at least six months of intensive after care following a resident's release from the boot camp program and the type of treatment and supervision that will be provided upon the resident's release from the program;~~

~~4. Whether residents will be cycled through the program individually or in platoons; and~~

~~4. 5. The program's incentives and sanctions, including whether military or correctional discipline will be used. If military style discipline is used, written procedures shall specify what summary punishments are permitted.~~]

~~DOCUMENTS INCORPORATED BY REFERENCE (6VAC35-71)~~

~~Documents Incorporated By Reference~~

~~Compliance Manual — Juvenile Correctional Centers, effective January 1, 2014, Virginia Department of Juvenile Justice~~

[Chapter 73
Regulation Governing Juvenile Boot Camps

6VAC35-73-10. Definitions.

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

"Boot camp" means a short-term secure or nonsecure juvenile residential program that includes aspects of basic military training and that utilizes a form of military-style discipline whereby employees are authorized to respond to minor institutional offenses by imposing immediate sanctions that may require the performance of some physical activity based on the program's written procedures

"Department" means the Department of Juvenile Justice.

"Director" means the director of the department.

"Resident" means an individual, regardless of age, who resides in a juvenile boot camp.

6VAC35-73-20. Staff physical and psychological qualifications.

The boot camp shall include in the qualifications for staff positions a statement of:

1. The physical fitness level requirements for each staff position; and

2. Any psychological assessment or evaluation required before employment.

6VAC35-73-30. Resident physical qualifications.

The boot camp shall have written procedures that govern:

1. Admission, which shall require a written statement from (i) a licensed physician or licensed medical provider that the resident is cleared to participate in contact sports; and (ii) a mental health clinician that the resident is an appropriate candidate for a boot camp program; and

2. Discharge, should a resident be physically unable to continue the program.

6VAC35-73-40. Resident nonparticipation.

The boot camp shall have written procedures approved by the director or the director's designee for addressing residents who do not comply with boot camp program requirements.

6VAC35-73-50. Program description.

The boot camp shall have a written program description that specifies:

1. How residents' physical training, work assignments, education, and career-readiness training, and treatment program participation will be interrelated;

2. The duration of the boot camp program;

3. That any juvenile boot camp program established by or as a result of a contract with the department shall require at least six months of intensive after-care following a resident's release from the boot camp program and the type of treatment and supervision that will be provided upon the resident's release from the program;

4. That the programming for such boot camp shall consider the therapeutic needs of each participant;

5. Whether residents will be cycled through the program individually or in platoons; and

6. The program's incentives and sanctions, including whether military or correctional discipline will be used, and what summary punishments are permitted.]

VA.R. Doc. No. R17-4810; Filed January 19, 2022, 1:09 p.m.

TITLE 8. EDUCATION

STATE BOARD OF EDUCATION

Proposed Regulation

Title of Regulation: **8VAC20-23. Licensure Regulations for School Personnel (adding 8VAC20-23-615).**

Statutory Authority: § 22.1-298.1 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: April 15, 2022.

Agency Contact: Patty Pitts, Assistant Superintendent for Teacher Education and Licensure, Department of Education, James Monroe Building, 101 North 14th Street, Richmond, VA 23219, telephone (804) 371-2522, or email patty.pitts@doe.virginia.gov.

Basis: Section 22.1-16 of the Code of Virginia gives the State Board of Education authority to promulgate regulations to carry out its statutory powers and duties. Pursuant to § 22.1-298.2 of the Code of Virginia, the board has the authority to prescribe by regulation the requirements for accreditation and approval of education preparation programs. Section 22.1-200.03 of the Code of Virginia requires the board to develop and approve objectives for economics education and financial literacy to be required of all students at the middle and high school levels.

Purpose: Students who gain knowledge and skills in economics and personal finance are more productive citizens in society. This regulatory change is offered to protect the health, safety, and welfare of citizens by helping to address gaps in teacher preparation and training. Students who gain knowledge and skills in economics and personal finance are more productive citizens in society.

Substance: Currently, no specific endorsement has been established in the Licensure Regulations for School Personnel (8VAC20-23) and the Regulations Governing the Review and Approval of Education Programs in Virginia (8VAC20-543) to teach courses in economics and personal finance. Teachers holding valid Virginia licenses with endorsements in specific areas of agricultural education, business and information

technology, family and consumer sciences, history and social science, marketing, and mathematics may teach the courses. The regulatory action (standard procedure) is to establish an add-on endorsement to teach economics and personal finance. The add-on endorsement will expand the number of teachers who may teach economics and personal finance. The add-on endorsement will expand the number of teachers who may teach economics and personal finance and ensure that such teachers have completing training in economics and personal finance.

Upon the effective date of the establishment of the Economics and Personal Finance (Add-on Endorsement), individuals who hold a teaching license may be eligible for the economics and personal finance add-on endorsement if the individual (i) completed one year of successful teaching experience in Virginia as the teacher of record in economics and personal finance prior to the effective date of this endorsement; and (ii) receives the recommendation from the Virginia school division superintendent where the individual is employed at the time of the request.

Individuals who are teaching in Virginia public schools and meet grandfathering requirements will receive the Economics and Personal Finance at no additional cost. The $50 fee to apply for an additional endorsement would be waived because these individuals currently may teach economics and personal finance with the endorsements on their license.

A transition period of two years should be implemented from the effective date of the Economics and Personal Finance (Add-on Endorsement) for individuals to complete the requirements to add the endorsement. As of the effective date of the Economics and Personal Finance (Add-on Endorsement), those currently teaching the course and those receiving the endorsement through grandfathering, will be endorsed to teach the course.

Issues: The primary advantage of this regulatory change is the assurance that those teachers trained in Virginia approved educator programs or licensed by the State Board of Education will be even better-equipped to teach courses in economics and personal finance to students who take the course. This in turn, will provide the knowledge and life skills students will need to make sound financial decisions.

While this does add a few new training requirements for individuals in the profession, the agency and educational partners understand the importance and necessity of these changes. Additionally, the impact the relevant changes will have on approved educator preparation programs will be marginal as many have already begun to incorporate these types of instruction or training opportunities into their course maps.

As a result of this regulatory action, the Commonwealth can expect to benefit from future cohorts of students who have a more complete understanding of financial literacy. No disadvantages to the agency or Commonwealth have been identified.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Education (Board) proposes to establish in the Licensure Regulations for School Personnel an add-on endorsement to teach economics and personal finance.[1]

Background. In order to earn a Standard or Advanced Studies Diploma, public high school students must pass a course on economics and personal finance. Currently, there is no specific endorsement in the Licensure Regulations for School Personnel and the Regulations Governing the Review and Approval of Education Programs in Virginia to teach courses in economics and personal finance. According to the Department of Education (DOE), teachers holding valid Virginia licenses with endorsements in specific areas of agricultural education, business and information technology, family and consumer sciences, history and social science, marketing, and mathematics may teach the courses.[2]

The proposed Economics and Personal Finance (Add-On Endorsement) is as follows:

Endorsement requirement. The candidates shall have:

1. Earned a baccalaureate degree from a regionally accredited college or university and hold a license (Collegiate Professional License, Postgraduate Professional License, or a Provisional License leading to a Collegiate Professional or Postgraduate Professional License) issued by the Virginia Board of Education with a teaching endorsement; and

2. Completed an approved teacher preparation program in economics and personal finance (add-on endorsement); or completed the following requirements:

a. Six semester hours of economics or a non-college credit institute in economics. The non-college credit institute in economics must be a minimum of 45 clock hours and offered by a Virginia school division or a regionally accredited college or university. The institute must include the economics content set forth in the Virginia Standards of Learning for economics and personal finance and be approved by the Department of Education; and

b. Three semester hours of personal finance or a non-college credit institute in finance. The non-college credit institution in finance must be a minimum of 45 clock hours and offered by a Virginia school division or a regionally accredited college or university. The institute must include the personal finance content set forth in the Standards of Learning for economics and personal finance and be approved by the Department of Education.

The proposed text does not specify whether or not the Economics and Personal Finance (Add-On Endorsement) would be required for teaching courses in economics and personal finance. According to DOE, two years after the effective date of this regulatory action, the endorsement would be required to teach the courses.[3] Also according to DOE, there

would be grandfathering such that upon the effective date of the establishment of the Economics and Personal Finance (Add-on Endorsement), individuals who hold a teaching license (Collegiate Professional, Postgraduate Professional License, or a Provisional License leading to a Collegiate Professional or Postgraduate Professional License) may be eligible for the economics and personal finance add-on endorsement if the individual:

> completed one year of successful teaching experience [satisfactory performance rating on summative evaluation] in Virginia as the teacher of record in economics and personal finance prior to the effective date of this endorsement; and
>
> receives the recommendation from the Virginia school division superintendent where the individual is employed at the time of the request.

Estimated Benefits and Costs. Though the proposed establishment of the Economics and Personal Finance (Add-On Endorsement) does not directly affect who may teach economics and personal finance courses, as stated above DOE has indicated that the endorsement would effectively be required to teach such courses two years after the effective date of this regulatory action. Other than for the teachers who are grandfathered in to receive the endorsement, earning the endorsement would require six semester hours of economics or 45 clock hours from a non-college credit institute in economics, and three semester hours of personal finance or of 45 clock hours from a non-college credit institute in finance.[4] This would provide much greater assurance that future teachers of economics and personal finance courses would be knowledgeable in the subject matter that they are teaching. This in turn would likely have a positive impact on students obtaining and retaining economics and personal finance knowledge and skills, perhaps positively affecting their productivity, job prospects, and personal finances.

The Virginia Council on Economic Education (VCEE)[5] is a nonprofit organization that through its VCEE institutes and workshops provides professional development opportunities for teachers to assist them in teaching economics and personal finance at no cost to the teachers or school divisions. VCEE supports a statewide network of Centers for Economic Education located at the following universities: Christopher Newport University, George Mason University, James Madison University, Old Dominion University, University of Lynchburg, University of Mary Washington, University of Virginia's College at Wise, Virginia Commonwealth University, and Virginia Tech.[6] Institutes held at these Centers provide training and resources, and staff help facilitate efforts with local school divisions. The free training available through these institutes would likely meet at least a significant portion of the requirements for the endorsement and would likely greatly reduce the cost of obtaining the endorsement. It may thus be possible to earn the endorsement without paying for course fees, but candidates would still incur the cost of their time (90 clock hours if obtaining through the institutes). Additionally, according to DOE, there would be a $50 fee to add the endorsement.[7]

Businesses and Other Entities Affected. The proposed amendments affect the 132 local school divisions in the Commonwealth, the high schools within those school divisions, the 1,220 teachers of economics and personal finance courses,[8] and future teachers of teachers of economics and personal finance courses. No school divisions or high schools appear to be disproportionately affected.

Small Businesses[9] Affected. The proposal does not appear to substantively directly affect small businesses.

Localities[10] Affected.[11] The proposal affects all Virginia localities in that all localities have students and staff associated with public high schools. No localities appear to be disproportionately affected. The proposal would not likely substantively increase costs for local governments.

Projected Impact on Employment. The proposal does not appear to substantively affect total employment.

Effects on the Use and Value of Private Property. The proposal does not appear to substantively affect the use and value of private property nor real estate development costs.

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[1]In a concurrent action, the Board is proposing to add the Economics and Personal Finance (Add-on Endorsement) to the Regulations Governing the Review and Approval of Education Programs in Virginia. See https://townhall.virginia.gov/L/ViewAction.cfm?actionid=5420

[2]See https://www.doe.virginia.gov/instruction/economics_personal_finance/resources/faq.shtml

[3]DOE stated that this would be through a Superintendent's Memo and possibly further regulatory action.

[4]Another proposed option to earn the endorsement is "Completed an approved teacher preparation program in economics and personal finance (add-on endorsement)." No such programs currently exist. A concurrent action would enable the existence of such programs. See https://townhall.virginia.gov/L/ViewAction.cfm?actionid=5420

[5]See https://vcee.org/about-vcee/

[6]See https://vcee.org/about-vcee/centers/

[7]Those who receive the endorsement through grandfathering would be exempt from the fee, according to DOE.

[8]DOE indicated that in the 2019-2020 school year there were 1,220 teachers of economics and personal finance courses.

[9]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."

[10]"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.

[11]Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

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

Summary:

The proposed amendment establishes an add-on endorsement to teach economics and personal finance.

8VAC20-23-615. Economics and personal finance (add-on endorsement).

Endorsement requirement. The candidates shall have:

1. Earned a baccalaureate degree from a regionally accredited college or university and hold a license (Collegiate Professional License, Postgraduate Professional License, or a Provisional License leading to a Collegiate Professional or Postgraduate Professional License) issued by the State Board of Education with a teaching endorsement; and

2. Completed an approved teacher preparation program in economics and personal finance (add-on endorsement); or completed the following requirements:

a. Six semester hours of economics or a non-college credit institute in economics. The non-college credit institute in economics must be a minimum of 45 clock hours and offered by a Virginia school division or a regionally accredited college or university. The institute must include the economics content set forth in the Virginia Standards of Learning for economics and personal finance and be approved by the Department of Education; and

b. Three semester hours of personal finance or a non-college credit institute in finance. The non-college credit institution in finance must be a minimum of 45 clock hours and offered by a Virginia school division or a regionally accredited college or university. The institute must include the personal finance content set forth in the Standards of Learning for economics and personal finance and be approved by the Department of Education.

VA.R. Doc. No. R19-5855; Filed January 13, 2022, 7:49 a.m.

Fast-Track Regulation

Title of Regulation: **8VAC20-81. Regulations Governing Special Education Programs for Children with Disabilities in Virginia (amending 8VAC20-81-170).**

Statutory Authority: §§ 22.1-16 and 22.1-214 of the Code of Virginia.

Public Hearing Information: No public hearing currently scheduled.

Public Comment Deadline: March 16, 2022.

Effective Date: April 1, 2022.

Agency Contact: Jim Chapman, Regulatory and Legal Coordinator, Department of Education, James Monroe Building, 101 North 14th Street, 25th Floor, Richmond, VA 23219, telephone (804) 225-2540, or email jim.chapman@doe.virginia.gov.

Basis: The board's overall regulatory authority is found in § 22.1-16 of the Code of Virginia, which states that the State Board of Education may adopt bylaws for its own government and promulgate such regulations as may be necessary to carry out its powers and duties. The board's regulatory authority over special education programs for children with disabilities is found in § 22.1-214 of the Code of Virginia.

Purpose: The rationale and goal of the regulatory change is to maintain the internal consistency the board's regulations and also to ensure that the board's regulations align with federal regulations. The regulatory change is essential to protect the health, safety, and welfare of citizens by ensuring adequate and proper due process protections to children with disabilities and those seeking educational services.

Rationale for Using Fast-Track Rulemaking Process: The board expects this action to be noncontroversial and therefore appropriate for the fast-track rulemaking process because the proposed changes ensure consistency and conform the board's regulations to already existing federal requirements.

Substance: The amendments align the regulation with previous regulatory action and applicable federal regulations.

Issues: The primary advantage of the regulatory action to the public and the agency or Commonwealth is that the change will ensure adequate and proper due process protections to children with disabilities and those seeking educational services. There are no disadvantages to the regulatory change nor are there other pertinent matters of interest to the regulated community, government officials, or the public.

Department of Planning and Budget's Economic Impact Analysis:

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 14 (as amended, July 16, 2018). The analysis presented represents DPB's best estimate of these economic impacts.[1]

Summary of the Proposed Amendments to Regulation. The Board of Education (Board) proposes to amend text in 8VAC20-81 Regulations Governing Special Education Programs for Children with Disabilities in Virginia to match text in federal regulations.

Background.

Independent Educational Evaluation. Section 8VAC20-81-170 B 4 currently states the following: "Requests for evaluations by special education hearing officers. If a special education hearing officer requests an independent educational evaluation for an evaluation component,[2] as part of a hearing on a due process complaint, the cost of the evaluation shall be at public expense. (34 CFR 300.502(d)) [emphasis added]" The federal regulation 34 CFR 300.502(d) is the same as this text, except it does not include the words "for an evaluation component." The Board proposes to remove the words "for an evaluation component" from the regulation, so that the Virginia regulatory text would match the federal regulatory text.

Procedural Safeguards Notice. Section 8VAC20-81-170 D 3 states that "The procedural safeguards notice shall include a full explanation of all of the procedural safeguards available relating to: "followed by 13 items. The Board proposes to remove the language in the 13th item, which concerns the opportunity to present and resolve complaints through state complaint procedures, and add it to the text in one of the other 12 items.

Confidentiality of Information. Section 8VAC20-81-170 G 10 a currently is the following: "Parental consent shall be obtained before personally identifiable information is disclosed to anyone other than officials of the local educational agency unless the information is contained in the education records, and the disclosure is authorized[3] under the Family Education Rights and Privacy Act. (20 USC § 1232g) [emphasis added]." The Board proposes to add the words "without parental consent" after the existing words "disclosure is authorized" in order to match text in federal regulation 34 CFR § 300.622(a).

Estimated Benefits and Costs. The federal regulations already apply in the Commonwealth. The proposed amendments essentially are clarifications of the rules that already apply. According to the Department of Education (DOE), removing the words "for an evaluation component" would have no impact on whether or not the costs (or the full costs) for any particular evaluations are at public expense. The proposed moving of text within Section 8VAC20-81-170 D 3 would not effectively change requirements. Also, DOE considers adding the words "without parental consent" to be clarifying the existing rule, and would have no effect in practice. Thus, overall the proposed amendments would likely have no impact beyond improving clarity for readers of the regulation.

Businesses and Other Entities Affected. The Regulations Governing Special Education Programs for Children with Disabilities in Virginia apply to all 132 local school divisions in the Commonwealth. The proposed amendments do not affect requirements in practice, but may improve clarity for readers of the regulation.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.[4] An 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. As neither of these conditions appear to result from this proposed action, an adverse impact is not indicated.

Small Businesses[5] Affected.[6] The proposed amendments do not appear to adversely affect small businesses.

Localities[7] Affected.[8] The Regulations Governing Special Education Programs for Children with Disabilities in Virginia apply to all local school divisions, and hence affect all Virginia localities. No locality is disproportionately affected. Since the proposal does not affect rules and requirements in practice, costs for local governments are not affected.

Projected Impact on Employment. The proposal is unlikely to substantively affect employment.

Effects on the Use and Value of Private Property. The proposal is unlikely to substantively affect the use and value of private property. The proposal does not affect real estate development costs.

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[1]Section 2.2-4007.04 of the Code of Virginia requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

[2]Bold is for emphasis. The original text is not in bold.

[3]Ibid

[4]Pursuant to § 2.2-4007.04 D: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

[5]Pursuant to § 2.2-4007.04, 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."

[6]If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

[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 agency concurs with the economic impact analysis completed by the Department of Planning and Budget.

Summary:

The amendments conform regulatory text to (i) amendments required by Chapter 109 of the 2021 Acts of Assembly, Special Session I, and (ii) applicable federal regulations.

8VAC20-81-170. Procedural safeguards.

A. Opportunity to examine records; parent participation. (34 CFR 300.322(e), 34 CFR 300.500 and 34 CFR 300.501; 8VAC20-150)

1. Procedural safeguards. Each local educational agency shall establish, maintain, and implement procedural safeguards as follows:

a. The parent of a child with a disability shall be afforded an opportunity to:

(1) Inspect and review all education records with respect to (i) the identification, evaluation, and educational placement of the child; and (ii) the provision of a free appropriate public education to the child.

(2) Participate in meetings with respect to the identification, evaluation, and educational placement of the child and the provision of a free appropriate public education to the child.

b. Parent participation in meetings.

(1) Each local educational agency shall provide notice to ensure that the parent of a child with a disability has the opportunity to participate in meetings described in subdivision 1 a (2) of this subsection, including notifying the parent of the meeting early enough to ensure that the parent has an opportunity to participate. The notice shall:

(a) Indicate the purpose, date, time, and location of the meeting and who will be in attendance;

(b) Inform the parent that at the parent's discretion or at the discretion of the local educational agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel, as appropriate, may participate in meetings with respect to the identification, evaluation, and educational placement of the child and the provision of a free appropriate public education to the child;

(c) Inform the parent that the determination of the knowledge or special expertise shall be made by the party who invited the individual; and

(d) Inform the parent, in the case of a child who was previously served under Part C that an invitation to the initial IEP team meeting shall, at the request of the parent, be sent to the Part C service coordinator or other representatives of Part C to assist with the smooth transition of services.

(2) A meeting does not include informal or unscheduled conversations involving local educational agency personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision if those issues are not addressed in the child's IEP. A meeting also does not include preparatory activities that local educational agency personnel engage in to develop a proposal or a response to a parent proposal that will be discussed at a later meeting.

c. Parent involvement in placement decisions.

(1) Each local educational agency shall ensure that a parent of each child with a disability is a member of the IEP team that makes decisions on the educational placement of their child or any Comprehensive Services Act team that makes decisions on the educational placement of their child.

(2) In implementing the requirements of subdivision 1 c (1) of this subsection, the local educational agency shall provide notice in accordance with the requirements of 8VAC20-81-110 E.

(3) If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the local educational agency shall use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.

(4) A placement decision may be made by the IEP or Comprehensive Services Act team without the involvement of the parent if the local educational agency is unable to obtain the parents' participation in the decision. In this case, the local educational agency shall have a record of its attempt to ensure the parents' involvement.

(5) The local educational agency shall take whatever action is necessary to ensure that the parent understands and is able to participate in, any group discussions relating to the educational placement of the parent's child, including arranging for an interpreter for a parent with deafness, or whose native language is other than English.

(6) The exception to the IEP team determination regarding placement is with disciplinary actions involving interim alternative education settings for 45-day removals under 8VAC20-81-160 D 6 a. (34 CFR 300.530(f)(2) and (g))

B. Independent educational evaluation.

1. General. (34 CFR 300.502(a))

a. The parent of a child with a disability shall have the right to obtain an independent educational evaluation of the child.

b. The local educational agency shall provide to the parent of a child with a disability, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained and the applicable criteria for independent educational evaluations.

2. Parental right to evaluation at public expense. (34 CFR 300.502(b) and (e))

a. The parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the local educational agency.

b. If the parent requests an independent educational evaluation at public expense, the local educational agency shall, without unnecessary delay, either:

(1) Initiate a due process hearing to show that its evaluation is appropriate; or

(2) Ensure that an independent educational evaluation is provided at public expense, unless the local educational agency demonstrates in a due process hearing that the evaluation obtained by the parent does not meet the local educational agency's criteria.

c. If the local educational agency initiates a due process hearing and the final decision is that the local educational agency's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

d. If the parent requests an independent educational evaluation, the local educational agency may ask the reasons for the parent's objection to the public evaluation. However, the explanation by the parent may not be required and the local educational agency may not unreasonably delay either providing the independent educational evaluation at public expense or initiating a due process hearing to defend the public evaluation.

e. A parent is entitled to only one independent educational evaluation at public expense each time the public educational agency conducts an evaluation with which the parent disagrees.

f. If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, shall be the same as the criteria that the local educational agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation. Except for the criteria, a local educational agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

3. Parent-initiated evaluations. If the parent obtains an independent educational evaluation at public expense or shares with the local educational agency an evaluation obtained at private expense, the results of the evaluation: (34 CFR 300.502(c))

a. Shall be considered by the local educational agency, if it meets local educational agency criteria, in any decision regarding the provision of a free appropriate public education to the child; and

b. May be presented by any party as evidence at a hearing under 8VAC20-81-210.

4. Requests for evaluations by special education hearing officers. If a special education hearing officer requests an independent educational evaluation ~~for an evaluation component,~~ as part of a hearing on a due process complaint, the cost of the evaluation shall be at public expense. (34 CFR 300.502(d))

C. Prior written notice by the local educational agency; content of notice.

1. Prior written notice shall be given to the parent of a child with a disability within a reasonable time before the local educational agency: (34 CFR 300.503(a))

a. Proposes to initiate or change the identification, evaluation, or educational placement (including graduation with a standard or advanced studies diploma) of the child, or the provision of a free appropriate public education for the child; or

b. Refuses to initiate or change the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education for the child.

2. The notice shall include: (34 CFR 300.503(b))

a. A description of the action proposed or refused by the local educational agency;

b. An explanation of why the local educational agency proposes or refuses to take the action;

c. A description of any other options the IEP team considered and the reasons for the rejection of those options;

d. A description of each evaluation procedure, assessment, record, or report the local educational agency used as a basis for the proposed or refused action;

e. A description of any other factors that are relevant to the local educational agency's proposal or refusal;

f. A statement that the parent of a child with a disability have protection under the procedural safeguards of this chapter and, if the notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; and

g. Sources for the parent to contact in order to obtain assistance in understanding the provisions of this section.

3. a. The notice shall be~~:~~ (i) written in language understandable to the general public; and (ii) provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so. (34 CFR 300.503(c))

b. If the native language or other mode of communication of the parent is not a written language, the local educational agency shall take steps to ensure that:

(1) The notice is translated orally or by other means to the parent in the parent's native language or other mode of communication;

(2) The parent understands the content of the notice; and

(3) There is written evidence that the requirements of subdivisions (1) and (2) of this subdivision have been met.

D. Procedural safeguards notice. (34 CFR 300.504)

1. A copy of the procedural safeguards available to the parent of a child with a disability shall be given to the parent

by the local educational agency only one time a school year, except that a copy shall be given to the parent upon:

a. Initial referral for or parent request for evaluation;

b. If the parent requests an additional copy;

c. Receipt of the first state complaint during a school year;

d. Receipt of the first request for a due process hearing during a school year; and

e. On the date on which the decision is made to make a disciplinary removal that constitutes a change in placement because of a violation of a code of student conduct.

2. The local educational agency may place a current copy of the procedural safeguards notice on its Internet website if a website exists, but the local educational agency does not meet its obligation under subdivision 1 of this subsection by directing the parent to the website. The local educational agency shall offer the parent a printed copy of the procedural safeguards notice in accordance with subdivision 1 of this subsection.

3. The procedural safeguards notice shall include a full explanation of all of the procedural safeguards available relating to:

a. Independent educational evaluation;

b. Prior written notice;

c. Parental consent;

d. Access to educational records;

e. Opportunity to present and resolve complaints through the due process complaint and state complaint procedures, including:

(1) The time period in which to file a complaint;

(2) The opportunity for the local educational agency to resolve the complaint; and

(3) The difference between the due process and the state complaint procedures, including the applicable jurisdiction of each procedure, potential issues, filing and decisional timelines for each process, and relevant procedures;

f. The availability of mediation;

g. The child's placement during pendency of due process proceedings;

h. Procedures for students who are subject to placement in an interim alternative educational setting;

i. Requirements for unilateral placement by parents of children in private schools at public expense;

j. Due process hearings, including requirements for disclosure of evaluation results and recommendations;

k. Civil actions, including the time period in which to file those actions;

l. Attorneys' fees; and

m. The opportunity to present and resolve complaints through the state complaint procedures, including:

(1) The time period in which to file a complaint;

(2) The opportunity for the local educational agency to resolve the complaint; and

(3) The difference between the due process and the state complaint procedures, including the applicable jurisdiction, potential issues, and timelines for each process.

4. The notice required under this subsection shall meet the prior notice requirements regarding understandable language in subdivision C 3 of this section.

E. Parental consent.

1. Required parental consent. Informed parental consent is required before:

a. Conducting an initial evaluation or reevaluation, including a functional behavioral assessment if such assessment is not a review of existing data conducted at an IEP meeting; (34 CFR 300.300(a)(1)(i))

b. An initial eligibility determination or any change in categorical identification;

c. Initial provision of special education and related services to a child with a disability; (34 CFR 300.300(b)(1))

d. Any revision to the child's IEP services;

e. Any partial or complete termination of special education and related services, except for graduation with a standard or advance studies diploma;

f. The provision of a free appropriate public education to children with disabilities who transfer between public agencies in Virginia or transfer to Virginia from another state in accordance with 8VAC20-81-120;

g. Accessing a child's public benefits or insurance or private insurance proceeds in accordance with subsection F of this section; and (34 CFR 300.154)

h. Inviting to an IEP meeting a representative of any participating agency that is likely to be responsible for providing or paying for secondary transition services. (34 CFR 300.321(b)(3))

2. Parental consent not required. Parental consent is not required before:

a. Review of existing data as part of an evaluation or a reevaluation, including a functional behavioral assessment; (34 CFR 300.300(d)(1))

b. Administration of a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of the parents of all children; (34 CFR 300.300(d)(1))

c. The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation; (34 CFR 300.302)

d. Administration of a test or other evaluation that is used to measure progress on the child's IEP goals and is included in the child's IEP;

e. A teacher's or related service provider's observations or ongoing classroom evaluations;

f. Conducting an initial evaluation of a child who is a ward of the state and who is not residing with his parent if: (34 CFR 300.300(a)(2))

(1) Despite reasonable efforts, the local educational agency cannot discover the whereabouts of the parent;

(2) The parent's rights have been terminated; or

(3) The rights of the parent to make educational decisions have been subrogated by a judge and an individual appointed by the judge to represent the child has consented to the initial evaluation.

3. Revoking consent.

a. If at any time subsequent to the initial provision of special education and related services the parent revokes consent in writing for the continued provision of special education and related services: (34 CFR 300.300(b)(4))

(1) The local educational agency may not continue to provide special education and related services to the child, but must provide prior written notice in accordance with 8VAC20-81-170 C before ceasing the provision of special education and related services;

(2) The local educational agency may not use mediation or due process hearing procedures to obtain parental consent, or a ruling that the services may be provided to the child;

(3) The local educational agency's failure to provide the special education and related services to the child will not be considered a violation of the requirement to provide FAPE; and

(4) The local educational agency is not required to convene an IEP meeting or to develop an IEP for the child for the further provision of special education and related services.

b. If a parent revokes consent, that revocation is not retroactive in accordance with the definition of "consent" at 8VAC20-81-10.

4. Refusing consent.

a. If the parent refuses consent for initial evaluation or a reevaluation, the local educational agency may, but is not required to, use mediation or due process hearing procedures to pursue the evaluation. The local educational agency does not violate its obligations under this chapter if it declines to pursue the evaluation. (34 CFR 300.300(a)(3) and (c)(1))

b. If the parent refuses to consent to the initial provision of special education and related services: (34 CFR 300.300(b)(3))

(1) The local educational agency may not use mediation or due process hearing procedures to obtain parental consent, or a ruling that the services may be provided to the child;

(2) The local educational agency's failure to provide the special education and related services to the child for which consent is requested is not considered a violation of the requirement to provide FAPE; and

(3) The local educational agency is not required to convene an IEP meeting or to develop an IEP for the child for the special education and related services for which the local educational agency requests consent. However, the local educational agency may convene an IEP meeting and develop an IEP to inform the parent about the services that may be provided with parental consent.

c. If the parent of a parentally placed private school child refuses consent for an initial evaluation or a reevaluation, the local educational agency: (34 CFR 300.300(d)(4))

(1) May not use mediation or due process hearing procedures to obtain parental consent, or a ruling that the evaluation of the child may be completed; and

(2) Is not required to consider the child as eligible for equitable provision of services in accordance with 8VAC20-81-150.

d. A local educational agency may not use a parent's refusal to consent to one service or activity to deny the parent or child any other service, benefit, or activity of the local educational agency, except as provided by this chapter. (34 CFR 300.300(d)(3))

5. Withholding consent.

a. If the parent fails to respond to a request to consent for an initial evaluation, the local educational agency may, but is not required to, use mediation or due process hearing procedures to pursue the evaluation. The local educational agency does not violate its obligations under this chapter if it declines to pursue the evaluation. (34 CFR 300.300(a)(3) and (c)(1))

b. Informed parental consent need not be obtained for reevaluation if the local educational agency can demonstrate that it has taken reasonable measures to obtain that consent, and the child's parent has failed to respond. (34 CFR 300.300(c)(2))

c. If the parent fails to respond to a request to provide consent for the initial provision of special education and related services, the local educational agency follows the provisions of subdivision 4 b of this subsection. (34 CFR 300.300(b)(3) and (4))

6. Consent for initial evaluation may not be construed as consent for initial provision of special education and related services. (34 CFR 300.300(a)(1)(ii))

7. The local educational agency shall make reasonable efforts to obtain informed parental consent for an initial evaluation and the initial provision of special education and related services. (34 CFR 300.300(a)(1)(iii) and (b)(2))

8. To meet the reasonable measures requirement of this section, the local educational agency shall have a record of its attempts to secure the consent, such as: (34 CFR 300.322(d) and 34 CFR 300.300(a), (b), (c) and (d)(5))

a. Detailed records of telephone calls made or attempted and the results of those calls;

b. Copies of correspondence (written, electronic, or facsimile) sent to the parent and any responses received; and

c. Detailed records of visits made to the parent's home or place of employment and the results of those visits.

F. Parental rights regarding use of public or private insurance. Each local educational agency using Medicaid or other public benefits or insurance programs to pay for services required under this chapter, as permitted under the public insurance program, and each local educational agency using private insurance to pay for services required under this chapter, shall provide notice to the ~~parent(s)~~ parent and obtain informed parental consent in accordance with 8VAC20-81-300. (34 CFR 300.154)

G. Confidentiality of information.

1. Access rights. (34 CFR 300.613)

a. The local educational agency shall permit the parent to inspect and review any education records relating to the parent's children that are collected, maintained, or used by the local educational agency under this chapter. The local educational agency shall comply with a request without unnecessary delay and before any meeting regarding an IEP or any hearing in accordance with 8VAC20-81-160 and 8VAC20-81-210, or resolution session in accordance with 8VAC20-81-210, and in no case more than 45 calendar days after the request has been made.

b. The right to inspect and review education records under this section includes:

(1) The right to a response from the local educational agency to reasonable requests for explanations and interpretations of the records;

(2) The right to request that the local educational agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and

(3) The right to have a representative of the parent inspect and review the records.

c. A local educational agency may presume that a parent has authority to inspect and review records relating to the parent's children unless the local educational agency has been provided a copy of a judicial order or decree, or other legally binding documentation, that the parent does not have the authority under applicable Virginia law governing such matters as guardianship, separation, and divorce.

2. Record of access. Each local educational agency shall keep a record of parties, except parents and authorized employees of the local educational agency, obtaining access to education records collected, maintained, or used under Part B of the Act, including the name of the party, the date of access, and the purpose for which the party is authorized to use the records. (34 CFR 300.614)

3. Record on more than one child. If any education record includes information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child or to be informed of the specific information requested. (34 CFR 300.615)

4. List of types and locations of information. Each local educational agency shall provide a parent on request a list of the types and locations of education records collected, maintained, or used by the local educational agency. (34 CFR 300.616)

5. Fees. (34 CFR 300.617)

a. Each local educational agency may charge a fee for copies of records that are made for a parent under this chapter if the fee does not effectively prevent the parent from exercising their right to inspect and review those records.

b. A local educational agency may not charge a fee to search for or to retrieve information under this section.

c. A local educational agency may not charge a fee for copying a child's IEP that is required to be provided to the parent in accordance with 8VAC20-81-110 E 7.

6. Amendment of records at parent's request. (34 CFR 300.618)

a. A parent who believes that information in the education records collected, maintained, or used under this chapter is inaccurate or misleading or violates the privacy or other rights of the child may request the local educational agency that maintains the information to amend the information.

b. The local educational agency shall decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.

c. If the local educational agency decides to refuse to amend the information in accordance with the request, it shall inform the parent of the refusal and advise the parent

of the right to a hearing under subdivision 7 of this subsection.

7. Opportunity for a hearing. The local educational agency shall provide on request an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child. (34 CFR 300.619)

8. Results of hearing. (34 CFR 300.620)

a. If, as a result of the hearing, the local educational agency decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it shall amend the information accordingly and so inform the parent in writing.

b. If, as a result of the hearing, the local educational agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it shall inform the parent of the right to place in the child's education records a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.

c. Any explanation placed in the records of the child under this section shall:

(1) Be maintained by the local educational agency as part of the records of the child as long as the record or contested portion is maintained by the local educational agency; and

(2) If the records of the child or the contested portion is disclosed by the local educational agency to any party, the explanation shall also be disclosed to the party.

9. Hearing procedures. A hearing held under subdivision 7 of this subsection shall be conducted in accordance with the procedures under 34 CFR 99.22 of the Family Educational Rights and Privacy Act. (20 USC § 1232g; 34 CFR 300.621)

a. The local educational agency may:

(1) Develop local procedures for such a hearing process; or

(2) Obtain a hearing officer from the Supreme Court of Virginia's special education hearing officer list in accordance with the provisions of 8VAC20-81-210 H.

10. Consent. (34 CFR 300.32; 34 CFR 300.622)

a. Parental consent shall be obtained before personally identifiable information is disclosed to anyone other than officials of the local educational agency unless the information is contained in the education records, and the disclosure is authorized without parental consent under the Family Education Rights and Privacy Act. (20 USC § 1232g).

b. Parental consent is not required before personally identifiable information is disclosed to officials of the local educational agencies collecting, maintaining, or using personally identifiable information under this chapter, except:

(1) Parental consent, or the consent of a child who has reached the age of majority, shall be obtained before personally identifiable information is released to officials of any agency or institution providing or paying for transition services.

(2) If a child is enrolled, or is going to enroll in a private school that is not located in the local educational agency where the parent resides, parental consent shall be obtained before any personally identifiable information about the child is released between officials in the local educational agency where the private school is located, and officials in the local educational agency where the parent resides.

11. Safeguards. (34 CFR 300.623)

a. Each local educational agency shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

b. Each local educational agency shall ensure that electronic communications via emails or facsimiles regarding any matter associated with the child, including matters related to IEP meetings, disciplinary actions, or service delivery, be part of the child's educational record.

c. One official at each local educational agency shall assume responsibility for ensuring the confidentiality of any personally identifiable information.

d. All persons collecting, maintaining, or using personally identifiable information shall receive training or instruction on Virginia's policies and procedures for ensuring confidentiality of the information.

e. Each local educational agency shall maintain for public inspection a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

12. Destruction of information. (34 CFR 300.624)

a. The local educational agency shall inform parents when personally identifiable information collected, maintained, or used under this chapter is no longer needed to provide educational services to the child.

b. This information shall be destroyed at the request of the parents. However, a permanent record of a student's name, address, phone number, grades, attendance record, classes attended, grade level completed, and year completed shall be maintained without time limitation.

c. The local educational agency shall comply with the Records Retention and Disposition Schedule of the Library of Virginia.

H. Electronic mail. If the local educational agency makes the option available, the parent of a child with a disability may elect to receive prior written notice, the procedural safeguards

notice, and the notice of a request for due process, by electronic mail. (34 CFR 300.505)

I. Electronic signature. If an electronically filed document contains an electronic signature, the electronic signature has the legal effect and enforceability of an original signature. An electronic signature is an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record. (Chapter 42.1 (§ 59.1-479 et seq.) of Title 59.1 of the Code of Virginia)

J. Audio and video recording.

1. The local educational agency shall permit the use of audio recording devices at meetings convened to determine a child's eligibility under 8VAC20-81-80; to develop, review, or revise the child's IEP under 8VAC20-81-110 F; and to review discipline matters under 8VAC20-81-160 D. The parent shall inform the local educational agency before the meeting in writing, unless the parents cannot write in English, that they will be audio recording the meeting. If the parent does not inform the local educational agency, the parent shall provide the local educational agency with a copy of the audio recording. The parent shall provide their own audio equipment and materials for audio recording. If the local educational agency audio records meetings or receives a copy of an audio recording from the parent, the audio recording becomes a part of the child's educational record.

2. The local educational agency may have policies that prohibit, limit, or otherwise regulate the use of:

a. Video recording devices at meetings convened pursuant to this chapter; or

b. Audio or video recording devices at meetings other than those meetings identified in subdivision 1 of this subsection.

3. These policies shall:

a. Stipulate that the recordings become part of the child's educational record;

b. Ensure that the policy is uniformly applied; and

c. If the policy prohibits the use of the devices, the policy shall provide for exceptions if they are necessary to ensure that the parent understands the IEP, the special education process, or to implement other parental rights guaranteed under this chapter.

VA.R. Doc. No. R22-7030; Filed January 13, 2022, 10:14 a.m.

TITLE 9. ENVIRONMENT

VIRGINIA WASTE MANAGEMENT BOARD

Proposed Regulation

Title of Regulation: **9VAC20-81. Solid Waste Management Regulations (amending 9VAC20-81-10, 9VAC20-81-25, 9VAC20-81-35, 9VAC20-81-40, 9VAC20-81-90, 9VAC20-81-95, 9VAC20-81-100, 9VAC20-81-120 through 9VAC20-81-397, 9VAC20-81-410, 9VAC20-81-450, 9VAC20-81-460, 9VAC20-81-470, 9VAC20-81-485, 9VAC20-81-490, 9VAC20-81-530, 9VAC20-81-570, 9VAC20-81-600, 9VAC20-81-620, 9VAC20-81-660; adding 9VAC20-81-98).**

Statutory Authority: § 10.1-1402 of the Code of Virginia; 42 USC § 6941 et seq.; 40 CFR Part 258.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: May 16, 2022.

Agency Contact: Priscilla Rohrer, Department of Environmental Quality, 4411 Early Road, P.O. Box 3000, Harrisonburg, VA 22801, telephone (540) 574-7852, FAX (804) 698-4178, or email priscilla.rohrer@deq.virginia.gov.

Basis: Section 10.1-1402 of the Code of Virginia authorizes the Virginia Waste Management Board to promulgate and enforce regulations. Section 10.1-1408.1 of the Code of Virginia requires a permit to be obtained to conduct nonhazardous solid waste disposal, treatment or storage activities. The Virginia Waste Management Board has adopted this regulation under the authority granted by state law.

The corresponding federal authority for the criteria for municipal solid waste landfills is found at 40 CFR Part 257 and 258.

Purpose: The Virginia Solid Waste Management Regulations (9VAC20-81) establish standards and procedures for the siting, design, construction, operation, maintenance, closure, and post-closure care of solid waste management facilities in the Commonwealth. It also establishes standards and procedures pertaining to the management of solid wastes. The proposed amendments are essential to protect the health, safety, and welfare of citizens because the amendments include changes related to landfill gas, groundwater monitoring, and daily operational requirements of landfills. The amendments are needed to provide addition protection the citizens in the vicinity of landfills from the operation of these facilities. The main goals of this amendment are to improve standards for the siting, operation and monitoring of landfills and revise the open burning exemptions to be more protective of human health and the environment.

Substance: Some of the major areas in which the regulations are being revised include the following:

Landfill siting: Changes are being made to the landfill siting criteria to update provisions related to setbacks and siting of solid waste facilities, as well as solid waste facility leachate pollution. Terminology used in the regulation pertaining to the siting setbacks is being updated to use the term "waste management boundary" to eliminate confusion by clarifying that the siting requirements for landfills apply to the locations where waste and leachate will be managed, not the entire parcel of the property. Changes have been made to clarify that the siting requirements apply to new and expanded waste

management boundaries. The setback distance from the waste management boundary to the facility boundary is being increased from 50 feet to 100 feet, in response to consensus from the regulatory advisory panel (RAP). The distance from the waste management boundary to any residence, school, daycare center, hospital, nursing home, or recreational park area in existence at the time of application is also being increased from 200 feet to 500 feet. These changes will create a larger buffer between the waste management boundary and development on properties adjacent to the landfill. The regulation is also being amended in response to RAP consensus to state that a new or expanded waste management boundary will not be sited or constructed in any locally designated resource protection area as defined in 9VAC25-830-80.

Landfill operations: A new requirement is being included in the regulation for active landfills to conduct a periodic topographic survey. The surveys will provide more accurate and updated information to the facility and the department on the current capacity and grades of the fill area, the remaining life of the landfill, and assist with planning for future landfill capacity. Survey reports will supplement and validate information provided in solid waste information and assessment (SWIA) reports. This requirement will also help to ensure that the final elevations of the landfill are as permitted and will prevent the overfilling of landfills from occurring. Landfills receiving fewer quantities of waste (those with a permitted daily disposal limit of 300 tons per day or less) are only required to conduct the survey on a biennial basis (once every 24 months) whereas all other landfills must survey and report on an annual basis (once every 12 months). Some landfills are already required by their permit to conduct these surveys. A requirement for weekly cover to be applied over exposed waste at active industrial landfills is being added to the regulation. The amended regulation allows the department to evaluate alternate methods proposed by the facility to address the same performance standards.

Landfill gas monitoring: An additional requirement is being added for landfills to notify adjacent properties within 500 feet of gas compliance level exceedances (i.e., methane gas detected at or above the lower explosive limit) in the perimeter gas monitoring network. Facilities will be required to offer to monitor inside nearby offsite structures for elevated levels of methane after an exceedance is detected in the perimeter gas monitoring network.

Landfill groundwater monitoring: Revisions to the groundwater monitoring section for all landfills are being proposed to prepare for the addition of any maximum contaminant levels (MCLs) established for perfluoroalkyl and polyfluoroalkyl substances (PFAS) and other emerging contaminants by the Virginia Department of Health (VDH) that adds a new Column C, to Table 3.1 that lists emerging constituents that VDH is directed to establish MCLs for in the future in response to § 32.1-169 of the Code of Virginia. The regulation is also proposing to allow other test methods other than the Environmental Protection Agency's SW-846 methods for constituents listed in Column C of Table 3.1.

Open burning exemptions: This amendment removes language that previously allowed citizens to dispose of their household solid waste through open burning of waste on their property if regularly scheduled collection services were not available at the adjacent road. Under the amended regulation, only vegetative waste, clean wood, and clean paper products will be allowed to be open burned on private property when no regular collection services are available. Other open burning exemptions are also being modified to be consistent with open burning requirements for volatile organic compound (VOC) emissions control areas found in regulations adopted by the State Air Pollution Control Board.

Other changes: Minor clarifications and revisions have been made to the regulation, and some regulatory requirements have been reorganized as part of this amendment. Operational requirements applicable to non-landfill facilities have been clarified and consolidated where possible to assist the regulated community with understanding the requirements of the regulation. Changes are being made to the regulation to further promote composting activities. Additional exemptions from permitting have been added to the regulation for certain composting activities on farms as well as composting activities performed in conjunction with a public or private event or festival. The agency is also proposing to remove the requirement for compost facilities to conduct parasite testing as historical data has demonstrated that parasites have not posed issues with final compost quality. The regulation is also being revised to require closure cost estimates to include the costs related to the removal of stockpiled beneficial use materials at a facility. This amendment will require facilities' closure cost estimates to include costs for removal of beneficial use materials when calculating the financial assurance a facility is required to provide for closure of the facility.

Issues: Many of the changes being proposed to the regulation provide additional protection to human health and the environment; therefore, the changes are advantageous to private citizens. Advantages to the public, as residential areas increasingly expand toward preexisting landfills, include improved safety and reduced odor in the vicinity of landfills. Increases to setback distances will help to provide a larger buffer between landfill activities and adjacent properties. Private citizens will no longer be allowed to open burn their general household waste, except for vegetative waste, clean wood, and clean paper products, and they will need to arrange for their waste to be properly managed at a permitted solid waste management facility. This change should reduce nuisance complaints from neighbors concerning the impact open burning has on the air quality on neighboring properties. Changes being proposed to compost-related requirements, such as additional compost activities exempt from permitting and elimination of certain testing requirements for permitted facilities, will promote composting activities in the Commonwealth, reduce regulatory burden without posing

risks to human health and the environment, and are advantageous to public and private entities, and well as the regulated community. There are no disadvantages to the agency or the Commonwealth.

The addition of regulatory requirements will impact the regulated community. This includes local governments and private companies that operate landfills. The additional regulatory requirements pertaining to the following areas are being added to the regulations to protect human health and the environment (i) increased setback distances from waste management boundaries; (ii) periodic topographic surveys of active landfills; (iii) revised cover requirements for active industrial landfills to meet required performance standards; (iv) notification and monitoring for neighbors in close proximity of landfill gas exceedances; and (v) groundwater monitoring of emerging contaminants, dependent upon actions taken by VDH. These issues are all related to the proper siting, operation and monitoring of the landfill and protecting the safety of those in proximity of the landfill. Owners and operators of landfills will incur costs to comply with these requirements.

Department of Planning and Budget's Economic Impact Analysis:

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 14 (as amended, July 16, 2018). The analysis presented represents DPB's best estimate of these economic impacts.[1]

Summary of the Proposed Amendments to Regulation. Following action by the Governor, a periodic review, and the work of a regulatory advisory panel, the Virginia Waste Management Board (Board) proposes amendments to landfill siting, operations, and gas and groundwater monitoring, as well as a ban on the open burning of household trash.

Background. This regulatory proposal was developed by the Department of Environmental Quality (DEQ) staff based on the comments received during the periodic review and Notice of Intended Regulatory Action (NOIRA) comment periods, recommendations included in the August 2019 final report submitted by the Secretary of Natural and Historic Resources (Secretary) to the Governor in response to the Governor's Executive Order 6 (2018), meetings with members of the Regulatory Advisory Panel (RAP), and feedback from program staff.

Executive Order 6 (2018).[2] On April 3, 2018, Governor Northam issued Executive Order Six (EO 6), "Supporting the Critical Role of the Virginia Department of Environmental Quality in Protection of Virginia's Air, Water, and Public Health." This EO required the DEQ director to review the agency's permitting, monitoring, and enforcement activities across the air, water, and solid waste programs. It also required the DEQ director to work with stakeholders to improve communication with the public and the regulated community and provide more opportunities for proactive education, especially among underserved and lower income populations. The EO further mandated that the Director of DEQ report monthly to the Secretary on the progress of these reviews. The Secretary was also tasked with sending a report on recommended actions to the Governor.

Report Issued by Secretary of Natural Resources.[3] In response to EO 6, the Secretary submitted a final report to the Governor in August 2019. The report recommends that solid waste management regulations be revised to: (1) ensure that facilities provide adequate financial assurance that they can fund cleanup and closure, (2) update provisions related to setbacks and siting of solid waste facilities, as well as solid waste facility leachate pollution, (3) eliminate or significantly reduce "with restrictions on timing, conditions, and residuals management "the open burning of household solid waste, and (4) require groundwater monitoring and safe disposal of Coal Combustion By-Product (CCB/coal ash) at non-utility facilities not covered by the federal CCB rule. Other sections of the report urge an increase in efficiency and responsiveness in permitting and an improvement in public engagement.

Periodic Review. [4] On June 10, 2019, a periodic review of this regulation was announced in the Virginia Register of Regulations. During the 21-day public comment period that followed, comments were received from ten individuals, four of whom posted comments on Town Hall; the others apparently contacted the agency directly. These comments suggested changes to the siting, design, operation, and monitoring of municipal solid waste landfills; requirements for host agreements; and public notification requirements. Commenters also provided information about other states' regulations in this area and requested that Virginia adopt similar requirements. Still other commenters requested additional regulation of, and requirements for, landfills larger than a specified size. The agency took these comments into consideration as it developed regulatory text in this action.

Regulatory Advisory Panel (RAP). A regulatory advisory group was formed to assist in developing this action and consisted of six members, including a representative of the waste management industry, a public citizen, a local government representative, two consultants (an engineer and a representative of the Solid Waste Association of North America), and a representative of environmental groups. According to the agency, a consensus was not achieved on a new or expanded landfill's setback distance to a residence, school, daycare center, hospital, nursing home, or recreational park area (described below), but there was agreement that the current distance should be increased. No consensus was reached on how often waste should be covered at an active industrial landfill (also described below), but there is now a provision that ameliorates that requirement by allowing an active industrial landfill to propose an alternative that would achieve the same result.

Estimated Benefits and Costs

Landfill Siting. One of the main changes proposed is an increase in the setback distance from a waste management boundary to the facility boundary, which would be increased from 50 feet to 100 feet. In addition, the distance from the waste management boundary to any residence, school, daycare center, hospital, nursing home, or recreational park area in existence at the time of application would be increased from 200 feet to 500 feet. These changes would create a larger buffer between the waste management boundary and development on properties adjacent to the landfill. DEQ notes that the additional buffer from the waste management boundary is consistent with the requests received from the public for an increased buffer space to be placed around landfills and is consistent with the increased setback distances found in surrounding states. The increase to the setback distances would potentially reduce noise and odor concerns, and provide more protection to adjacent properties from potential subsurface methane gas migration.

The proposed setback requirements are prospective in that the current landfills would be grandfathered from the revised setback distances. Increased setback distances would essentially create a larger buffer that would not be available for other uses, including the landfill's capacity. New and expanded landfill owners could meet the new siting criteria by increasing the land area to achieve the same capacity or by reducing the capacity if additional land area is not available or feasible. Thus, the expected cost to new and expanded landfill owners is either the purchase of additional land or a reduction in capacity. Conversely, values of real property that would be within the additional buffer areas created by this action may also be affected. For example, a landfill owner may choose to purchase additional real estate adjacent to a prospective site to keep the capacity as planned prior to this action. Or, some land may be rendered no longer suitable for siting as a landfill.

Landfill Operations. A new requirement for active landfills to conduct an annual topographic survey would be added to the regulation. Topographic surveys ensure the landfill is filled according to its permitted design capacity, prevent overfilling of the landfill and potential impacts to landfill stability, and verify when final elevations and slopes have been attained so that closure construction can be planned and implemented. Periodic topographic surveys also result in more accurate and up-to-date information on remaining capacity and life of the landfill. Landfills receiving fewer quantities of waste (those with a permitted daily disposal limit of 300 tons per day or less) would be required to conduct the survey on a biennial basis (once every 24 months), whereas all other landfills must survey and report on an annual basis (once every 12 months).

According to DEQ, some landfills are already required by their permit to conduct these surveys and some do so voluntarily. DEQ estimates that approximately 55 active landfills would be impacted by the requirement to conduct a periodic topographic survey because the remaining landfill permits already include this requirement. Based on the daily disposal limits of currently permitted landfills, approximately 35 active landfills would be impacted by the annual survey requirement, and approximately 20 active landfills would be impacted by the biennial survey requirement. Based on feedback from one large landfill that is already subject to this requirement by permit, the cost of the proposed survey is estimated to be $16,000 for that facility but could be as low as $5,000 for smaller facilities.

A requirement for weekly cover of six inches of compacted soil to be applied over exposed waste at active industrial landfills would be added. Currently, the regulation states that these facilities are to provide "periodic cover" without a specific time frame. According to DEQ, current inspection data indicates the periodic cover being applied is not adequate to prevent issues with fires, odors, blowing litter, stormwater infiltration, excess leachate generation, surface and subsurface erosion of waste, waste slides, compromised stability, and releases of waste and leachate at industrial landfills. In consideration of the RAP discussion and feedback, the proposed amendment allows DEQ to evaluate alternate methods proposed by the facility to address the same performance standards.

Twenty active industrial landfills, of which 19 are privately owned and operated (one is owned and operated by a local government authority), would be required to provide weekly cover. The soil used for weekly cover could be removed later and reused. The costs of application of weekly soil cover would vary depending on the landfill's adjusted ongoing working face size; the extent to which soil is removed and reused between lifts; and availability of soil onsite versus purchase and/or transport from offsite. The requirement for weekly cover would likely lead to industrial landfills minimizing the size of their working face to minimize the amount of weekly cover required to be applied, and would in turn minimize the amount of exposed waste at the facility. It is worth noting, however, that flexibility has been added to the regulation to allow landfills to investigate and propose less costly methods to meet the same performance standards based on site-specific conditions.

Landfill Gas Exceedance Notification. A new requirement would be added for landfills to notify adjacent properties within 500 feet when gas compliance levels have been exceeded (i.e., methane gas detected at or above the lower explosive limit) in the perimeter gas monitoring network. Landfill gas may migrate subsurface and accumulate in nearby off-site structures. The goal is to inform neighboring properties concerning the potential for the subsurface migration of methane and the safety risks related to explosive gases. Only landfills that detect compliance level exceedances of methane within 500 feet of an occupied structure would be impacted by this proposal.

The cost of sending notices to adjacent property owners would be consistent with regular mail costs, but is expected to provide landfill owners with an additional incentive to maintain compliance with exceedance limits. Increased awareness of a

nearby problematic landfill operation may adversely affect the perceived values of nearby properties and may prompt complaints and litigation.

Additional costs to landfill owners may accrue as facilities would be required to offer monitoring inside nearby offsite structures for elevated levels of methane after an exceedance is detected in the perimeter gas monitoring network. The costs of additional monitoring would vary from site to site depending on whether exceedances are detected and whether occupied structures are in close proximity. DEQ does not expect the costs of additional offsite monitoring to be significant because the majority of landfills do not have occupied structures within 500 feet of the perimeter gas monitoring network, and any additional monitoring could be conducted in conjunction with the current monitoring that already occurs at the facility.

Monitoring of Additional Constituents in Groundwater. The proposed groundwater monitoring requirement is contingent upon the Maximum Contaminant Levels (MCLs) to be established for polyfluoroalkyl substances (PFAS) and other emerging contaminants by the Virginia Department of Health (VDH) pursuant to Chapter 1097, 2020 Acts of Assembly.[5] Chapter 1097 modifies § 32.1-169 of the Code of Virginia (effective on January 1, 2022) and directs the State Board of Health to "adopt regulations establishing [MCLs] in all water supplies and waterworks in the Commonwealth for (i) [PFAS] as the board deems necessary; (ii) chromium-6; and (iii) 1,4-dioxane."

In anticipation of these new MCLs, a proposed amendment would add a new column, Column C, to Table 3.1 in the regulation. The proposed Column C lists emerging constituents for which MCLs will be established by VDH in response to the statutory mandate. The content of Column C can be modified in the future if necessary, based on the actions taken by VDH to adopt MCLs for emerging constituents. MCLs must be adopted by VDH before this regulation will be amended to require monitoring for these constituents; however, this information has been included in this amendment to provide a framework for these additional monitoring constituents and to provide the regulated community with insight concerning how these new MCLs would be incorporated in monitoring requirements for solid waste disposal facilities. Once final MCLs are adopted by VDH, Column C will be updated, if necessary, for consistency with MCLs adopted by VDH, and monitoring for constituents listed in Column C would be required for all landfills.

PFAS are manufactured chemicals that are found in many items that are allowed to be disposed in landfills, such as cookware and clothing. These chemicals do not degrade in the environment and thus leach into soil, air, and water. This may contribute to the presence of PFAS in the blood of 97% of Americans.[6] Additionally, health risks from groundwater constituents are constantly being evaluated and updated. Including the monitoring of PFAS and other emerging constituents in groundwater is an additional measure to detect and address any impacts to groundwater from the landfill so that risks to human health and the environment can be better understood. All active landfills and all closed landfills conducting post-closure care may be impacted by the requirement for groundwater monitoring of additional constituents if VDH establishes MCLs for PFAS or other emerging contaminants listed in Column C of Table 3.1.

This would be an additional cost for entities that choose to own or operate a landfill. Members of the RAP provided cost information on analyzing groundwater samples. One estimate was for the testing for 49 PFAS constituents at a cost of $349 using a non-SW-846 test method (EPA test method 537.1). Other RAP members provided more general estimates of testing for PFAS of $350-$500 per sample, while others estimated costs of $500 to 700 per sample and did not indicate the analytical test method used. The regulation has been drafted to allow the use of non-SW-846 test methods for constituents listed in Column C of table 3.1 to provide flexibility concerning the test methods to be used.

The proposed list of new sampling constituents would be subject to the existing groundwater sampling frequency set for each individual site in its corresponding solid waste permit. Semi-annual is the baseline sampling frequency. However, site specific criteria or the locality may mandate quarterly sampling.

Ban on Open Burning of Household Trash. This proposal would remove language that previously allowed citizens to dispose of their household solid waste through open burning of waste on their property if regularly scheduled collection services are not available at the adjacent road. Under the amended regulation, only vegetative waste, clean wood and clean paper products would be allowed to be openly burned on private property when no regular collection services are available. This change is proposed in response to the Secretary's report to the Governor noted above, which recommended that the regulations be revised to eliminate or significantly reduce the open burning of household solid waste. DEQ states that combustion of materials commonly found in household waste (e.g. plastics) is well documented to release carcinogenic compounds, and the smoke and odors from the burning of household waste may be a nuisance to adjacent property owners. Other open burning exemptions are also being modified to be consistent with open burning requirements for Volatile Organic Compound Emissions Control Areas found in regulations adopted by the State Air Pollution Control Board.

DEQ expects a reduction in complaints from neighbors will result from this ban on open burning of household waste. Due to the unknown number of affected households and different fee structures implemented by localities to assess fees for waste disposal, however, DEQ is not able to assess the size of the economic impact of this change.

Promotion of Composting Activities. Changes are being proposed to the regulation to further promote composting

activities. Additional exemptions from permitting have been added to the regulation for certain composting activities on farms as well as composting activities performed in conjunction with a public/private event or festival. The Board is also proposing to remove the requirement for compost facilities to conduct parasite testing because historical data has demonstrated that parasites have not posed issues with final compost quality.

Closure Cost Estimates. The regulation is also being revised to require that closure cost estimates include the costs related to the removal of stockpiled beneficial use materials (e.g. tire chips) at a facility in response to the Secretary's report noted above, which recommended that the regulations be revised to ensure that facilities provide adequate financial assurance that they can fund cleanup and closure. This amendment would require facilities' closure cost estimates to include costs for removal of beneficial use materials (which are not included currently) when calculating the financial assurance a facility is required to provide for closure of the facility. This change protects the Commonwealth from having to pay for the removal and disposal of beneficial use material if a facility fails to properly close.

Other Changes. The remaining proposed changes are clarifications of the following parts of the regulation: financial responsibility requirements, public participation, groundwater monitoring, exemptions and exclusions, closure and post closure requirements, permitting process, and recordkeeping requirements. These clarifying changes are not expected to create a significant economic impact other than improving the accuracy of the regulatory text.

Businesses and Other Entities Affected. DEQ reports that as of August 2021, 181 permitted landfills would be affected by the proposed amendments, including 128 sanitary landfills (80 closed), 24 construction/demolition/debris landfills (10 closed), and 29 industrial landfills (nine closed).

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.[7] An 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. As noted above, the proposed amendments add new requirements and would increase costs for landfills. Thus, an adverse impact is indicated.

This regulation also applies to permitted non-landfill facilities which include 15 compost facilities, 55 transfer stations, 53 materials recovery facilities, four waste to energy facilities, three incinerators, and eight surface impoundments. DEQ anticipates that the impacts to non-landfill facilities would be minimal as the proposed changes affecting these facilities clarify the intent of existing requirements and are consistent with industry standard practices.

No facilities appear to be disproportionately affected.

Of the permitted landfills, 126 are publicly owned or operated (125 by local governments and one by the Commonwealth), and 55 are privately owned or operated.

State agencies that own or operate waste management facilities would be subject to the same requirements as other publicly and privately owned or operated facilities. There are two permitted facilities owned or operated by state agencies a sanitary landfill in post-closure care and a compost facility. The landfill would incur ongoing costs for conducting PFAS monitoring and for notification of gas level exceedances as discussed above.

Citizens for whom no regularly scheduled collection services are available would no longer be allowed to burn their household waste (except for vegetative waste, clean wood, and clean paper products) and would be required to manage their waste at a solid waste permitted facility or convenience center. However, it is not known how many citizens are currently burning their municipal solid waste and would be impacted by this regulatory change.

Small Businesses[8] Affected.[9] In general, approximately 9.0% of all landfills (16 out of 181) are estimated by DEQ to be small businesses. Approximately 15% of 55 facilities impacted by the survey requirement are estimated to be small businesses. Approximately 10% of 20 active industrial landfills impacted by the weekly cover requirements are estimated to be small businesses. Thus, the proposed amendments also adversely affect small businesses.

Flexibility has been added to the regulation to allow industrial landfills impacted by the weekly cover requirement to investigate and propose less costly methods to meet the same performance standards based on site-specific conditions There are no clear additional alternative methods that both reduce adverse impact on small businesses and meet the intended policy goals.

Localities[10] Affected.[11] Localities that own or operate waste management facilities would be subject to the same requirements as other publicly and privately owned or operated facilities. If operating an active landfill, a locality would be required to conduct annual topographic surveys, to monitor PFAS, to notify and take corrective action for gas level exceedances. There are 125 permitted landfills owned or operated by localities. Consequently, an adverse economic impact on these localities is indicated.

Projected Impact on Employment. The proposed requirements regarding the topographic survey, weekly cover, off-site gas monitoring, groundwater monitoring, and ban on open burning of household waste would likely add to demand for professional, skilled, and unskilled labor in related areas, and may commensurately increase employment.

Effects on the Use and Value of Private Property. The proposed new siting requirements are anticipated to have a direct impact on affected real estate properties as specifically discussed above. The asset values of 55 private landfill facilities would likely be negatively affected to the extent they incur additional

compliance costs. The proposed amendments do not appear to have a direct effect on residential real estate development costs.

[1]Section 2.2-4007.04 of the Code of Virginia requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

[2]https://www.governor.virginia.gov/media/governorvirginiagov/executive-actions/eo-6-executive-order-supporting-the-critical-role-of-the-virginia-department-of-environmental-quality-in-protection-of-virginia-s-air-water-and-public-health.pdf

[3]See page 8 at https://www.governor.virginia.gov/media/governorvirginiagov/media/EO-6-Final-Report-from-SNR.pdf

[4]https://townhall.virginia.gov/L/comments.cfm?periodicreviewid=1807

[5]https://lis.virginia.gov/cgi-bin/legp604.exe?201+sum+HB1257

[6]https://www.niehs.nih.gov/health/topics/agents/pfc/index.cfm

[7]Pursuant to Code § 2.2-4007.04 D: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

[8]Pursuant to § 2.2-4007.04, 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."

[9]If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

[10]"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.

[11]Section 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:

The proposed regulatory action amends the Solid Waste Management Regulations (9VAC20-81), which establish standards and procedures for the siting, design, construction, operation, maintenance, closure, and post-closure care of solid waste management facilities in the Commonwealth. Substantive revisions include (i) updated provisions to setback, siting, operation, and monitoring requirements for landfills; (ii) updated provisions to open burn exemptions; (iii) increased promotion of composting; (iv) adequate closure cost estimates; and (v) clarification of many areas of the regulation.

9VAC20-81-10. Definitions.

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

"Accumulated speculatively" means to accumulate any material before being used, reused, or reclaimed or in anticipation of potential use, reuse, or reclamation. Materials are not being accumulated speculatively when they can be used, reused, or reclaimed, have a feasible means of use, reuse, or reclamation available and 75% of the materials accumulated are being removed from the facility annually.

"Active life" means the period of operation beginning with the initial receipt of solid waste and ending at completion of closure activities required by this chapter.

"Active portion" means that part of a facility or unit that has received or is receiving wastes and that has not been closed in accordance with this chapter.

"Agricultural waste" means all solid waste produced from farming operations.

"Airport" means, for the purpose of this chapter, a military airfield or a public-use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities.

"Aquifer" means a geologic formation, group of formations, or a portion of a formation capable of yielding significant quantities of groundwater to wells or springs.

"Ash" means the fly ash or bottom ash residual waste material produced from incineration or burning of solid waste or from any fuel combustion.

"Base flood" see "Hundred-year flood."

"Bedrock" means the rock that underlies soil or other unconsolidated, superficial material at a site.

"Benchmark" means a permanent monument constructed of concrete and set in the ground surface below the ~~frostline~~ frost line with identifying information clearly affixed to it. Identifying information will include the designation of the benchmark as well as the elevation and coordinates on the local or Virginia state grid system, such as the Virginia State Plane North or Virginia State Plane South.

"Beneficial use" means a use that is of benefit as a substitute for natural or commercial products and does not contribute to adverse effects on health or environment.

"Beneficial use of CCR" means the CCR meet all of the following conditions:

1. The CCR must provide a functional benefit;

2. The CCR must substitute for the use of a virgin material, conserving natural resources that would otherwise need to be obtained through practices, such as extraction;

3. The use of the CCR must meet relevant product specifications, regulatory standards, or design standards when available, and when such standards are not available, the CCR is not used in excess quantities; and

4. When unencapsulated use of CCR involving placement on the land of 12,400 tons or more in nonroadway applications, the user must demonstrate and keep records, and provide such documentation upon request, that environmental releases to groundwater, surface water, soil, and air are comparable to or lower than those from analogous products made without CCR, or that environmental releases to groundwater, surface water, soil, and air will be at or below relevant regulatory and health-based benchmarks for human and ecological receptors during use.

"Bioremediation" means remediation of contaminated media by the manipulation of biological organisms to enhance the degradation of contaminants.

"Bird hazard" means an increase in the likelihood of ~~bird/aircraft~~ bird and aircraft collisions that may cause damage to the aircraft or injury to its occupants.

"Board" means the Virginia Waste Management Board.

"Bottom ash" means ash or slag that has been discharged from the bottom of the combustion unit after combustion.

"Capacity" means the maximum permitted volume of solid waste, inclusive of daily and intermediate cover, that can be disposed in a landfill. This volume is measured in cubic yards.

"Captive industrial landfill" means an industrial landfill that is located on property owned or controlled by the generator of the waste disposed of in that landfill.

"Captive waste management facility" means a solid waste management facility that is located on property owned or controlled by the generator of the waste being treated, stored, or disposed of at the facility. A captive industrial landfill is a type of captive waste management facility.

"CCR landfill" means an area of land or an excavation that receives CCR and that is not a surface impoundment, an underground injection well, a salt dome formation, a salt bed formation, an underground or surface coal mine, or a cave. For purposes of this chapter, a CCR landfill also includes sand and gravel pits and quarries that receive CCR, CCR piles, and any practice that does not meet the definition of a beneficial use of CCR.

"CCR surface impoundment" means a natural topographic depression, man-made excavation, or diked area that is designed to hold an accumulation of CCR and liquids, and the unit treats, stores, or disposes of CCR.

"Clean wood" means solid waste consisting of untreated wood pieces and particles that do not contain paint, laminate, bonding agents, or chemical preservatives or are otherwise unadulterated.

"Closed facility" means a solid waste management facility that has been properly secured in accordance with the requirements of this chapter.

"Closure" means that point in time when a permitted landfill has been capped, certified as properly closed by a professional engineer, inspected by the department, and closure notification is performed by the department in accordance with 9VAC20-81-160 ~~D~~ E.

"Coal combustion byproducts" or "CCB" means residuals, including fly ash, bottom ash, boiler slag, and flue gas emission control waste produced by burning coal. CCB includes both CCR and other non-CCR wastes identified in this definition.

"Coal combustion residuals" or "CCR" means fly ash, bottom ash, boiler slag, and flue gas desulfurization materials generated from burning coal for the purpose of generating electricity by electric utilities and independent power producers. CCR is a specific type of CCB.

"Combustion unit" means an incinerator, waste heat recovery unit, or boiler.

"Commercial waste" means all solid waste generated by establishments engaged in business operations other than manufacturing or construction. This category includes~~, but is not limited to,~~ solid waste resulting from the operation of stores, markets, office buildings, restaurants, and shopping centers.

"Compliance schedule" means a time schedule for measures to be employed on a solid waste management facility that will ultimately upgrade it to conform to this chapter.

"Compost" means a stabilized organic product produced by a controlled aerobic decomposition process in such a manner that the product can be handled, stored, or applied to the land without adversely affecting public health or the environment.

"Composting" means the manipulation of the natural process of decomposition of organic materials to increase the rate of decomposition.

"Construction" means the initiation of permanent physical change at a property with the intent of establishing a solid waste management unit. This does not include land-clearing activities, excavation for borrow purposes, activities intended

for infrastructure purposes, or activities necessary to obtain Part A siting approval (i.e., advancing of exploratory borings, digging of test pits, groundwater monitoring well installation, etc.).

"Construction/demolition/debris landfill" or "CDD landfill" means a land burial facility engineered, constructed and operated to contain and isolate construction waste, demolition waste, debris waste, split tires, and white goods or combinations of the above solid wastes.

"Construction waste" means solid waste that is produced or generated during construction, remodeling, or repair of pavements, houses, commercial buildings, and other structures. Construction wastes include~~, but are not limited to~~ lumber, wire, sheetrock, broken brick, shingles, glass, pipes, concrete, paving materials, and metal and plastics if the metal or plastics are a part of the materials of construction or empty containers for such materials. Paints, coatings, solvents, asbestos, any liquid, compressed gases or semi-liquids, and garbage are not construction wastes.

"Contaminated soil" means, for the purposes of this chapter, a soil that, as a result of a release or human usage, has absorbed or adsorbed physical, chemical, or radiological substances at concentrations above those consistent with nearby undisturbed soil or natural earth materials.

"Container" means any portable device in which a material is stored, transported, treated, or otherwise handled and includes transport vehicles that are containers themselves (e.g., tank trucks) and containers placed on or in a transport vehicle.

"Containment structure" means a closed vessel such as a tank or cylinder.

"Convenience center" means a collection point for the temporary storage of solid waste provided for individual solid waste generators who choose to transport solid waste generated on their own premises to an established centralized point, rather than directly to a disposal facility. To be classified as a convenience center, the collection point may not receive waste from collection vehicles that have collected waste from more than one real property owner. A convenience center shall be on a system of regularly scheduled collections.

"Cover material" means compactable soil or other approved material that is used to blanket solid waste in a landfill.

"Daily disposal limit" means the amount of solid waste that is permitted to be disposed at the facility and shall be computed on the amount of waste disposed during any operating day.

"Debris waste" means wastes resulting from land-clearing operations. Debris wastes include~~, but are not limited to~~ stumps, wood, brush, leaves, soil, and road spoils.

"Decomposed vegetative waste" means a stabilized organic product produced from vegetative waste by a controlled natural decay process in such a manner that the product can be handled, stored, or applied to the land without adversely affecting public health or the environment.

"Demolition waste" means that solid waste that is produced by the destruction of structures and their foundations and includes the same materials as construction wastes.

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

"Director" means the Director of the Department of Environmental Quality. For purposes of submissions to the director as specified in the Waste Management Act, submissions may be made to the department.

"Discard" means to abandon, dispose of, burn, incinerate, accumulate, store, or treat before or instead of being abandoned, disposed of, burned, or incinerated.

"Discarded material" means a material that is:

1. Abandoned by being:

   a. Disposed of;

   b. Burned or incinerated; or

   c. Accumulated, stored, or treated (but not used, reused, or reclaimed) before or in lieu of being abandoned by being disposed of, burned, or incinerated; or

2. Recycled used, reused, or reclaimed material as defined in this part.

"Disclosure statement" means a sworn statement or affirmation as required by § 10.1-1400 of the Code of Virginia (see DEQ Form DISC-01 and 02 (Disclosure Statement)).

"Displacement" means the relative movement of any two sides of a fault measured in any direction.

"Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land or water so that such solid waste or any constituent of it may enter the environment or be emitted into the air or discharged into any waters.

"Disposal unit boundary" or "DUB" means the vertical plane located at the edge of the waste disposal unit. This vertical plane extends down into the uppermost aquifer. The DUB must be positioned within or coincident to the waste management boundary.

"EPA" means the U.S. Environmental Protection Agency.

"Exempt management facility" means a site used for activities that are conditionally exempt from management as a solid waste under this chapter. The facility remains exempt from solid waste management requirements provided it complies with the applicable conditions set forth in Parts II (9VAC20-81-20 et seq.) and IV (9VAC20-81-300 et seq.) of this chapter.

"Existing CCR landfill" means a CCR landfill that receives CCR both before and after October 19, 2015, or for which

construction commenced prior to October 19, 2015, and receives CCR on or after October 19, 2015. A CCR landfill has commenced construction if the owner or operator has obtained the federal, state, and local approvals or permits necessary to begin physical construction and a continuous onsite, physical construction program had begun prior to October 19, 2015.

"Existing CCR surface impoundment" means a CCR surface impoundment that receives CCR both before and after October 19, 2015, or for which construction commenced prior to October 19, 2015, and receives CCR on or after October 19, 2015. A CCR surface impoundment has commenced construction if the owner or operator has obtained the federal, state, and local approvals or permits necessary to begin physical construction and a continuous onsite, physical construction program had begun prior to October 19, 2015.

"Expansion" means a horizontal expansion of the waste management boundary as identified in the Part A application. If a facility's permit was issued prior to the establishment of the Part A process, an expansion is a horizontal expansion of the disposal unit boundary.

"Facility" means solid waste management facility unless the context clearly indicates otherwise.

"Facility boundary" means the boundary of the solid waste management facility. For landfills, this boundary encompasses the waste management boundary and all ancillary activities including~~, but not limited to~~ scales, groundwater monitoring wells, gas monitoring probes, and maintenance facilities as identified in the facility's permit application. For facilities with a permit-by-rule (PBR) the facility boundary is the boundary of the property where the permit-by-rule activity occurs. For unpermitted solid waste management facilities, the facility boundary is the boundary of the property line where the solid waste is located.

"Facility structure" means any building, shed, or utility or drainage line on the facility.

"Fault" means a fracture or a zone of fractures in any material along which strata on one side have been displaced with respect to that on the other side.

"Floodplain" means the lowland and relatively flat areas adjoining inland and coastal waters, including low-lying areas of offshore islands where flooding occurs.

"Fly ash" means ash particulate collected from air pollution attenuation devices on combustion units.

"Food-chain crops" means crops grown for human consumption, tobacco, and crops grown for pasture and forage or feed for animals whose products are consumed by humans.

"Fossil fuel combustion products" means coal combustion byproducts as defined in this regulation, coal combustion byproducts generated at facilities with fluidized bed combustion technology, petroleum coke combustion byproducts, byproducts from the combustion of oil, byproducts from the combustion of natural gas, and byproducts from the combustion of mixtures of coal and "other fuels" (i.e., co-burning of coal with "other fuels" where coal is at least 50% of the total fuel). For purposes of this definition, "other fuels" means waste-derived fuel product, auto shredder fluff, wood wastes, coal mill rejects, peat, tall oil, tire-derived fuel, deionizer resins, and used oil.

"Free liquids" means liquids that readily separate from the solid portion of a waste under ambient temperature and pressure as determined by the Paint Filter Liquids Test, Method 9095, U.S. Environmental Protection Agency, Publication SW-846.

"Garbage" means readily putrescible discarded materials composed of animal, vegetable, or other organic matter.

"Gas condensate" means the liquid generated as a result of gas control or recovery processes at the solid waste management facility.

"Governmental unit" means any department, institution, or commission of the Commonwealth and any public corporate instrumentality thereof, and any district, and shall include local governments.

"Ground rubber" means material processed from waste tires that is no larger than 1/4 inch in any dimension. This includes crumb rubber that is measured in mesh sizes.

"Groundwater" means water below the land surface in a zone of saturation.

"Hazardous constituent" means a constituent of solid waste found listed in Appendix VIII of 9VAC20-60-261.

"Hazardous waste" means a "hazardous waste" as described by the Virginia Hazardous Waste Management Regulations (9VAC20-60).

"Holocene" means the most recent epoch of the Quaternary period, extending from the end of the Pleistocene Epoch to the present.

~~"Home use" means the use of compost for growing plants that is produced and used on a privately-owned residential site.~~

"Host agreement" means any lease, contract, agreement, or land use permit entered into or issued by the locality in which the landfill is situated that includes terms or conditions governing the operation of the landfill.

"Household hazardous waste" means any waste material derived from households (including single and multiple residences, hotels, motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas) ~~which~~ that, except for the fact that it is derived from a household, would otherwise be classified as a hazardous waste in accordance with 9VAC20-60.

"Household waste" means any waste material, including garbage, trash, and refuse, derived from households. Households include single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas. Household wastes do not include sanitary waste in septic tanks (septage) that is regulated by other state agencies.

"Hundred-year flood" means a flood that has a 1.0% or greater chance of recurring in any given year or a flood of magnitude equaled or exceeded on the average only once in a hundred years on the average over a significantly long period.

"Inactive CCR surface impoundment" means a CCR surface impoundment that no longer receives CCR on or after October 19, 2015, and still contains both CCR and liquids on or after October 19, 2015.

"Incineration" means the controlled combustion of solid waste for disposal.

"Incinerator" means a facility or device designed for the treatment of solid waste by combustion.

"Industrial waste" means any solid waste generated by manufacturing or industrial process that is not a regulated hazardous waste. Such waste may include~~, but is not limited to,~~ waste resulting from the following manufacturing processes: electric power generation; fertilizer/agricultural chemicals; food and related products/byproducts; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.

"Industrial waste landfill" means a solid waste landfill used primarily for the disposal of a specific industrial waste or a waste that is a byproduct of a production process.

"Injection well" means, for the purposes of this chapter, a well or bore hole into which fluids are injected into selected geological horizons.

"Institutional waste" or "institutional solid waste" means all solid waste emanating from institutions such as, but not limited to, hospitals, nursing homes, orphanages, and public or private schools. It can include regulated medical waste from health care facilities and research facilities that must be managed as a regulated medical waste.

"Interim cover systems" means temporary cover systems applied to a landfill area when landfilling operations will be temporarily suspended for an extended period (typically, longer than one year). At the conclusion of the interim period, the interim cover system may be removed and landfilling operations resume or final cover is installed.

"Karst topography" means areas where karst terrane, with its characteristic surface and subterranean features, is developed as the result of dissolution of limestone, dolomite, or other soluble rock. Characteristic physiographic features present in karst terranes include~~, but are not limited to,~~ sinkholes, sinking streams, caves, large springs, and blind valleys.

"Key personnel" means the applicant itself and any person employed by the applicant in a managerial capacity, or empowered to make discretionary decisions, with respect to the solid waste or hazardous waste operations of the applicant in Virginia, but shall not include employees exclusively engaged in the physical or mechanical collection, transportation, treatment, storage, or disposal of solid or hazardous waste and such other employees as the director may designate by regulation. If the applicant has not previously conducted solid waste or hazardous waste operations in Virginia, the term also includes any officer, director, partner of the applicant, or any holder of 5.0% or more of the equity or debt of the applicant. If any holder of 5.0% or more of the equity or debt of the applicant or of any key personnel is not a natural person, the term includes all key personnel of that entity, provided that where such entity is a chartered lending institution or a reporting company under the Federal Security and Exchange Act of 1934, the term does not include key personnel of such entity. Provided further that the term means the chief executive officer of any agency of the United States or of any agency or political subdivision of the Commonwealth, and all key personnel of any person, other than a natural person, that operates a landfill or other facility for the disposal, treatment, or storage of nonhazardous solid waste under contract with or for one of those governmental entities.

"Lagoon" means a body of water or surface impoundment designed to manage or treat waste water.

"Land-clearing activities" means the removal of flora from a parcel of land.

"Land-clearing debris" means vegetative waste resulting from land-clearing activities.

"Landfill" means a sanitary landfill, an industrial waste landfill, or a construction/demolition/debris landfill.

"Landfill gas" means gas generated as a byproduct of the decomposition of organic materials in a landfill. Landfill gas consists primarily of methane and carbon dioxide.

"Landfill mining" means the process of excavating solid waste from an existing landfill but does not include excavation of waste to facilitate installation of landfill gas, leachate management, or other utility systems provided waste excavated is managed and cover installed in accordance with 9VAC20-81-140 or 9VAC20-81-160, as applicable.

"Leachate" means a liquid that has passed through or emerged from solid waste and contains soluble, suspended, or miscible materials from such waste. Leachate and any material with

which it is mixed is solid waste; except that leachate that is pumped from a collection tank for transportation to disposal in an offsite facility is regulated as septage, leachate discharged into a waste water collection system is regulated as industrial waste water and leachate that has contaminated groundwater is regulated as contaminated groundwater.

"Lead acid battery" means, for the purposes of this chapter, any wet cell battery.

"Lift" means the daily landfill layer of compacted solid waste plus the cover material.

"Liquid waste" means any waste material that is determined to contain "free liquids" as defined by this chapter.

"Lithified earth material" means all rock, including all naturally occurring and naturally formed aggregates or masses of minerals or small particles of older rock, that formed by crystallization of magma or by induration of loose sediments. This term does not include man-made materials, such as fill, concrete, and asphalt, or unconsolidated earth materials, soil, or regolith lying at or near the earth's surface.

"Litter" means, for purposes of this chapter, any solid waste that is discarded or scattered about a solid waste management facility outside the immediate working area.

"Lower explosive limit" means the lowest concentration by volume of a mixture of explosive gases in air that will propagate a flame at 25°C and at atmospheric pressure.

"Materials recovery facility" means a solid waste management facility for the collection, processing, and recovery of material such as metals from solid waste or for the production of a fuel from solid waste. This does not include the production of a waste-derived fuel product.

"Maximum horizontal acceleration in lithified earth material" means the maximum expected horizontal acceleration depicted on a seismic hazard map, with a 90% or greater probability that the acceleration will not be exceeded in 250 years, or the maximum expected horizontal acceleration based on a site-specific seismic risk assessment.

"Monitoring" means all methods, procedures, and techniques used to systematically analyze, inspect, and collect data on operational parameters of the facility or on the quality of air, groundwater, surface water, and soils.

"Monitoring well" means a well point below the ground surface for the purpose of obtaining periodic water samples from groundwater for quantitative and qualitative analysis.

"Mulch" means woody waste consisting of stumps, trees, limbs, branches, bark, leaves and other clean wood waste that has undergone size reduction by grinding, shredding, or chipping, and is distributed to the general public for landscaping purposes or other horticultural uses except composting as defined and regulated under this chapter.

"Municipal solid waste" means that waste that is normally composed of residential, commercial, and institutional solid waste and residues derived from combustion of these wastes.

"New CCR landfill" means a CCR landfill or lateral expansion of a CCR landfill that first receives CCR or commences construction after October 19, 2015. A new CCR landfill has commenced construction if the owner or operator has obtained the federal, state, and local approvals or permits necessary to begin physical construction and a continuous onsite, physical construction program had begun after October 19, 2015. Overfills are also considered new CCR landfills.

"New CCR surface impoundment" means a CCR surface impoundment or lateral expansion of an existing or new CCR surface impoundment that first receives CCR or commences construction after October 19, 2015. A new CCR surface impoundment has commenced construction if the owner or operator has obtained the federal, state, and local approvals or permits necessary to begin physical construction and a continuous onsite, physical construction program had begun after October 19, 2015.

"New solid waste management facility" means a facility or a portion of a facility that was not included in a previous determination of site suitability (Part A approval).

"Nuisance" means an activity that unreasonably interferes with an individual's or the public's comfort, convenience or enjoyment such that it interferes with the rights of others by causing damage, annoyance, or inconvenience.

"Offsite" means any site that does not meet the definition of onsite as defined in this part.

"Onsite" means the same or geographically contiguous property, which may be divided by public or private right-of-way, provided the entrance and exit to the facility are controlled by the owner or the operator of the facility. Noncontiguous properties owned by the same person, but connected by a right-of-way that he controls and to which the public does not have access, are also considered onsite property.

"Open burning" means the combustion of solid waste without:

1. Control of combustion air to maintain adequate temperature for efficient combustion;

2. Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

3. Control of the combustion products' emission.

"Open dump" means a site on which any solid waste is placed, discharged, deposited, injected, dumped, or spilled so as to present a threat of a release of harmful substances into the environment or present a hazard to human health. Such a site is subject to the Open Dump Criteria in 9VAC20-81-45.

"Operating record" means records required to be maintained in accordance with the facility permit or this part (see 9VAC20-81-530).

"Operation" means all waste management activities at a solid waste management facility beginning with the initial receipt of solid waste for treatment, storage, disposal, or transfer and ceasing with the initiation of final closure activities at the solid waste management facility subsequent to the final receipt of waste.

"Operator" means the person responsible for the overall operation and site management of a solid waste management facility.

"Owner" means the person who owns a solid waste management facility or part of a solid waste management facility.

"PCB" means any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of substances that contain such substance (see 40 CFR 761.3, as amended).

"Perennial stream" means a well-defined channel that contains water year round during a year of normal rainfall. Generally, the water table is located above the streambed for most of the year and groundwater is the primary source for stream flow. A perennial stream exhibits the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.

"Permit" means the written permission of the director to own, operate, or construct a solid waste management facility.

"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, vessel, or other floating craft, from which pollutants are or may be discharged. Return flows from irrigated agriculture are not included.

"Pollutant" means any substance that causes or contributes to, or may cause or contribute to, environmental degradation when discharged into the environment.

"Poor foundation conditions" means those areas where features exist that indicate that a natural or man-induced event may result in inadequate foundation support for the structural components of a solid waste management facility.

~~"Postclosure"~~ "Post-closure" means the requirements placed upon solid waste disposal facilities after closure to ensure environmental and public health safety for a specified number of years after closure.

"Process rate" means the maximum rate of waste acceptance that a solid waste management facility can process for treatment and storage. This rate is limited by the capabilities of equipment, personnel, and infrastructure.

"Processing" means preparation, treatment, or conversion of waste by a series of actions, changes, or functions that bring about a desired end result.

"Professional engineer" means an engineer licensed to practice engineering in the Commonwealth as defined by the rules and regulations set forth by the Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects (18VAC10-20).

"Professional geologist" means a geologist licensed to practice geology in the Commonwealth as defined by the rules and regulations set forth by the Board for Professional Soil Scientists, Wetland Professionals, and Geologists (18VAC145-40).

"Progressive cover" means cover material placed over the working face of a solid waste disposal facility advancing over the deposited waste as new wastes are added keeping the exposed area to a minimum.

"Putrescible waste" means solid waste that contains organic material capable of being decomposed by ~~micro-organisms~~ microorganisms and cause odors.

"Qualified groundwater scientist" means a scientist or engineer who has received a baccalaureate or postgraduate degree in the natural sciences or engineering and has sufficient training and experience in groundwater hydrology and related fields as may be demonstrated by professional certifications or completion of accredited university programs that enable that individual to make sound professional judgments regarding groundwater monitoring, contaminant fate and transport, and corrective action.

"RCRA" means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 USC § 6901 et seq.), the Hazardous and Solid Waste Amendments of 1984, and any other applicable amendments to these laws.

"Reclaimed material" means a material that is processed or reprocessed to recover a usable product or is regenerated to a usable form.

"Refuse" means all solid waste products having the character of solids rather than liquids and that are composed wholly or partially of materials such as garbage, trash, rubbish, litter, residues from clean up of spills or contamination, or other discarded materials.

"Refuse-derived fuel (RDF)" means a type of municipal solid waste produced by processing municipal solid waste through shredding and size classification. This includes all classes of refuse-derived fuel including low-density fluff refuse-derived

fuel through densified refuse-derived fuel and pelletized refuse-derived fuel.

"Regulated hazardous waste" means a solid waste that is a hazardous waste, as defined in the Virginia Hazardous Waste Management Regulations (9VAC20-60), that is not excluded from those regulations as a hazardous waste.

"Regulated medical waste" means solid wastes so defined by the Regulated Medical Waste Management Regulations (9VAC20-120) as promulgated by the Virginia Waste Management Board.

"Release" means, for the purpose of this chapter, any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injection, escaping, leaching, dumping, or disposing into the environment solid wastes or hazardous constituents of solid wastes (including the abandonment or discarding of barrels, containers, and other closed receptacles containing solid waste). This definition does not include any release that results in exposure to persons solely within a workplace; release of source, byproduct, or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954 (68 Stat. 923); and the normal application of fertilizer. For the purpose of this chapter, release also means substantial threat of release.

"Remediation waste" means all solid waste, including all media (groundwater, surface water, soils, and sediments) and debris, that are managed for the purpose of remediating a site in accordance with 9VAC20-81-45 or Part III (9VAC20-81-100 et seq.) of this chapter or under the Voluntary Remediation Regulations (9VAC20-160) or other regulated remediation program under DEQ oversight. For a given facility, remediation wastes may originate only from within the boundary of that facility, and may include wastes managed as a result of remediation beyond the boundary of the facility. Hazardous wastes as defined in 9VAC20-60, as well as "new" or "as generated" wastes, are excluded from this definition.

"Remediation waste management unit" or "RWMU" means an area within a facility that is designated by the director for the purpose of implementing remedial activities required under this chapter or otherwise approved by the director. An RWMU shall only be used for the management of remediation wastes pursuant to implementing such remedial activities at the facility.

"Responsible official" means one of the following:

1. For a business entity, such as a corporation, association, limited liability company, or cooperative: a duly authorized representative of such business entity if the representative is responsible for the overall operation of one or more operating facilities applying for or subject to a permit. The authority to sign documents must be assigned or delegated to such representative in accordance with procedures of the business entity;

2. For a partnership or sole proprietorship: a general partner or the proprietor, respectively; or

3. For a municipality, state, federal, or other public agency: a duly authorized representative of the locality if the representative is responsible for the overall operation of one or more operating facilities applying for or subject to a permit. The authority to sign documents must be assigned or delegated to such representative in accordance with procedures of the locality.

"Rubbish" means combustible or slowly putrescible discarded materials that include ~~but are not limited to~~ trees, wood, leaves, trimmings from shrubs or trees, printed matter, plastic and paper products, grass, rags, and other combustible or slowly putrescible materials not included under the term "garbage."

"Runoff" means any rainwater, leachate, or other liquid that drains over land from any part of a solid waste management facility.

"Run-on" means any rainwater, wastewater, leachate, or other liquid that drains over land onto any part of the solid waste management facility.

"Salvage" means the authorized, controlled removal of waste materials from a solid waste management facility.

"Sanitary landfill" means an engineered land burial facility for the disposal of household waste that is so located, designed, constructed, and operated to contain and isolate the waste so that it does not pose a substantial present or potential hazard to human health or the environment. A sanitary landfill also may receive other types of solid wastes, such as commercial solid waste, nonhazardous sludge, hazardous waste from very small quantity generators, construction demolition debris, and nonhazardous industrial solid waste.

"Saturated zone" means that part of the earth's crust in which all voids are filled with water.

"Scavenging" means the unauthorized or uncontrolled removal of waste materials from a solid waste management facility.

"Scrap metal" means metal parts such as bars, rods, wire, empty containers, or metal pieces that are discarded material and can be used, reused, or reclaimed.

"Secondary containment" means an enclosure into which a container or tank is placed for the purpose of preventing discharge of wastes to the environment.

"Seismic impact zone" means an area with a 10% or greater probability that the maximum horizontal acceleration in lithified earth material, expressed as a percentage of the earth's gravitational pull (g), will exceed 0.10g in 250 years.

~~"Semiannual"~~ "Semi-annual" means an interval corresponding to approximately 180 days. For the purposes of

scheduling monitoring activities, sampling within 30 days of the 180-day interval will be considered ~~semiannual.~~ semi-annual.

"Site" means all land and structures, infrastructure, other appurtenances, and improvements on them used for treating, storing, and disposing of solid waste. This term includes adjacent land within the facility boundary used for the utility systems such as repair, storage, shipping or processing areas, or other areas incident to the management of solid waste.

"Sludge" means any solid, semi-solid or liquid waste generated from a municipal, commercial or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of treated effluent from a wastewater treatment plant.

"Small landfill" means a landfill that disposed of 100 tons/day or less of solid waste during a representative period prior to October 9, 1993, and did not dispose of more than an average of 100 tons/day of solid waste each month between October 9, 1993, and April 9, 1994.

"Solid waste" means any of those materials defined as "solid waste" in 9VAC20-81-95.

"Solid waste disposal facility" means a solid waste management facility at which solid waste will remain after closure.

"Solid waste management facility" or "SWMF" means a site used for planned treating, storing, or disposing of solid waste. A facility may consist of several treatment, storage, or disposal units.

"Special wastes" means solid wastes that are difficult to handle, require special precautions because of hazardous properties, or the nature of the waste creates waste management problems in normal operations. (See Part VI (9VAC20-81-610 et seq.) of this chapter.)

~~"Speculatively accumulated material" means any material that is accumulated before being used, reused, or reclaimed or in anticipation of potential use, reuse, or reclamation. Materials are not being accumulated speculatively when they can be used, reused, or reclaimed, have a feasible means of use, reuse, or reclamation available and 75% of the materials accumulated are being removed from the facility annually.~~

"State waters" means all water, on the surface and under the ground, wholly or partially within, or bordering the Commonwealth, or within its jurisdiction.

"Storage" means the holding of waste, at the end of which the waste is treated, disposed, or stored elsewhere.

"Structural fill" means an engineered fill with a projected beneficial end use, constructed using soil or fossil fuel combustion products, when done in accordance with this chapter, spread and compacted with proper equipment, and covered with a vegetated soil cap.

"Sudden event" means a one-time, single event such as a sudden collapse or a sudden, quick release of contaminants to the environment. An example would be the sudden loss of leachate from an impoundment into a surface stream caused by failure of a containment structure.

"Surface impoundment" or "impoundment" means a facility or part of a facility that is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), that is designed to hold an accumulation of liquid wastes or wastes containing free liquids and that is not an injection well.

"Surface waters" means all state waters that are not groundwater as defined in § 62.1-255 of the Code of Virginia.

"SW-846" means Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, EPA Publication SW-846, Second Edition, 1982 as amended by Update I (April, 1984), and Update II (April, 1985) and the third edition, November, 1986, as amended.

"Tank" means a stationary device, designed to contain an accumulation of liquid or semi-liquid components of solid waste that is constructed primarily of nonearthen materials that provide structural support.

"TEF" or "Toxicity Equivalency Factor" means a factor developed to account for different toxicities of structural isomers of polychlorinated dibenzodioxins and dibenzofurans and to relate them to the toxicity of 2,3,7,8-tetrachloro dibenzo-p-dioxin.

"Terminal" means the location of transportation facilities such as classification yards, docks, airports, management offices, storage sheds, and freight or passenger stations, where solid waste that is being transported may be loaded, unloaded, transferred, or temporarily stored.

"Thermal treatment" means the treatment of solid waste in a device that uses elevated temperature as the primary means to change the chemical, physical, or biological character, or composition of the solid waste.

"Tire chip" means a material processed from waste tires that is a nominal two square inches in size, and ranges from 1/4 inch to four inches in any dimension. Tire chips contain no wire protruding more than 1/4 inch.

"Tire shred" means a material processed from waste tires that is a nominal 40 square inches in size, and ranges from four inches to 10 inches in any dimension.

"Transfer station" means any solid waste storage or collection facility at which solid waste is transferred from collection vehicles to haulage vehicles for transportation to a central solid waste management facility for disposal, incineration, or resource recovery.

"Trash" means combustible and noncombustible discarded materials and is used interchangeably with the term rubbish.

"Treatment" means, for the purpose of this chapter, any method, technique, or process, including ~~but not limited to~~ incineration, designed to change the physical, chemical, or biological character or composition of any waste to render it more stable, safer for transport, or more amenable to use, reuse, reclamation, recovery, or disposal.

"Underground source of drinking water" means an aquifer or its portion:

1. Which contains water suitable for human consumption; or

2. In which the groundwater contains less than 10,000 mg/liter total dissolved solids.

"Unit" means a discrete area of land used for the disposal of solid waste.

"Unstable area" means a location that is susceptible to natural or human-induced events or forces capable of impairing the integrity of some or all of the landfill structural components responsible for preventing releases from a landfill. Unstable areas can include poor foundation conditions, areas susceptible to mass movements, and karst terranes.

"Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as, lower aquifers that are hydraulically interconnected with this aquifer within the facility boundary.

"Used or reused material" means a material that is either:

1. Employed as an ingredient (including use as an intermediate) in a process to make a product, excepting those materials possessing distinct components that are recovered as separate end products; or

2. Employed in a particular function or application as an effective substitute for a commercial product or natural resources.

"Vector" means a living animal, insect, or other arthropod that transmits an infectious disease from one organism to another.

"Vegetative waste" means decomposable materials generated by yard and lawn care or land-clearing activities and includes~~, but is not limited to,~~ leaves, grass trimmings, woody wastes such as shrub and tree prunings, bark, limbs, roots, and stumps.

"Vermicomposting" means the controlled and managed process by which live worms convert organic residues into fertile excrement.

"Vertical design capacity" means the maximum design final elevation specified in the facility's permit or if none is specified in the permit, the maximum elevation based on a 3:1 slope from the waste disposal unit boundary.

"Very small quantity generator" means a generator of hazardous waste as defined in 40 CFR 260.10 as incorporated by reference in 9VAC20-60-260 that generates less than or equal to the following amounts in a calendar month: (i) 100 kilograms of nonacute hazardous waste; (ii) one kilogram of acute hazardous waste; and (iii) 100 kilograms of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill into or on any land or water of acute hazardous waste.

"VPDES" (Virginia Pollutant Discharge Elimination System) means the Virginia system for the issuance of permits pursuant to the Permit Regulation (9VAC25-31), the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia), and § 402 of the Clean Water Act (33 USC § 1251 et seq.).

~~"Washout" means carrying away of solid waste by waters of the base flood.~~

"Waste-derived fuel product" means a solid waste or combination of solid wastes that have been treated (altered physically, chemically, or biologically) to produce a fuel product with a minimum heating value of 5,000 BTU/lb. Solid wastes used to produce a waste-derived fuel product must have a heating value, or act as binders, and may not be added to the fuel for the purpose of disposal. Waste ingredients may not be listed or characteristic hazardous wastes. The fuel product must be stable at ambient temperature, and not degraded by exposure to the elements. This material may not be "refuse derived fuel (RDF)" as defined in 9VAC5-40-890.

"Waste management boundary" means the vertical plane located at the boundary line of the area approved in the Part A application for the disposal of solid waste and storage of leachate. This vertical plane extends down into the uppermost aquifer and is within the facility boundary.

"Waste pile" means any noncontainerized accumulation of nonflowing, solid waste that is used for treatment or storage.

"Waste tire" means a tire that has been discarded because it is no longer suitable for its original intended purpose because of wear, damage or defect. (See 9VAC20-150 for other definitions dealing with the waste tire program.)

"Wastewaters" means, for the purpose of this chapter, wastes that contain less than 1.0% by weight total organic carbon (TOC) and less than 1.0% by weight total suspended solids (TSS).

"Water pollution" means such alteration of the physical, chemical, or biological properties of any state water as will or is likely to create a nuisance or render such waters:

1. Harmful or detrimental or injurious to the public health, safety, or welfare, or to the health of animals, fish, or aquatic life or plants;

2. Unsuitable, with reasonable treatment, for use as present or possible future sources of public water supply; or

3. Unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that:

a. An alteration of the physical, chemical, or biological properties of state waters or a discharge or deposit of sewage, industrial wastes, or other wastes to state waters by any owner that by itself is not sufficient to cause pollution but which in combination with such alteration or discharge or deposit to state waters by other persons is sufficient to cause pollution;

b. The discharge of untreated sewage by any person into state waters; and

c. The contribution to the degradation of water quality standards duly established by the State Water Control Board, are "pollution" for the terms and purposes of this chapter.

"Water table" means the upper surface of the zone of saturation in groundwaters in which the hydrostatic pressure is equal to the atmospheric pressure.

"Waters of the United States" or "waters of the U.S." means:

1. All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters 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), mud flats, sand flats, "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:

a. Any such waters that are or could be used by interstate or foreign travelers for recreational or other purposes;

b. Any such waters from which fish or shellfish are or could be taken and sold in interstate or foreign commerce;

c. Any such waters that are used or could be used for industrial purposes by industries in interstate commerce;

d. All impoundments of waters otherwise defined as waters of the United States under this definition;

e. Tributaries of waters identified in subdivisions 3 a through 3 d of this definition;

f. The territorial sea; and

g. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in subdivisions 3 a through 3 f of this definition.

"Wetlands" means those areas that are defined by the federal regulations under 33 CFR Part 328, as amended.

"White goods" means any stoves, washers, hot water heaters, and other large appliances.

"Working face" means that area within a landfill that is actively receiving solid waste for compaction and cover.

"Yard waste" means a subset of vegetative waste and means decomposable waste materials generated by yard and lawn care and includes leaves, grass trimmings, brush, wood chips, and shrub and tree trimmings. Yard waste shall not include roots or stumps that exceed 12 inches in diameter.

Part II
General Information

9VAC20-81-25. Purpose of chapter.

A. The purpose of this chapter is to establish standards and procedures pertaining to the management of solid wastes by providing the requirements for siting, design, construction, operation, maintenance, closure, and ~~postclosure~~ post-closure care of solid waste management facilities in the Commonwealth in order to protect the public health, public safety the environment, and our natural resources.

B. This chapter provides for the prohibition of open dumping of solid waste to protect public health and safety and the environment.

C. This chapter sets forth the requirements for undertaking corrective actions at solid waste management facilities.

9VAC20-81-35. Applicability of chapter.

A. This chapter applies to all persons who treat, store, dispose, or otherwise manage solid wastes as defined in 9VAC20-81-95.

~~B. All facilities that were permitted prior to March 15, 1993, and upon which solid waste has been disposed of prior to October 9, 1993, may continue to receive solid waste until they have reached their vertical design capacity or until the closure date established pursuant to § 10.1-1413.2 of the Code of Virginia, in Table 2.1 provided:~~

~~1. The facility is in compliance with the requirements for liners and leachate control in effect at the time of permit issuance.~~

~~2. On or before October 9, 1993, the owner or operator of the solid waste management facility submitted to the director:~~

~~a. An acknowledgment that the owner or operator is familiar with state and federal law and regulations pertaining to solid waste management facilities operating after October 9, 1993, including postclosure care, corrective action, and financial responsibility requirements;~~

~~b. A statement signed by a professional engineer that he has reviewed the regulations established by the department for solid waste management facilities, including the open dump criteria contained therein, that he has inspected the facility and examined the monitoring data compiled for the facility in accordance with applicable regulations and that, on the basis of his inspection and review, he has concluded:~~

~~(1) That the facility is not an open dump;~~

~~(2) That the facility does not pose a substantial present or potential hazard to human health and the environment; and~~

(3) That the leachate or residues from the facility do not pose a threat of contamination or pollution of the air, surface water, or groundwater in a manner constituting an open dump or resulting in a substantial present or potential hazard to human health or the environment; and

c. A statement signed by the owner or operator:

(1) That the facility complies with applicable financial assurance regulations; and

(2) Estimating when the facility will reach its vertical design capacity.

3. Enlargement or closure of these facilities shall conform with the following subconditions:

a. The facility may not be enlarged prematurely to avoid compliance with this chapter when such enlargement is not consistent with past operating practices, the permit, or modified operating practices to ensure good management.

b. The facility shall not dispose of solid waste in any portion of a landfill disposal area that has received final cover or has not received waste for a period of one year, in accordance with 9VAC20-81-160 C. The facility shall notify the department, in writing, within 30 days, when an area has received final cover or has not received waste for a one-year period, in accordance with 9VAC20-81-160 C. However, a facility may apply for a permit, and if approved, can construct and operate a new cell that overlays ("piggybacks") over a closed area in accordance with the permit requirements of this chapter.

c. The facilities subject to the restrictions in this subsection are listed in Table 2.1. The closure dates were established in Final Prioritization and Closure Schedule for HB 1205 Disposal Areas (DEQ, September 2001). The publication of these tables is for the convenience of the regulated community and does not change established dates. Any facility, including, but not limited to those listed in Table 2.1, must cease operation if that facility meets any of the open dump criteria listed in 9VAC20-81-45 A 1.

d. Those facilities assigned a closure date in accordance with § 10.1-1413.2 of the Code of Virginia shall designate on a map, plat, diagram, or other engineered drawing, areas in which waste will be disposed of in accordance with Table 2.1 until the latest cessation of waste acceptance date as listed in Table 2.1 is achieved. This map or plat shall be placed in the operating record and a copy shall be submitted upon request to the department in order to track the progress of closure of these facilities. If the facility already has provided this information under 9VAC20-81-160, then the facility may refer to that information.

TABLE 2.1
Final Prioritization and Closure Schedule For House Bill (HB) 1205 Disposal Areas

Solid Waste Permit Number and Site Name	Location	Department Regional Office[1]	Latest Cessation of Waste Acceptance Date[2]
429 - Fluvanna County Sanitary Landfill	Fluvanna County	VRO	12/31/2007
92 - Halifax County Sanitary Landfill[3]	Halifax County	BRRO	12/31/2007
49 - Martinsville Landfill	City of Martinsville	BRRO	12/31/2007
14 - Mecklenburg County Landfill	Mecklenburg County	BRRO	12/31/2007
228 - Petersburg City Landfill[3]	City of Petersburg	PRO	12/31/2007
31 - South Boston Sanitary Landfill	Town of South Boston	BRRO	12/31/2007
204 - Waynesboro City Landfill	City of Waynesboro	VRO	12/31/2007
91 - Accomack County Landfill - Bobtown South	Accomack County	TRO	12/31/2012
580 - Bethel Landfill[3]	City of Hampton	TRO	12/31/2012
182 - Caroline County Landfill	Caroline County	NVRO	12/31/2012
149 - Fauquier County Landfill	Fauquier County	NVRO	12/31/2012
405 - Greensville County Landfill	Greensville County	PRO	12/31/2012
29 - Independent Hill Landfill[3]	Prince William County	NVRO	12/31/2012
1 - Loudoun County Sanitary Landfill	Loudoun County	NVRO	12/31/2012
194 - Louisa County	Louisa County	NVRO	12/31/2012

~~Sanitary Landfill~~			
~~227 - Lunenburg County Sanitary Landfill~~	~~Lunenburg County~~	~~BRRO~~	~~12/31/2012~~
~~507 - Northampton County Landfill~~	~~Northampton County~~	~~TRO~~	~~12/31/2012~~
~~90 - Orange County Landfill~~	~~Orange County~~	~~NVRO~~	~~12/31/2012~~
~~75 - Rockbridge County Sanitary Landfill~~	~~Rockbridge County~~	~~VRO~~	~~12/31/2012~~
~~23 - Scott County Landfill~~	~~Scott County~~	~~SWRO~~	~~12/31/2012~~
~~587 - Shoosmith Sanitary Landfill[3]~~	~~Chesterfield County~~	~~PRO~~	~~12/31/2012~~
~~417 - Southeastern Public Service Authority Landfill[3]~~	~~City of Suffolk~~	~~TRO~~	~~12/31/2012~~
~~461 - Accomack County Landfill #2~~	~~Accomack County~~	~~TRO~~	~~12/31/2020~~
~~86 - Appomattox County Sanitary Landfill~~	~~Appomattox County~~	~~BRRO~~	~~12/31/2020~~
~~582 - Botetourt County Landfill[3]~~	~~Botetourt County~~	~~BRRO~~	~~12/31/2020~~
~~498 - Bristol City Landfill~~	~~City of Bristol~~	~~SWRO~~	~~12/31/2020~~
~~72 - Franklin County Landfill~~	~~Franklin County~~	~~BRRO~~	~~12/31/2020~~
~~398 - Virginia Beach Landfill #2 - Mount Trashmore II[3]~~	~~City of Virginia Beach~~	~~TRO~~	~~12/31/2020~~

~~Notes:~~
~~[1]Department of Environmental Quality Regional Offices:~~

~~BRRO - Blue Ridge Regional Office~~
~~NVRO - Northern Virginia Regional Office~~
~~PRO - Piedmont Regional Office~~
~~SWRO - Southwest Regional Office~~
~~TRO - Tidewater Regional Office~~
~~VRO - Valley Regional Office~~

~~[2]This date means the latest date that the disposal area must cease accepting waste.~~
~~[3]A portion of these facilities operated under HB 1205 and another portion currently is compliant with Subtitle D requirements.~~

B. All facilities or disposal areas without a composite liner within a facility boundary that were permitted prior to March 15, 1993, and upon which solid waste has been disposed of prior to October 9, 1993, and met the requirements of § 10.1-1408.1 N of the Code of Virginia were required to cease solid waste acceptance on or before December 31, 2020, pursuant to § 10.1-1413.2 of the Code of Virginia. The closure dates are established in Final Prioritization and Closure Schedule, Chapter 308 of the 2000 Acts of Assembly. These facilities are required to install final cover and close in accordance with 9VAC20-81-160 and perform post-closure care in accordance with 9VAC20-81-170.

C. Facilities are authorized to expand beyond the waste boundaries existing on October 9, 1993, as follows:

1. Existing captive industrial landfills.

a. Existing nonhazardous industrial waste facilities that are located on property owned or controlled by the generator of the waste disposed of in the facility shall comply with all the provisions of this chapter except as shown in subdivision 1 of this subsection.

b. Facility owners or operators shall not be required to modify their facility permit in order to expand a captive industrial landfill beyond the waste boundaries existing on October 9, 1993. Liners and leachate collection systems constructed beyond the waste boundaries existing on October 9, 1993, shall be constructed in accordance with the requirements in effect at the time of permit issuance.

c. Owners or operators of facilities that are authorized under subdivision 1 of this subsection to accept waste for disposal beyond the waste boundaries existing on October 9, 1993, shall ensure that such expanded disposal areas maintain setback distances applicable to such facilities in 9VAC20-81-120.

d. Facilities authorized for expansion in accordance with subdivision 1 of this subsection are limited to expansion to the limits of the permitted disposal area existing on October 9, 1993, or the facility boundary existing on October 9, 1993, if no discrete disposal area is defined in the facility permit.

2. Other existing industrial waste landfills.

a. Existing nonhazardous industrial waste facilities that are not located on property owned or controlled by the generator of the waste disposed of in the facility shall comply with all the provisions of this chapter except as shown in subdivision 2 of this subsection.

b. Facility owners or operators shall not be required to modify their facility permit in order to expand an industrial landfill beyond the waste boundaries existing on October 9, 1993. Liners and leachate collection systems constructed beyond the waste boundaries existing on October 9, 1993, shall be constructed in accordance with the requirements of 9VAC20-81-130.

c. Prior to the expansion of any such facility, the owner or operator shall submit to the department a written notice of the proposed expansion at least 60 days prior to commencement of construction. The notice shall include recent groundwater monitoring data sufficient to determine that the facility does not pose a threat of contamination of groundwater in a manner constituting an open dump or creating a substantial present or potential hazard to human health or the environment (see 9VAC20-81-45). The director shall evaluate the data included with the notification and may advise the owner or operator of any additional requirements that may be necessary to ensure compliance with applicable laws and prevent a substantial present or potential hazard to health or the environment.

d. Owners or operators of facilities which are authorized under subdivision 2 of this subsection to accept waste for disposal beyond the waste boundaries existing on October 9, 1993, shall ensure that such expanded disposal areas maintain setback distances applicable to such facilities in 9VAC20-81-120 and 9VAC20-81-130.

e. Facilities authorized for expansion in accordance with subdivision 2 of this subsection are limited to expansion to the limits of the permitted disposal area existing on October 9, 1993, or the facility boundary existing on October 9, 1993, if no discrete disposal area is defined in the facility permit.

3. Existing construction/demolition/debris landfills.

a. Existing facilities that accept only construction/demolition/debris waste shall comply with all the provisions of this chapter except as shown in subdivision 3 of this subsection.

b. Facility owners or operators shall not be required to modify their facility permit in order to expand a construction/demolition/debris landfill beyond the waste boundaries existing on October 9, 1993. Liners and leachate collection systems constructed beyond the waste boundaries existing on October 9, 1993, shall be constructed in accordance with the requirements of 9VAC20-81-130.

c. Prior to the expansion of any such facility, the owner or operator shall submit to the department a written notice of the proposed expansion at least 60 days prior to commencement of construction. The notice shall include recent groundwater monitoring data sufficient to determine that the facility does not pose a threat of contamination of groundwater in a manner constituting an open dump or creating a substantial present or potential hazard to human health or the environment (see 9VAC20-81-45). The director shall evaluate the data included with the notification and may advise the owner or operator of any additional requirements that may be necessary to ensure compliance with applicable laws and prevent a substantial present or potential hazard to health or the environment.

d. Owners or operators of facilities which are authorized under subdivision 3 of this subsection to accept waste for disposal beyond the active portion of the landfill existing on October 9, 1993, shall ensure that such expanded disposal areas maintain setback distances applicable to such facilities in 9VAC20-81-120 and 9VAC20-81-130.

e. Facilities, or portions thereof, which have reached their vertical design capacity shall be closed in compliance with 9VAC20-81-160.

f. Facilities authorized for expansion in accordance with subdivision 3 of this subsection are limited to expansion to the permitted disposal area existing on October 9, 1993, or the facility boundary existing on October 9, 1993, if no discrete disposal area is defined in the facility permit.

4. Facilities or units undergoing expansion in accordance with the partial exemptions created by subdivision 1 b, 2 b, or 3 b of this subsection may not receive hazardous wastes generated by the exempt small quantity generators, as defined by the Virginia Hazardous Waste Management Regulations (9VAC20-60), for disposal on the expanded portions of the facility. Other wastes that require special handling in accordance with the requirements of Part VI (9VAC20-81-610 et seq.) of this chapter or that contain hazardous constituents that would pose a risk to health or environment, may only be accepted with specific approval by the director.

5. Nothing in subdivisions 1 b, 2 b, and 3 b of this subsection shall alter any requirement for groundwater monitoring, financial responsibility, operator certification, closure, ~~postclosure~~ post-closure care, operation, maintenance, or corrective action imposed under this chapter, or impair the powers of the director to revoke or modify a permit pursuant to § 10.1-1409 of the Virginia Waste Management Act or Part V (9VAC20-81-400 et seq.) of this chapter.

D. An owner or operator of a previously unpermitted facility or unpermitted activity that managed materials previously exempt or excluded from this chapter shall submit a complete application for a solid waste management facility permit,

permit by rule or a permit modification, as applicable, in accordance with Part V (9VAC20-81-400 et seq.) of this chapter within six months after these materials have been defined or identified as solid wastes. If the director finds that the application is complete, the owner or operator may continue to manage the newly defined or identified waste until a permit or permit modification decision has been rendered or until a date two years after the change in definition whichever occurs sooner, provided however, that in so doing he shall not operate or maintain an open dump, a hazard, or a nuisance.

Owners or operators of solid waste management facilities in existence prior to September 24, 2003, shall now be in compliance with this chapter. Where conflicts exist between the existing facility permit and the new requirements of the regulations, the regulations shall supersede the permit except where the standards in the permit are more stringent than the regulation. Language in an existing permit shall not act as a shield to compliance with the regulation, unless a variance to the ~~regulations~~ regulation has been approved by the director in accordance with the provisions of Part VII (9VAC20-81-700 et seq.) of this chapter. Existing facility permits will not be required to be updated to eliminate requirements conflicting with the regulation, except at the request of the director or if a permit is modified for another reason. However, all sanitary landfills and incinerators that accept waste from jurisdictions outside of Virginia must have submitted the materials required under 9VAC20-81-100 E 4 by March 22, 2004.

E. This chapter is not applicable to landfill units closed in accordance with regulations or permits in effect prior to December 21, 1988, unless releases from these closed landfills meet the open dump criteria found in 9VAC20-81-45, or the closed landfills are found to be a hazard or a nuisance under subdivision 21 of § 10.1-1402 of the Code of Virginia, or a site where improper waste management has occurred under subdivision 19 of § 10.1-1402 of the Code of Virginia.

F. Part VIII (9VAC20-81-800 et seq.) of this chapter applies to the following:

1. Owners and operators of new and existing CCR landfills and CCR surface impoundments, including any lateral expansions of such units that dispose or otherwise engage in solid waste management of CCR generated from the combustion of coal at electric utilities and independent power producers;

2. Disposal units located offsite of the electric utility or independent power producer. Part VIII of this chapter also applies to any practice that does not meet the definition of a beneficial use of CCR; and

3. Inactive CCR surface impoundments at active electric utilities or independent power producers, regardless of the fuel currently used at the facility to produce electricity.

G. Part VIII of this chapter is not applicable to the following:

1. CCR landfills that have ceased receiving CCR prior to October 19, 2015;

2. Electric utilities or independent power producers that have ceased producing electricity prior to October 19, 2015;

3. Wastes, including fly ash, bottom ash, boiler slag, and flue gas desulfurization materials generated at facilities that are not part of an electric utility or independent power producer, such as manufacturing facilities, universities, and hospitals;

4. Fly ash, bottom ash, boiler slag, and flue gas desulfurization materials, generated primarily from the combustion of fuels (including other fossil fuels) other than coal, for the purpose of generating electricity unless the fuel burned consists of more than 50% coal on a total heat input or mass input basis, whichever results in the greater mass feed rate of coal;

5. Practices that meet the definition of a beneficial use of CCR;

6. CCR placement at active or abandoned underground or surface coal mines; or

7. Municipal solid waste landfills that receive CCR.

9VAC20-81-40. Prohibitions.

A. No person shall operate any sanitary landfill or other facility for the disposal, treatment, or storage of solid waste without a permit from the director.

B. No person shall allow waste to be treated, stored, open burned, disposed of, or otherwise managed on his property except in accordance with this chapter. Some activities may be conditionally exempt if conducted as outlined under 9VAC20-81-95.

C. It shall be the duty of all persons to dispose of or otherwise manage their solid waste in a legal manner.

D. Any person who violates subsection A, B, or C of this section shall immediately cease the activity of improper management and the treatment, storage, or disposal of any additional wastes and shall initiate such removal, cleanup, or closure in place.

E. Management of lead acid batteries.

1. No person shall place a used lead acid battery in mixed municipal solid waste or discard or otherwise dispose of a lead acid battery except by delivery to a battery retailer or wholesaler, or to a secondary lead smelter, or to a collection or reclamation facility authorized under the laws of the Commonwealth or by the United States Environmental Protection Agency.

2. No battery retailer shall dispose of a used lead acid battery except by delivery to:

a. The agent of a battery wholesaler or a secondary lead smelter;

b. A battery manufacturer for delivery to a secondary smelter; or

c. A collection or reclamation facility authorized under the laws of the Commonwealth or by the United States Environmental Protection Agency.

3. No person selling new lead acid batteries at wholesale shall refuse to accept from customers at the point of transfer, used lead acid batteries of the type and in a quantity at least equal to the number of new batteries purchased, if offered by customers.

4. The provisions of subdivisions 1 through 3 of this subsection shall not be construed to prohibit any person who does not sell new lead acid batteries from collecting and reclaiming such batteries.

F. Any locality may, by ordinance, prohibit the disposal of cathode ray tubes (CRTs) in any waste to energy or solid waste disposal facility within its jurisdiction if it has implemented a CRT recycling program that meets the requirements of § 10.1-1425.26 of the Code of Virginia.

G. No person shall dispose of or manage solid waste in an unpermitted facility, including by disposing, causing to be disposed, or arranging for the disposal of solid waste upon a property for which the director has not issued a permit and that is not otherwise exempt from permitting requirements.

9VAC20-81-90. Relationship with other regulations promulgated by the Virginia Waste Management Board.

A. Virginia Hazardous Waste Management Regulations (9VAC20-60).

1. Solid wastes that have been declared hazardous or a universal waste by the generator in accordance with 40 CFR 262.11, as amended, or that are regulated as hazardous wastes by the Commonwealth or another state, and will be treated, stored, or disposed of in Virginia shall be managed in accordance with the requirements of 9VAC20-60 and not 9VAC20-81.

2. Any material from a state other than Virginia that is classified as a hazardous waste in that state shall be managed in accordance with 9VAC20-60.

3. Wastes generated by generators who are conditionally exempt pursuant to ~~40 CFR 261.5~~ 40 CFR 262.14 may be managed in solid waste management facilities provided that:

a. (i) A specific approval is obtained from the director for acceptance of the material at a facility with an approved liner and leachate collection system; or (ii) it is included in the facility permit; and

b. Records are kept of the actual amount, type, and source of these wastes.

B. Regulated Medical Waste Management Regulations (9VAC20-120). Solid wastes that are defined as regulated medical wastes by the Regulated Medical Waste Management Regulations shall be managed in accordance with those regulations. Regulated medical wastes that are excluded or exempt by 9VAC20-120 shall be regulated by this chapter.

C. Financial Assurance Regulations for Solid Waste Disposal, Transfer, and Treatment Facilities (9VAC20-70). 9VAC20-70 specifies the requirements for financial assurance and allowable financial assurance mechanisms. Solid waste management facilities shall provide financial assurance in accordance with 9VAC20-70.

D. Solid Waste Management Facility Permit Action Fees and Annual Fees (9VAC20-90). All applicants for solid waste management facility permits are required to pay a fee in accordance with the schedule shown in 9VAC20-90. All solid waste management facilities shall pay annual fees in accordance with 9VAC20-90, as applicable.

E. Solid Waste Planning and Recycling Regulations (9VAC20-130). 9VAC20-130 establishes a framework for local governments to plan for solid waste management needs and a mechanism for tracking recycling rates and solid waste management plan contents.

F. Transportation of Solid and Medical Wastes on State Waters (9VAC20-170). 9VAC20-170 establishes the standards and procedures pertaining to the commercial transport, loading, and offloading of solid wastes or regulated medical wastes upon the navigable waters of the Commonwealth.

G. Voluntary Remediation Regulations (9VAC20-160). 9VAC20-160 establishes standards and procedures for the Virginia Voluntary Remediation Program.

H. Coal Combustion Byproduct Regulations (9VAC20-85). 9VAC20-85 establishes standards for the use of fossil fuel combustion products, which are not subject to requirements of this chapter, and establishes standards for siting, design, construction, operation, and administrative procedures pertaining to their use, reuse, or reclamation other than in a manner addressed by this chapter.

9VAC20-81-95. Identification of solid waste.

A. Wastes identified in this section are solid wastes that are subject to this chapter unless regulated pursuant to other applicable regulations issued by the department.

B. Except as otherwise provided, the definition of solid waste per 40 CFR 261.2 as incorporated by 9VAC20-60-261, as amended, is also hereby incorporated as part of this chapter. Except as otherwise provided, all material definitions, reference materials and other ancillaries that are a part of 9VAC20-60-261, as amended, are also hereby incorporated as part of this chapter as well.

C. Except as otherwise modified or excepted by 9VAC20-60, the materials listed in the regulations of the United States Environmental Protection Agency set forth in 40 CFR 261.4(a) are considered a solid waste for the purposes of this chapter.

However, these materials are not regulated under the provisions of this chapter if all conditions specified therein are met. This list and all material definitions, reference materials and other ancillaries that are part of 40 CFR Part 261.4(a), as incorporated, modified or accepted by 9VAC20-60 are incorporated as part of this chapter. In addition, the following materials are not solid wastes for the purpose of this chapter:

1. Materials generated by any of the following, which are returned to the soil as fertilizers:

a. The growing and harvesting of agricultural crops.

b. The raising and husbanding of animals, including animal manures and used animal bedding.

2. Mining overburden returned to the mine site.

3. Recyclable materials used in manner constituting disposal per 9VAC20-60-266.

4. Wood wastes burned for energy recovery.

5. Materials that are:

a. Used or reused, or prepared for use or reuse, as an ingredient in an industrial process to make a product, or as effective substitutes for commercial products or natural resources provided the materials are not being reclaimed or accumulated speculatively; or

b. Returned to the original process from which they are generated.

6. Materials that are beneficially used as determined by the department under this subsection. The department may consider other waste materials and uses to be beneficial in accordance with the provisions of 9VAC20-81-97.

7. The following materials and uses listed in this part are exempt from this chapter as long as they are managed so that they do not create an open dump, hazard, or public nuisance. These materials and the designated use are considered a beneficial use of waste materials:

a. Clean wood, wood chips, or bark from ~~land clearing,~~ land-clearing, logging operations, utility line clearing and maintenance operations, pulp and paper production, and wood products manufacturing, when these materials are placed in commerce for service as mulch, landscaping, animal bedding, erosion control, habitat mitigation, wetlands restoration, or bulking agent at a compost facility operated in compliance with Part IV (9VAC20-81-300 et seq.) of this chapter;

b. Clean wood combustion residues when used for pH adjustment in compost, liquid absorbent in compost, or as a soil amendment or fertilizer, provided the application rate of the wood ash is limited to the nutrient need of the crop grown on the land on which the wood combustion residues will be applied and provided that such application meets the requirements of the Virginia Department of Agriculture and Consumer Services (2VAC5-400 and 2VAC5-410);

c. Compost or soil amendment that satisfies the applicable requirements of the Virginia Department of Agriculture and Consumer Services (2VAC5-400 and 2VAC5-410);

d. Nonhazardous, contaminated soil that has been excavated as part of a construction project and that is used as backfill for the same excavation or excavations containing similar contaminants at the same site, at concentrations at the same level or higher. Excess contaminated soil from these projects is subject to the requirements of this chapter;

e. Nonhazardous petroleum contaminated soil that has been treated to the satisfaction of the department in accordance with 9VAC20-81-660;

f. Nonhazardous petroleum contaminated soil when incorporated into asphalt pavement products;

g. Solid wastes that are approved in advance of the placement, in writing, by the department or that are specifically mentioned in the facility permit for use as alternate daily cover material or other protective materials for landfill liner or final cover system components;

h. Fossil fuel combustion products that are not CCR when used as a material in the manufacturing of another product (e.g., concrete, concrete products, lightweight aggregate, roofing materials, plastics, paint, flowable fill) or as a substitute for a product or material resource (e.g., blasting grit, roofing granules, filter cloth pre-coat for sludge dewatering, pipe bedding);

i. Tire chips and tire shred when used as a sub-base fill for road base materials or asphalt pavements when approved by the Virginia Department of Transportation or by a local governing body;

j. Tire chips, tire shred, and ground rubber used in the production of commercial products such as mats, pavement sealers, playground surfaces, brake pads, blasting mats, and other rubberized commercial products;

k. Tire chips and tire shred when used as backfill in landfill gas or leachate collection pipes, recirculation lines, and drainage material in landfill liner and cover systems, and gas interception or remediation applications;

l. Waste tires, tire chips or tire shred when burned for energy recovery or when used in pyrolysis, gasification, or similar treatment process to produce fuel;

m. Waste-derived fuel product, as defined in 9VAC20-81-10, derived from nonhazardous solid waste;

n. Uncontaminated concrete and concrete products, asphalt pavement, brick, glass, soil, and rock placed in commerce for service as a substitute for conventional aggregate; and

o. Clean, ground gypsum wallboard when used as a soil amendment or fertilizer, provided the following conditions are met:

(1) No components of the gypsum wallboard have been glued, painted, or otherwise contaminated from manufacture or use (e.g., waterproof or fireproof drywall) unless otherwise processed to remove contaminants.

(2) The gypsum wallboard shall be processed so that 95% of the gypsum wallboard is less than 1/4 inch by 1/4 inch in size, unless an alternate size is approved by the department.

(3) The gypsum wallboard shall be applied only to agricultural, silvicultural, landscaped, or mined lands or roadway construction sites that need fertilization.

(4) The application rate for the ground gypsum wallboard shall not exceed the following rates.

Region	Rate
Piedmont, Mountains, and Ridge and Valley	250 lbs/1,000 ft^2
Coastal Plain	50 lbs/1,000 ft^2
Note: These weights are for dry ground gypsum wallboard.	

D. The following activities are conditionally exempt from this chapter provided no open dump, hazard, or public nuisance is created:

1. Composting of sewage sludge at the sewage treatment plant of generation without addition of other types of solid wastes.

2. Composting of household waste generated at a residence and composted at the site of generation.

3. Composting activities performed for educational purposes as long as no more than 100 cubic yards of materials are onsite at any time. Greater quantities will be allowed with suitable justification presented to the department. For quantities greater than 100 cubic yards, approval from the department will be required prior to composting.

4. Composting of animal carcasses and animal manures onsite at the farm of generation. Farms may accept Category I feedstocks and manures from herbivorous animals generated offsite provided the requirements of 9VAC20-81-397 B 2 are met.

5. Composting of vegetative waste or yard waste generated onsite by owners or operators of agricultural operations or owners of the real property or those authorized by the owners of the real property provided:

a. All decomposed vegetative waste and compost produced is utilized on said property;

b. No vegetative waste or other waste material generated from other sources other than said property is received;

c. All applicable standards of local ordinances that govern or concern vegetative waste handling, composting, storage or disposal are satisfied; and

d. They pose no nuisance or present no potential threat to human health or the environment.

6. Composting of yard waste by owners or operators who accept yard waste generated offsite shall be exempt from all other provisions of this chapter as applied to the composting activities provided the requirements of 9VAC20-81-397 B are met.

7. Composting of preconsumer food waste and kitchen culls generated onsite and composted in containers designed to prohibit vector attraction and prevent nuisance odor generation.

8. Vermicomposting, when used to process Category I, Category II, or Category III feedstocks in containers designed to prohibit vector attraction and prevent nuisance odor generation. If offsite feedstocks are received no more than 100 cubic yards of materials may be onsite at any one time. For quantities greater than 100 cubic yards, approval from the department will be required prior to composting.

9. Composting of sewage sludge or combinations of sewage sludge with nonhazardous solid waste provided the composting facility is permitted under the requirements of a Virginia Pollution Abatement (VPA) or VPDES permit.

10. Management of solid waste in appropriate containers meeting the criteria of 9VAC20-81-98 at the site of its generation or at a convenience center, provided that:

a. Putrescible waste is not stored more than seven days between time of collection and time of removal for proper management or disposal;

b. Nonputrescible wastes are not stored more than 90 days between time of collection and time of removal for proper management or disposal; ~~and~~

c. Treatment of waste is conducted in accordance with the following:

(1) In accordance with a waste analysis plan that:

(a) Contains a detailed chemical and physical analysis of a representative sample of the waste being treated and contains all records necessary to treat the waste in accordance with the requirements of this part, including the selected testing frequency; and

(b) Is kept in the facility's onsite file and made available to the department upon request.

(2) Notification is made to the receiving waste management facility that the waste has been treated; and

d. Management of waste prevents discharges of leachate and wastewater.

11. Using ~~rocks, brick, block, dirt, broken concrete, crushed glass, porcelain, and road pavement~~ any of the following uncontaminated materials as clean fill:

a. Rocks;

b. Brick;

c. Block;

d. Dirt;

e. Broken concrete without protruding rebar;

f. Crushed glass;

g. Porcelain; and

h. Road pavement.

12. Storage of less than 100 waste tires at the site of generation provided that no waste tires are accepted from offsite and that the storage will not present a hazard or a nuisance.

13. Storage in piles of land-clearing debris including stumps and brush, clean wood wastes, log yard scrapings consisting of a mixture of soil and wood, cotton gin trash, peanut hulls, and similar organic wastes that do not readily decompose, are exempt from this chapter if they meet the following conditions at a minimum:

a. The wastes are managed in the following manner:

(1) They do not cause discharges of leachate~~,~~ or attract vectors.

(2) They cannot be dispersed by wind and rain.

(3) Fire is prevented.

(4) They do not become putrescent.

b. Any facility storing waste materials under the provisions of this subsection shall obtain a stormwater discharge permit if they are considered a significant source under the provisions of 9VAC25-31-120 ~~A~~ B 1 c.

c. No more than a total of 1/3 acre of waste material is stored onsite and the waste pile does not exceed 15 feet in height above base grade.

d. Siting provisions.

(1) All log yard scrapings consisting of a mixture of soil and wood, cotton gin trash, peanut hulls, and similar organic wastes that do not readily decompose are stored at the site of the industrial activity that produces them;

(2) A 50-foot fire break is maintained between the waste pile and any structure or tree line;

(3) The slope of the ground within the area of the pile and within 50 feet of the pile does not exceed 4:1;

(4) No waste material may be stored closer than 50 feet to any regularly flowing surface water body or river, floodplain, or wetland; and

(5) No stored waste materials shall extend closer than 50 feet to any property line.

e. If activities at the site cease, any waste stored at the site must be properly managed in accordance with these regulations within 90 days. The director can approve longer timeframes with appropriate justification. Justification must be provided in writing no more than 30 days after ceasing activity at the site.

f. Waste piles that do not meet these provisions are required to obtain a permit in accordance with the permitting provisions in Part V (9VAC20-81-400 et seq.) of this chapter and meet all of the applicable waste pile requirements in Part IV (9VAC20-81-300 et seq.) of this chapter. Facilities that do not comply with the provisions of this subsection and fail to obtain a permit are subject to the provisions of 9VAC20-81-40.

14. Storage of nonhazardous solid wastes and hazardous wastes, or hazardous wastes from very small quantity generators as defined in Virginia Hazardous Waste Management Regulations (9VAC20-60) at a transportation terminal or transfer station in closed containers meeting the U.S. Department of Transportation specifications is exempt from this section and the permitting provisions of Part V (9VAC20-81-400 et seq.) of this chapter provided such wastes are removed to a permitted storage or disposal facility within 10 days from the initial receipt from the waste generator. To be eligible for this exemption, each shipment must be properly documented to show the name of the generator, the date of receipt by the transporter, and the date and location of the final destination of the shipment. The documentation shall be kept at the terminal or transfer station for at least three years after the shipment has been completed and shall be made available to the department upon request. All such activities shall comply with any local ordinances.

15. Open burning of solid wastes as provided in the following:

a. For forest management, agriculture practices, and highway construction and maintenance programs approved by the State Air Pollution Control Board.

b. For training and instruction of government and public firefighters under the supervision of the designated official and industrial in-house firefighting personnel with clearance from the local firefighting authority. Buildings that have not been demolished may be burned under the provisions of this subdivision only. Additionally, burning rubber tires, asphaltic materials, crankcase oil, impregnated wood, or other rubber-based or petroleum-based wastes is permitted when conducting bona fide firefighting instruction. Open burning in Volatile Organic Compound Emissions Control Areas as designated by 9VAC5-20-206 may be subject to additional requirements under the state air pollution control regulations.

c. For the destruction of classified military documents under the supervision of the designated official.

d. For campfires or other fires using clean wood or vegetative waste that are used solely for recreational purposes, for ceremonial occasions, for outdoor preparation of food, and for warming of outdoor workers.

e. For the onsite destruction of vegetative waste, clean wood, and clean paper products, located on the premises of private property, provided that no regularly scheduled collection service for such ~~vegetative~~ waste is available at the adjacent street or public road.

~~f. For the onsite destruction of household waste by homeowners or tenants, provided that no regularly scheduled collection service for such household waste is available at the adjacent street or public road.~~

~~g.~~ f. For the onsite destruction of clean wood waste and debris waste resulting from property maintenance; from the development or modification of roads and highways, parking areas, railroad tracks, pipelines, power and communication lines, buildings or building areas, sanitary landfills; or from any other clearing operations. Open burning in volatile organic compound emissions control areas as designated by 9VAC5-20-206 is prohibited from May 1 through September 30.

g. For the destruction of debris waste from cleanup operations, in the event that the Governor declares a state of emergency. Open burning in volatile organic compound emissions control areas as designated by 9VAC5-20-206 may require a variance from the State Air Pollution Control Board.

16. Open burning of vegetative waste is allowed at a closed landfill that has not been released from ~~postclosure~~ post-closure care. There shall be no open burning permitted on areas where solid waste has been disposed of. The activity shall be included in the text of the ~~postclosure~~ post-closure plan and conducted in accordance with § 10.1-1410.3 of the Code of Virginia. Open burning at a closed landfill shall be limited to five days per quarter. Facilities located in volatile organic compound emissions control areas as designated by 9VAC5-20-206 shall not burn from May 1 through September 30.

17. Placement of trees, brush, or other vegetation from land used for agricultural or silvicultural purposes on the same property or other property of the same landowner.

18. Using fossil fuel combustion products that are not CCR in one or more of the following applications or when handled, processed, transported, or stockpiled for the following uses:

a. As a base, sub-base or fill material under a paved road, the footprint of a structure, a paved parking lot, sidewalk, walkway, or similar structure, or in the embankment of a road. In the case of roadway embankments, materials will be placed in accordance with Virginia Department of Transportation specifications, and exposed slopes not directly under the surface of the pavement must have a minimum of 18 inches of soil cover over the fossil fuel combustion products, the top six inches of which must be capable of sustaining the growth of indigenous plant species or plant species adapted to the area. The use, reuse, or reclamation of unamended coal combustion byproduct shall not be placed in an area designated as a 100-year flood plain;

b. Processed with a cementitious binder to produce a stabilized structural fill product that is spread and compacted with proper equipment for the construction of a project with a specified end use; or

c. For the extraction or recovery of materials and compounds contained within the fossil fuel combustion products.

19. Composting activities performed in conjunction with a public or private event or festival to manage organic wastes generated during the event as long as no more than 100 cubic yards of materials are on site at any time. Greater quantities may be allowed with suitable justification presented to the department. For quantities greater than 100 cubic yards, approval from the department shall be required prior to composting.

20. Storage of nonhazardous solid wastes generated from an emergency cleanup (conducted in order to protect public safety, human health, and the environment) is allowed at the cleanup site or another property provided that:

a. Waste is managed in appropriate containers meeting the criteria of 9VAC20-81-98;

b. Putrescible waste is not stored more than seven days between time of collection (cleanup) and time of removal for proper management or disposal;

c. Nonputrescible waste is not stored more than 90 days between time of collection (cleanup) and time of removal for proper management or disposal; and

d. Management of waste prevents discharges of leachate and wastewater.

E. The following solid wastes are exempt from this chapter provided that they are managed in accordance with the requirements promulgated by other applicable state or federal agencies:

1. Management of wastes regulated by the State Board of Health, the State Water Control Board, the Air Pollution Control Board, the Department of ~~Mines, Minerals and~~ Energy, Department of Agriculture and Consumer Services, or any other state or federal agency with such authority.

2. Drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas, or geothermal energy.

3. Solid waste from the extraction, beneficiation, and processing of ores and minerals, including coal.

4. Fossil fuel combustion products used for mine reclamation, mine subsidence, or mine refuse disposal on a mine site permitted by the Virginia Department of ~~Mines, Minerals and~~ Energy ~~(DMME)~~ when used in accordance with the standards.

5. Solid waste management practices that involve only the onsite placing of solid waste from mineral mining activities at the site of those activities and in compliance with a permit issued by the ~~DMME,~~ Department of Energy that do not include any municipal solid waste, are accomplished in an environmentally sound manner, and do not create an open dump, hazard or public nuisance are exempt from all requirements of this chapter.

6. Waste or byproduct derived from an industrial process that meets the definition of fertilizer, soil amendment, soil conditioner, or horticultural growing medium as defined in § 3.2-3600 of the Code of Virginia, or whose intended purpose is to neutralize soil acidity (see § 3.2-3700 of the Code of Virginia), and that is regulated under the authority of the Virginia Department of Agriculture and Consumer Services.

7. Fossil fuel combustion products bottom ash or boiler slag used as a traction control material or road surface material if the use is consistent with Virginia Department of Transportation practices. This exemption does not apply to CCR used in this manner.

8. Waste tires generated by and stored at salvage yards licensed by the Department of Motor Vehicles provided that such storage complies with requirements set forth in § 10.1-1418.2 of the Code of Virginia and such storage does not pose a hazard or nuisance.

9. Tire chips used as the drainage material in construction of septage drain fields regulated under the authority of the Virginia Department of Health.

F. The following solid wastes are exempt from this chapter provided that they are reclaimed or temporarily stored incidentally to reclamation, are not accumulated speculatively, and are managed without creating an open dump, hazard, or a public nuisance:

1. Paper and paper products;

2. Clean wood waste that is to undergo size reduction in order to produce a saleable product, such as mulch;

3. Cloth;

4. Glass;

5. Plastics;

6. Tire chips, tire shred, ground rubber; ~~and~~

7. ~~Mixtures of above materials only. Such mixtures may include scrap metals excluded from regulation in accordance with the provisions of subsection C of this section~~ Scrap metal excluded from regulation in accordance with the provisions of subsection C of this section; and

8. Mixtures of above materials only.

9VAC20-81-98. Appropriate containers.

A. The use of appropriate containers is a critical component of proper management of waste.

B. Appropriate containers or compactors shall be:

1. Of adequate size to physically contain all the waste that is placed into it in a manner that is not a fire, health, or safety hazard, or provides food or harborage for vectors;

2. Constructed of corrosion resistant metal, durable or rigid plastic, or other material that will not absorb water, grease, or oil;

3. Compatible with the type of waste to be stored;

4. Leak-proof; including sides, seams, and bottoms, and durable enough to withstand anticipated usage without rusting, cracking, or deforming in a manner that would make it a fire health or safety hazard or provide harborage for vectors;

5. In the case of containers used for compaction, the container must be capable of withstanding the full force of the ram; and

6. Designed or equipped to prevent spillage so that it cannot be tipped over easily.

C. Single use plastic and paper bags must:

1. Meet the National Sanitation Foundation (NSF) Standard No. 31 for polyethylene refuse bags and Standard No. 32 for paper refuse bags, respectively. However, such bags do not need to have been certified by the NSF; and

2. Be stored between collection periods in a manner that protects its contents from scavenging animals (i.e., dogs, raccoons, cats, rats, etc.) and vectors if the bags contain putrescible waste. This can be accomplished by storing the plastic bags either within the confines of a building or within an appropriate container as described in subsection B of this section.

9VAC20-81-100. General.

A. Any person who constructs~~,~~ or operates any solid waste disposal facility~~,~~ not otherwise exempt under 9VAC20-81-35 D, shall comply with the requirements of this part. Further, all applications for permits pursuant to these standards shall demonstrate specific means proposed for compliance with requirements set forth in this part.

B. All solid waste disposal facilities shall be maintained and operated in accordance with the permit issued pursuant to this regulation, and in accordance with the approved design and intended use of the facility.

C. Hazardous wastes shall not be disposed of or managed in solid waste disposal facilities subject to this regulation unless specifically authorized by the facility permit or the director.

D. A solid waste management facility regulated under Part IV (9VAC20-81-300 et seq.) of this chapter will become subject to the closure and ~~postclosure~~ post-closure care standards contained in this part if solid waste will remain after the closure of such a facility.

E. Control program for unauthorized waste.

1. All landfills are required to implement a control program for unauthorized waste in accordance with the provisions of this section. A written description of the program will be placed in the ~~operating record~~ facility's operations manual. Additional provisions for ~~sanitary~~ all landfills (other than captive industrial landfills) required in subdivision 5 of this subsection are required to be placed in the landfill's operating record. The owner or operator shall institute a control program (including measures such as signs at all maintained access points indicating hours of operation and the types of solid waste accepted and not accepted, monitoring, alternate collection programs, passage of local laws, etc.) to assure that only solid waste authorized by the department to be treated, disposed of, or transferred at the landfill is being treated, disposed of, or transferred at that landfill. The owner or operator must develop and implement a program to teach the landfill's staff to recognize, remove, and report receipt of solid waste not authorized by the department to be treated, disposed of, or transferred at the landfill.

2. If unauthorized waste is observed in the waste delivered to the facility prior to unloading, the owner or operator may refuse to accept the waste. If the owner or operator has accepted the waste, the owner or operator shall remove it, segregate it, and provide to the department a record identifying that waste and its final disposition. Records of each incident shall be available for department review. Any unauthorized waste accepted by the owner or operator shall be managed in accordance with applicable federal or state laws and regulations.

3. Solid waste not authorized by the department to be treated, disposed of, or transferred at the landfill that is segregated shall be adequately secured and contained to prevent leakage or contamination of the environment. The solid waste management facility owner or operator shall have the unauthorized waste removed or properly managed as soon as practicable, but not more than 90 days after discovery. Removal shall be by a person authorized to transport such waste to a waste management facility approved to receive it for treatment, disposal, or transfer.

4. Each noncaptive landfill receiving waste generated outside Virginia shall include provisions in the landfill's unauthorized waste control program for notifying customers outside of Virginia of Virginia's requirements and for preventing the acceptance of prohibited wastes. Each noncaptive landfill shall comply with the same increased random inspection provisions presented for all such landfills in subdivision 5 of this subsection, as applicable.

5. The owner or operator of all landfills (other than captive industrial landfills) shall implement an inspection program to be conducted by landfill personnel to detect and prevent disposal of those wastes prohibited in 9VAC20-81-40 and 9VAC20-81-140. In addition to implementing the requirements of the control program for unauthorized waste in this subsection, the program shall include, at a minimum:

a. The procedures for the routine monitoring and observation of incoming waste at the working face of the landfill;

b. The procedures for random inspections of incoming loads to detect whether incoming loads contain regulated hazardous wastes, PCB wastes, regulated medical waste, or other unauthorized solid waste and ensure that such wastes are not accepted at the landfill. The owner or operator shall inspect a minimum of 1.0% of the incoming loads of waste. In addition, if the facility receives waste generated outside of Virginia and the regulatory structure in that jurisdiction allows for the disposal or incineration of wastes as municipal solid waste that Virginia's laws and regulations prohibit or restrict, the facility shall inspect a minimum of 10% of the incoming loads from that jurisdiction;

c. Records of all inspections, to include at a minimum time and date of the inspection, the personnel involved, the hauler, the type of waste observed, the identity of the generator of the waste if it can be determined, the location of the facility where the waste was handled prior to being sent to the landfill, and the results of the inspection. All records associated with unauthorized waste monitoring and incidents shall be retained onsite for a minimum of three years and shall be available for inspection by the department;

d. Training of landfill personnel to recognize and manage regulated hazardous waste, PCB wastes, regulated medical waste, and other unauthorized solid wastes. Refresher training on the unauthorized waste control program shall be conducted on an annual basis (at least once every 12 months);

e. Notification to the department in accordance with 9VAC20-81-530 C 3 if a regulated hazardous waste, PCB waste, regulated medical waste, or other unauthorized waste is discovered at the landfill~~. This notification will be made orally as soon as possible, but no later than 24 hours after the occurrence and shall be followed within five working days by a written report that includes a description of the event, the cause of the event, the time and date of the event, and the actions taken to respond to the event~~; and

f. All regulated medical waste, PCB waste, or other unauthorized solid waste that are detected at a landfill shall be isolated from the incoming waste and properly contained until arrangements can be made for proper transportation for treatment or disposal at an approved facility.

9VAC20-81-120. Siting requirements.

A. The siting of the waste management boundary for all ~~new~~ sanitary, CDD, and industrial landfills shall be governed by the standards set forth in this section.

~~A.~~ B. Floodplains. No new ~~landfill~~ or expanded waste management boundary shall be sited in a 100-year floodplain.

~~B.~~ C. Stable areas. New ~~landfills~~ and expanded waste management boundaries shall be sited in geologically stable areas where adequate foundation support for the structural components of the landfill exists. At a minimum, factors to be considered when determining stable areas shall include:

1. Onsite or local soil conditions that may result in differential settling and subsequent failure of structural components or containment structures; and

2. Onsite or local geological or manmade features or events that may result in sudden or nonsudden events and subsequent failure of structural components or containment structures.

~~C.~~ D. Restrictions (distances are to be measured in the horizontal plane).

1. No ~~disposal unit or leachate storage unit~~ new or expanded waste management boundary shall be closer than:

a. ~~200~~ 500 feet from any residence, school, daycare center, hospital, nursing home, or recreational park area in existence at the time of application;

b. 100 feet from any perennial stream or river;

c. ~~50~~ 100 feet from the facility boundary;

d. 500 feet from any well, spring, or other groundwater source of drinking water in existence at the time of application; and

e. 1,000 feet from the nearest edge of the right-of-way of any interstate or primary highway or 500 feet from the nearest edge of the right-of-way of any other highway or city street, except the following:

(1) Units that are screened by natural objects, plantings, fences, or other means so as to minimize the visibility from the main-traveled way of the highway or city street, or otherwise removed from sight;

(2) Units that are located in areas that are zoned for industrial use under authority of state law or in unzoned industrial areas as determined by the Commonwealth Transportation Board; or

(3) Units that are not visible from the main-traveled way of the highway or city street.

2. No new ~~landfill~~ or expanded waste management boundary shall be sited or constructed in any park or recreational area, wildlife management area, ~~or~~ area designated by the federal or state agency as the critical habitat of any endangered species or locally designated resource protection area as defined in 9VAC25-830-80.

3. Sanitary landfills.

a. No new or expanded waste management boundary for a sanitary landfill ~~area~~ shall be sited or constructed:

(1) Within a one mile upgradient of any existing surface or groundwater public water supply intake or reservoir;

(2) Within three miles upgradient of any existing surface or groundwater public water supply intake or reservoir except as allowed under the provisions of § 10.1-1408.4 B 3 of the Code of Virginia;

(3) In any area vulnerable to flooding resulting from dam failures;

(4) Over a sinkhole or less than 100 feet over a solution cavern associated with karst topography; or

(5) Over a fault that has had displacement in Holocene time.

b. No new or expanded waste management boundary for a sanitary landfill ~~or expansion of an existing sanitary landfill~~ shall be sited or constructed:

(1) Within 200 feet of a fault that has had displacement in Holocene time unless the owner or operator demonstrates to the director that an alternative setback distance of less than 200 feet will prevent damage to the structural integrity of the facility and will be protective of human health and the environment; or

(2) Within seismic impact zones, unless the owner or operator demonstrates to the director that all containment structures, including liners, leachate collection systems, and surface water control systems, are designed to resist the maximum horizontal acceleration in lithified earth material for the site.

~~D.~~ E. Groundwater.

1. No new ~~facility~~ or expanded waste management boundary shall be located in areas where groundwater monitoring cannot be conducted in accordance with 9VAC20-81-250 unless this requirement is suspended by the director pursuant to subdivision A 1 c of that section. Factors to be considered in determining whether or not a site can be monitored shall include:

a. Ability to characterize the direction of groundwater flow within the uppermost aquifer;

b. Ability to characterize and define any releases from the landfill so as to determine what corrective actions are necessary; and

c. Ability to perform corrective action as necessary;

~~E.~~ F. Wetlands.

1. Sanitary landfills.

a. New and expanded waste management boundaries for sanitary landfills ~~and expansions of existing landfills~~, other than those impacting less than 2.0 acres of nontidal wetlands, shall not be sited or constructed in any tidal wetland or nontidal wetland contiguous to any surface water body.

b. After July 1, 1999, construction at existing permitted facilities (allowed under the provisions of § 10.1-1408.5) only will be allowed with approvals under the provisions of 9VAC25-210. In addition, the demonstration noted in subdivision 3 of this subsection must be made by the owner or operator to the director.

2. New and expanded waste management boundaries for CDD or industrial landfills ~~and expansions of existing CDD or industrial landfills~~ shall not be located in wetlands, unless the owner or operator can make the demonstration noted in subdivision 3 of this subsection.

3. Demonstration.

a. Where applicable under § 404 of the Clean Water Act or § 62.1-44.15:5 of the Code of Virginia, the presumption is clearly rebutted that a practicable alternative to the proposed landfill exists that does not involve wetlands;

b. The construction and operation of the landfill will not:

(1) Cause or contribute to violations of any applicable water quality standard;

(2) Violate any applicable toxic effluent standard or prohibition under § 307 of the Clean Water Act;

(3) Jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of a critical habitat, protected under the Endangered Species Act of 1973; and

(4) Violate any requirement under the Marine Protection, Research, and Sanctuaries Act of 1972 for the protection of a marine sanctuary;

c. The landfill will not cause or contribute to significant degradation of wetlands. The owner or operator shall demonstrate the integrity of the landfill and its ability to protect ecological resources by addressing the following factors:

(1) Erosion, stability, and migration potential of native wetland soils, muds, and deposits used to support the landfill;

(2) Erosion, stability, and migration potential of dredged and fill materials used to support the landfill;

(3) The volume and chemical nature of the waste managed in the landfill;

(4) Impacts on fish, wildlife, and other aquatic resources and their habitat from release of the solid waste;

(5) The potential effects of catastrophic release of waste to the wetland and the resulting impacts on the environment; and

(6) Any additional factors, as necessary, to demonstrate that ecological resources in the wetland are protected;

d. To the extent required under § 404 of the Clean Water Act or applicable Virginia wetlands laws, steps have been taken to attempt to achieve no net loss of wetlands (as defined by acreage and function) by first avoiding impacts to wetlands to the maximum extent practicable as required by subdivision 3 of this subsection, then minimizing unavoidable impacts to the maximum extent practicable, and finally offsetting remaining unavoidable wetland impacts through all appropriate and practicable compensatory mitigation actions (e.g., restoration of existing degraded wetlands or creation of manmade wetlands); and

e. Information is available to enable the department to make a reasonable determination with respect to these demonstrations.

~~F.~~ G. Limiting site characteristics.

1. Certain site characteristics may prevent approval or require substantial limitations on the site use or require incorporation of sound engineering controls. Such site characteristics shall be identified and an explanation of precautions necessary to assure compliance with the provisions of this chapter shall be provided. Examples include~~, but are not limited to~~:

a. Excessive slopes (greater than 33%);

b. Lack of readily available cover materials on site, or lack of a firm commitment for adequate cover material from a borrow site;

c. Springs, seeps, or other groundwater intrusion into the site;

d. The presence of gas, water, sewage, or electrical or other transmission lines under the site; or

e. The prior existence on the site of an open dump, unpermitted landfill, lagoon, or similar unit, even if such a unit is closed, will be considered a defect in the site unless the proposed unit can be isolated from the defect by the nature of the unit design and the groundwater for the proposed unit can be effectively monitored.

~~G.~~ H. Specific site conditions may be considered in approving an exemption of a site from the following:

1. The limiting site characteristics in subsection F of this section for all landfills; and

2. The groundwater monitoring in subsection D of this section for CDD and industrial landfills.

~~H.~~ I. Acceptable landfill sites shall allow for adequate area and terrain for management of leachate.

~~I.~~ J. Airport safety.

1. Owners or operators of all sanitary landfills with new or expanded waste management boundaries that are located within 10,000 feet of any airport runway end used by turbojet aircraft or within 5,000 feet of any airport runway end used by only piston-type aircraft shall demonstrate that the units are designed and operated so that the landfill does not pose a bird hazard to aircraft.

2. Owners or operators proposing to site new or expanded waste management boundaries for a sanitary landfill ~~and expansions of an existing landfill~~ within a ~~five-mile~~ six-mile radius of any airport runway end used by turbojet or piston-type aircraft shall notify the affected airport and the Federal Aviation Administration (FAA). Owners and operators should also be aware that 49 USC § 44718(d), restricts the establishment of landfills within six miles of public airports under certain conditions. Provisions for exemptions from this law also exist.

~~J.~~ K. For CDD landfills located in strip mine pits, all coal seams and coal outcrops shall be isolated from solid waste materials by a minimum of five feet of natural or compacted soils with a hydraulic conductivity equal to or less than $1x10^{-7}$ cm/sec.

9VAC20-81-130. Design and construction requirements.

A. The design and construction of all sanitary, CDD, and industrial landfills shall be governed by the standards set forth in this section.

~~A.~~ B. Both the landfill capacity (in cubic yards) and the daily disposal limit shall be specified.

~~B.~~ C. All facilities shall be surrounded on all sides by natural barriers, fencing, or an equivalent means of controlling vehicular and public access and preventing illegal disposal. All access will be limited by gates, and such gates shall be securable and equipped with locks, except, in the case of industrial disposal sites where the solid waste disposal landfill is on site of the industrial facility where access is limited.

~~C.~~ D. All landfill access roads shall be provided with a base capable of withstanding anticipated heavy vehicle loads and shall be all-weather roads extending from the entrance of the landfill to the working face.

~~D.~~ E. All facilities, except captive industrial, shall have an adequately lighted and heated shelter where operating personnel can exercise site control and have access to essential sanitation facilities. Lighting, heat, and sanitation facilities may be provided by portable equipment as necessary.

~~E.~~ F. Aesthetics shall be considered in the design of a landfill or site. Use of artificial or natural screens shall be incorporated into the design for site screening and noise attenuation. The design shall reflect those requirements, if any, that are determined from the long-range plan for the future use of the site. Noise attenuation shall be less than 80 dBA at the facility boundary.

~~F.~~ G. All landfills shall be equipped with permanent or mobile telephone or radio communications except at industrial landfills where other onsite resources are available.

~~G. Two~~ H. A minimum of two survey benchmarks shall be established and maintained on the landfill site, and their location identified or recorded on drawings and maps of the landfill. Benchmark horizontal and geometric locations shall be provided in the North American Datum of 1983 (NAD83), and elevations shall be provided in the National Geodetic Vertical Datum of 1929 (NGVD 29) or North American Vertical Datum of 1988 (NAVD88), or shall be referenced to a datum and geographic coordinate system in accordance with the latest industry standard.

~~H.~~ I. Surface water runoff. Facilities shall be designed based on current available rainfall intensity data to provide and maintain:

1. A run-on control system to prevent flow onto the active portion of the landfill during the peak discharge from a 24-hour, 25-year storm;

2. A ~~run-off~~ runoff control system from the active portion of the landfill to collect and control at least the water volume resulting from a 24-hour, 25-year storm. ~~Run-off~~ Runoff from the active portion of the landfill unit shall be handled in a manner that will not cause the discharge of:

a. Pollutants into waters of the United States, including wetlands, that violates any requirements of the Clean Water Act, including~~, but not limited to,~~ the Virginia Pollutant Discharge Elimination System (VPDES) requirements; and

b. A nonpoint source of pollution to waters of the United States, including wetlands, that violates any requirement of an areawide or statewide water quality management plan that has been approved under § 208 or 319 of the Clean Water Act, as amended; ~~and~~

3. Drainage structures shall be installed and continuously maintained to prevent ponding and erosion, and to minimize infiltration of water into solid waste cells; and

4. Erosion and sediment control measures for all areas of land-disturbing activity, consistent with the Erosion and Sediment Control Regulations (9VAC25-840) and the minimum standards and specifications.

~~I.~~ J. A fire break of 50 feet shall be designed between the limits of waste and all tree lines.

~~J.~~ K. Bottom liner.

1. Sanitary landfills.

All sanitary landfills shall be underlain by a composite liner system as follows:

a. Subtitle D Liner System.

(1) Base preparation to protect the liner by preventing liner failure through subsidence or structural failure of the liner system.

(2) A lower liner consisting of at least a two-foot layer of compacted soil or augmented soil with a hydraulic conductivity of no more than $1x10^{-7}$ cm/sec.

(3) An upper component consisting of a minimum 30 mil flexible membrane liner (FML). If high density polyethylene (HDPE) is used as an FML, it shall be at least 60 mil thick. The FML component shall be:

(a) Installed in direct and uniform contact with the compacted soil liner;

(b) Placed in accordance with an approved construction quality control/quality assurance program submitted with the design plans; and

(c) Placed with a minimum of 2.0% slope for leachate drainage.

b. ~~Alternate Liner System.~~ FML/Geosynthetic Clay Liner (GCL).

(1) The ~~alternate~~ FML/GCL liner system presented below is the minimum that is required under these regulations requiring no demonstration. If additional components to this ~~alternate~~ FML/GCL system are incorporated into the liner design, no demonstration will be required pursuant to subdivision J 1 c of this section.

(2) A controlled subgrade with a minimum thickness of 12 inches shall be provided immediately beneath the ~~alternate~~ FML/GCL liner. The controlled subgrade ~~shall consist of soils having a Unified Soil Classification of SC, ML, CL, MH, or CH and~~ shall be compacted to a minimum of 95% of the maximum dry density, as determined by ASTM D698 (Standard Proctor). The surface shall be rolled smooth and be free of rocks or stones in excess of 0.75 inches prior to placement of the overlying GCL.

The surface shall be prepared to meet the liner manufacturer's and the installer's specifications. The liner manufacturer's/installer's specifications shall consider compaction, soft areas, proof rolling, maximum grain size, rocks, and other subgrade imperfections that may affect the liner. The liner installer shall provide written acceptance of the subgrade before installing liner on it.

(3) A lower liner consisting of geosynthetic clay liner (GCL) with a hydraulic conductivity of no more than ~~$1x10^{-9}$~~ $5x10^{-9}$ cm/sec. The GCL shall have appropriate overlap between adjacent panels so as to minimize the risk of panel shrinkage ~~and/or~~ or transverse shortening creating panel separation, and be installed with a minimum 12-inch overlap on the panel ends and 6-inch overlap between adjacent panels. If the liner system will be exposed prior to the placement of a protective cover layer for periods in excess of two months, a discussion of the adequacy of the GCL overlap shall be included in the certification report. Granular bentonite shall be spread on all seams prior to placement of overlapping panels, or other means per manufacturer's specifications.

(4) An upper component consisting of a minimum 30 mil flexible membrane liner (FML). If high density polyethylene (HDPE) is used as an FML, it shall be at least 60 mil thick. The FML component shall be:

(a) Installed in direct and uniform contact with the GCL;

(b) Placed in accordance with an approved construction quality control/quality assurance program submitted with the design plans;

(c) Placed with a minimum of 2.0% slope for leachate drainage; and

(d) Leachate collection aggregate/protective cover materials shall be placed as soon as practical following the completion of the FML installation. At a minimum, this material should be placed within three months of final acceptance of the FML surface by the CQA engineer.

c. Additional alternate liner systems.

(1) Additional alternate liner systems may be approved if the owner or operator of the landfill demonstrates to the satisfaction of the director that the proposed alternate liner system design will ensure that the maximum contaminant levels (MCL) promulgated under § 1412 of the Safe Drinking Water Act (40 CFR Part 141) will not be exceeded in the uppermost aquifer at the disposal unit boundary.

(a) The demonstration shall be based on the consideration of the following factors:

(1) The hydrogeologic characteristics of the landfill and surrounding land;

(2) The climatic factors of the area;

(3) The volume and physical and chemical characteristics of the leachate;

(4) The quantity, quality, and direction of flow of groundwater;

(5) The proximity and withdrawal rate of the groundwater users;

(6) The availability of alternative drinking water supplies;

(7) The existing quality of the groundwater, including other sources of contamination and their cumulative impacts on the groundwater, and whether the groundwater is currently used or reasonably expected to be used for drinking water;

(8) Public health, safety, and welfare effects; and

(9) Practicable capability of the owner or operator.

(b) The demonstration shall be supported by the results of a mathematical modeling study based on the EPA

MULTIMED model.[1] Other models may be used if accompanied by justification describing the reasons for inapplicability of the MULTIMED model.[2]

[1]Sharp-Hansen, S., C. Travers, P. Hummel, T. Allison, R. Johns, and W. B. Mills. A Subtitle D Landfill Application Manual for the Multimedia Exposure Assessment Model (MULTIMED 2.0), United States Environmental Protection Agency, Athens, Georgia, 1995.

[2]For a listing and review of models see Travers, C.L., and S. Sharp-Hansen, Leachate Generation and Migration at Subtitle D Facilities: A Summary and Review of Processes and Mathematical Models, United States Environmental Protection Agency, Environmental Research Laboratory, Athens, Georgia (1991).

2. CDD and industrial landfills. All landfills shall be underlain by a liner system as follows:

a. Compacted clay:

(1) A liner consisting of at least one-foot layer of compacted soil with a hydraulic conductivity of no more than $1x10^{-7}$ cm/sec.

(2) The liner shall be placed with a minimum of 2.0% slope for leachate drainage.

(3) The liner shall be covered with a minimum one-foot thick drainage layer.

b. Synthetic liners:

(1) Synthetic liner consisting of a minimum 30 mil thick flexible membrane. If high density polyethylene is used, it shall be at least 60 mil thick. Synthetic liners shall be proven to be compatible with the solid waste and its leachate.

(2) The liner shall be placed in accordance with an approved construction quality ~~control/quality~~ control or quality assurance program submitted with the design plans.

(3) The surface under the liner shall be a smooth rock-free base or otherwise prepared to prevent liner failure.

(4) The liner shall be placed with a minimum of 2.0% slope for leachate drainage.

(5) The liner shall be covered with a 12-inch thick drainage layer for leachate removal and a six-inch thick protective layer placed above the drainage layer, both composed of materials with a hydraulic conductivity of $1x10^{-3}$ cm/sec or greater (lab tested).

c. Other liners:

(1) Other augmented compacted clays or soils may be used as a liner provided the thickness is equivalent and the hydraulic conductivity will be equal to or less than that for compacted clay alone.

(2) The effectiveness of the proposed augmented soil liner shall be documented by using laboratory tests.

(3) The liner shall be placed with a minimum of 2.0% slope for leachate drainage.

d. In-place soil:

(1) Where the landfill will be separated from the groundwater by low hydraulic conductivity soil as indicated by laboratory tests, which is natural and undisturbed, and provides equal or better performance in protecting groundwater from leachate contamination, a liner can be developed by manipulation of the soil to form a liner with equivalent thickness and hydraulic conductivity equal to or less than that of the clay liner.

(2) The liner shall be prepared with a minimum of 2.0% slope for leachate drainage. Interior liner slopes of 33% will be allowed provided that adequate runoff and erosion controls are established. All interior slopes shall be supported by necessary calculations and included in the design manual.

e. Double liners required or used in lieu of groundwater monitoring shall include:

(1) Base preparation to protect the liner.

(2) A bottom or secondary liner that is soil, synthetic, or augmented soil as indicated in subdivision 2 a, b, c, or d of this subsection.

(3) A witness or monitoring zone placed above the bottom or secondary liner consisting of a 12-inch thick drainage layer composed of material with a hydraulic conductivity of $1x10^{-3}$ cm/sec or greater (lab tested) with a network of perforated pipe, or an equivalent design.

(4) The primary liner as indicated in subdivision 2 a, 2 b, or 2 c of this subsection.

(5) The primary liner will be covered with a minimum 12-inch thick drainage layer and a six-inch thick protective layer, placed above the drainage layer, both composed of materials having a hydraulic conductivity of $1x10^{-3}$ cm/sec or greater (lab tested).

(6) A program for monitoring the witness zone shall be established. The program will monitor the quantity and quality of liquids collected from this zone and shall be designed to detect waste constituents most likely associated with the waste accepted at the landfill. The program will also establish a leakage action rate beyond which groundwater contamination will be assessed through a groundwater monitoring program in accordance with 9VAC20-81-250.

f. If five-foot separation from seasonal high ground water can be demonstrated, a separate area may be established to receive only stumps, brush, leaves, and land-clearing debris. Such an area may be constructed without a liner or a leachate collection system, but may not receive any other solid waste.

~~K.~~ L. Each site design shall include a decomposition gas venting system or gas management system (see 9VAC20-81-

200), except at CDD and industrial landfills if the owner or operator can demonstrate to the department that gas formation is not a concern.

~~L.~~ M. Leachate control and monitoring systems are subject to the requirements in 9VAC20-81-210.

~~M.~~ N. A groundwater monitoring system shall be installed at all landfills in accordance with 9VAC20-81-250, except for the exemption of double-lined CDD or industrial landfills referenced in this section.

~~N.~~ O. Final contours of the finished landfill shall be specified. Design of final contours shall consider subsequent site uses, existing natural contours, surface water management requirements, and the nature of the surrounding area. The final elevation of the landfill shall be limited by the structural capacity of the liner and leachate collection and removal system and by stability of foundation and slopes. The final contour shall not cause structural damage or collapse of the leachate collection system.

~~O.~~ P. Finished side slopes shall be designed as set forth in 9VAC20-81-160 ~~D~~ E 3 ~~of this part~~.

~~P.~~ Q. All landfills shall be constructed in accordance with approved plans, which shall not be subsequently modified without approval by the department.

~~Q.~~ R. Construction quality assurance program.

1. General.

a. A construction quality assurance (CQA) program is required for all landfill units. The program shall ensure that the constructed unit meets or exceeds all design criteria and specifications in the permit. The program shall be developed and implemented under the direction of a CQA officer who is a professional engineer.

b. The CQA program shall address the following physical components, where applicable:

(1) Foundations;

(2) Low-hydraulic conductivity soil liners;

(3) Synthetic membrane liners;

(4) Leachate collection and removal systems including an 18-inch protective layer;

(5) Gas management components; and

(6) Final cover systems.

2. Written CQA plan. The owner or operator shall develop and implement a written CQA plan that shall include observations, inspections, tests, and measurements. The plan shall identify steps that will be used to monitor and document the quality of materials and the condition and manner of their installation. The CQA plan shall include:

a. Identification of applicable units, and a description of how they will be constructed;

b. Identification of key personnel in the development and implementation of the CQA plan, and CQA officer qualifications;

c. A description of inspection and sampling activities for all unit components identified in subdivision 1 b of this ~~section~~ subsection including observations and tests that will be used before, during, and after construction to ensure that the construction materials and the installed unit components meet the design specifications. The description shall cover sampling size and locations; frequency of testing; data evaluation procedures; acceptance and rejection criteria for construction materials and constructed components; plans for implementing corrective measures; and data or other information to be recorded;

d. Structural stability and integrity of all components of the unit identified in subdivision 1 b of this subsection;

e. Proper construction of all components of the liners, leachate collection and removal system, gas management system if required under subsection K of this section, and final cover system, according to permit specifications and good engineering practices, and proper installation of all components (e.g., pipes) according to design specifications;

f. Conformity of all materials used with design and other material specifications;

g. The permeability of the soil liner.

(1) The ability of the soil to be used as a liner material must be demonstrated using a test pad. At least one test pad shall be required for every source of low permeability liner soil. If soil sources are consistent (i.e. similar USCS soil type, liquid and plastic limits, grain size distribution, moisture density relationship, and permeability characteristics) one test pad will be adequate provided that the third-party quality control firm agrees. In the event that soils are not uniform within a borrow source an additional test pad shall be constructed for each soil type.

The test pad shall establish the range of criteria (compaction, moisture content, USCS classification, and grain size) that can be expected to achieve a low permeability soil liner meeting the requirements of the permit. To achieve these results the test pad's permeability shall be correlated with grain size analysis, liquid and plastic limits, moisture content, relative compaction, remolded permeability, undisturbed Shelby tube sample permeability, and the in-situ permeability determined by field tests performed on the test pad.

(2) Following the completion of the test pad the remaining low permeability liner system shall be certified by testing the constructed liner to determine its conformance to the acceptable criteria established during the test pad construction. Such tests shall include compaction, moisture content, grain size, and the liquid and plastic

limits of the soil. Any area that does not conform to the established criteria shall be further tested by obtaining an undisturbed Shelby tube sample of the constructed liner and performing a laboratory permeability on it. In addition to testing any liner areas that do not conform to the established test pad acceptance criteria, a minimum of one additional laboratory permeability test shall be performed on each acre of constructed liner.

3. Certification. Once construction is complete, the owner or operator shall submit to the department by certified mail or other equivalent method with a return receipt or hand delivery a certification signed by the CQA officer that the approved CQA plan has been successfully carried out and that the unit meets the requirements of this section. Documentation supporting the CQA officer's certification shall be submitted to the department upon request. An additional professional engineer's certification is required under the provisions of 9VAC20-81-490 A. Wastes shall not be accepted until the facility receives a Certificate to Operate (CTO) per 9VAC20-81-490 A.

9VAC20-81-140. Operation requirements.

A. The operation of all sanitary, CDD, and industrial landfills shall be governed by the standards set forth in this section. Landfill operations ~~will~~ shall be detailed in an operations manual ~~that shall be maintained in the operating record in accordance with 9VAC20-81-485. This operations manual will include an operations plan, an inspection plan, a health and safety plan, an unauthorized waste control plan, an emergency contingency plan, and a landscaping plan~~ meeting the requirements of this section and 9VAC20-81-485. ~~This manual shall be made available to the department when requested. If~~ The facility shall operate in accordance with this manual, and if the applicable standards of this chapter and the landfill's Operations Manual conflict, this chapter shall take precedence.

~~A.~~ B. Landfill operational performance standards.

1. The facility shall operate under the direct supervision of a waste management facility operator licensed by the Board for Waste Management Facility Operators.

2. Safety hazards to operating personnel shall be controlled through an active safety program consistent with the requirements of 29 CFR Part 1910, as amended.

~~2.~~ 3. A groundwater monitoring program meeting the requirements of 9VAC20-81-250 shall be implemented, as applicable.

~~3.~~ 4. A corrective action program meeting the requirements of 9VAC20-81-260 is required whenever the groundwater protection standard is exceeded at statistically significant levels.

~~4.~~ 5. Open burning and fire control at active landfills.

a. Owners or operators shall ensure that the units do not violate any applicable requirements developed by the State Air Pollution Control Board or promulgated by the EPA administrator pursuant to § 110 of the Clean Air Act, as amended (42 USC §§ 7401 to 7671q).

b. Open burning of solid waste, except for infrequent burning of agricultural wastes, silvicultural wastes, land-clearing debris, diseased trees, or debris from emergency cleanup operations is prohibited. There shall be no open burning permitted on areas where solid waste has been disposed of or is being used for active disposal. Open burning shall be limited to five days per quarter. Facilities located in volatile organic compound emissions control areas as designated by 9VAC5-20-206 shall not burn from May 1 through September 30.

c. The owner or operator shall be responsible for extinguishing any fires that may occur at the facility in accordance with the facility's fire control plan. ~~A fire control plan will be developed that outlines the response of facility personnel to fires. The fire control plan will be provided as an attachment to the emergency contingency plan required under the provisions of 9VAC20-81-485. The fire control plan will be available for review upon request by the public. There shall be no open burning permitted on areas where solid waste has been disposed or is being used for active disposal.~~ Fires shall be effectively controlled and extinguished as soon as possible. Landfill fire control shall include application of sufficient soil or other fire suppression materials (e.g., water or foam) as appropriate.

d. A fire control plan shall be developed that outlines the response of facility personnel to fires. The fire control plan shall be provided as an attachment to the emergency contingency plan required under the provisions of 9VAC20-81-485. The fire control plan shall be available for review upon request by the public.

e. The owner or operator of an active landfill shall train staff to recognize fire hazards and respond to fires in accordance with the facility's fire control plan. Refresher training on the procedures in the fire control plan shall be provided to staff on an annual basis (at least once every 12 months).

~~5.~~ 6. Except as provided in 9VAC20-81-130 ~~K~~ L, owners or operators shall implement a gas management plan in accordance with 9VAC20-81-200 to control landfill gas such that:

a. The concentration of methane gas generated by the landfill does not exceed 25% of the lower explosive limit for methane (1.25% methane by volume) in landfill structures (excluding gas control or recovery system components); and

b. The concentration of methane gas does not exceed the lower explosive limit for methane ~~at~~ (5.0% methane by volume) within the facility boundary gas monitoring network.

~~6.~~ 7. Landfills shall not:

a. Allow leachate from the landfill to drain or discharge into surface waters except when treated onsite and discharged into surface water as authorized under a VPDES Permit (9VAC25-31).

b. Cause a discharge of pollutants into waters of the United States, including wetlands, that violates any requirements of the Clean Water Act (33 USC § 1251 et seq.), including~~, but not limited to,~~ the VPDES requirements and Virginia Water Quality Standards (9VAC25-260).

c. Cause the discharge of a nonpoint source of pollution to waters of the United States, including wetlands, that violates any requirement of an areawide or statewide water quality management plan that has been approved under § 208 or 319 of the Clean Water Act (33 USC § 1251 et seq.), as amended or violates any requirement of the Virginia Water Quality Standards (9VAC25-260).

d. Allow solid waste to be deposited in or to enter any surface waters or groundwaters.

e. Allow solid waste to be placed outside the constructed disposal unit boundary or above the vertical design capacity, except as may be separately permitted or approved in writing by DEQ for exigent or emergency situations.

~~7.~~ 8. Owners or operators shall maintain the ~~run-on/runoff~~ run-on and runoff control systems designed and constructed in accordance with 9VAC20-81-130 ~~H~~ I.

~~8.~~ 9. Access to sanitary, CDD, or noncaptive industrial landfills shall be permitted only when an attendant is on duty and only during daylight hours, unless otherwise specified in the landfill permit.

~~9.~~ 10. Fencing or other suitable control means shall be used to control litter migration. All litter blown from the landfill operations shall be collected on a weekly basis.

~~10.~~ 11. Odors and vectors shall be effectively controlled so they do not constitute nuisances or hazards. Odor hazard or nuisances shall be controlled in accordance with 9VAC20-81-200 ~~D~~ E. Disease vectors shall be controlled using techniques for the protection of human health and the environment.

~~11.~~ 12. If salvaging is allowed by a landfill, it shall not interfere with operation of the landfill and shall not create hazards or nuisances.

~~12.~~ 13. Fugitive dust and mud deposits on main offsite roads and access roads shall be minimized at all times to limit nuisances. Dust shall be controlled to meet the requirements of Article 1 (9VAC5-40-60 et seq.) of Part II of 9VAC5-40.

~~13.~~ 14. Internal roads in the landfill shall be maintained to be passable in all weather by ordinary vehicles. All operation areas and units shall be accessible, including the access roads or paths to monitoring locations.

~~14.~~ 15. All landfill ~~appurtenances~~ infrastructure listed in 9VAC20-81-130 shall be properly maintained and operated as designed and approved in the facility's permit.

~~15.~~ 16. Adequate numbers and types of properly maintained equipment shall be available to a landfill for operation. Provision shall be made for substitute equipment to be available or alternate means implemented to achieve compliance with subdivision B 1, C 1, or D 1 of this section, as applicable, within 24 hours should the former become inoperable or unavailable. Operators with training appropriate to the tasks they are expected to perform and in sufficient numbers for the complexity of the site shall be on the site whenever it is in operation.

~~16. Self-Inspection~~ 17. Self-inspection. Each landfill shall implement an inspection routine including a schedule for inspecting all applicable major aspects of facility operations necessary to ensure compliance with the requirements of this chapter. Records of these inspections must be maintained in the operating record and available for review. At a minimum, the following aspects of the facility shall be inspected on at least a monthly basis: erosion and sediment controls, storm water conveyance system, leachate collection system, leachate seep control, safety and emergency equipment, internal roads, and operating equipment. The groundwater monitoring system and gas management system shall be inspected at a rate consistent with the system's monitoring frequency. Records must include the date and time of the inspection; the name of the inspector; a description of the inspection, including the identity of specific equipment and structures inspected; the observations recorded; and the date and nature of any remedial actions implemented or repairs made as a result of the inspection.

~~17.~~ 18. Records to include, at a minimum, date of receipt, quantity by weight or volume, and origin shall be maintained on solid waste received and processed to fulfill the applicable requirements of the Solid Waste Information and Assessment Program under 9VAC20-81-80 and the Control Program for Unauthorized Waste under 9VAC20-81-100 E. Such records shall be made available to the department for examination or use when requested.

19. The facility shall operate within the hours of operation specified in the permit. The facility may request a temporary extension of operating hours if necessary in order to respond to an emergency or other unusual event.

20. The facility shall not exceed the daily disposal limit or waste storage limits specified in the permit. The facility may request a temporary increase in daily disposal limit or waste storage limits if necessary in order to respond to an emergency or other unusual event.

21. Topographic survey. Each landfill with a permitted daily disposal limit of more than 300 tons per day shall perform a

topographic survey of the active portion of the landfill on an annual basis (at least once every 12 months). Each landfill with a permitted daily disposal limit of 300 tons per day or less shall perform a topographic survey of the active portion of the landfill on a biennial basis (at least once every 24 months). The survey shall be certified by a professional engineer or certified land surveyor licensed in the Commonwealth of Virginia, unless exempt pursuant to § 54.1-402 of the Code of Virginia. The survey results shall be compared to the landfill permit's final site topography plan. Within 90 days of the survey, the landfill shall submit to the department a drawing comparing surveyed elevations, permitted final elevations, and the disposal unit boundary. The drawing shall note areas that have reached final elevation or lateral extent, and any areas of overfill (waste outside the constructed disposal unit boundary or above the vertical design capacity) including an estimate of total area and volume of overfill. The remaining capacity and estimated life within the permitted disposal unit boundary shall also be included as part of the submittal.

~~B.~~ C. In addition to the standards in subsection A of this section, sanitary landfills shall also comply with the following:

1. Compaction and cover requirements.

a. Unless provided otherwise in the permit, solid waste shall be spread into two-foot layers or less and compacted at the working face, which shall be confined to the smallest area practicable as determined by the tipping demand for unloading.

b. Lift heights shall be sized in accordance with daily waste volumes. Lift height is not recommended to exceed 10 feet.

c. Daily cover consisting of at least six inches of compacted soil or other approved material shall be placed upon and maintained on all exposed solid waste prior to the end of each operating day, or at more frequent intervals if necessary, to control disease vectors, fires, odors, blowing litter, ~~and~~ scavenging, and stormwater infiltration. Alternate materials of an alternate thickness may be approved by the department if it has been demonstrated that the alternate material and thickness control disease vectors, fires, odors, blowing litter, ~~and~~ scavenging, and stormwater infiltration, without presenting a threat to human health and the environment. ~~At least three days of acceptable cover soil or approved material at the average usage rate shall be maintained at the landfill or readily available at all times.~~ Alternate daily cover shall be applied in accordance with the site-specific conditions approved by the department. The use of an alternate daily cover shall cease if it is not effective in controlling disease vectors, fires, odors, blowing litter, scavenging, and stormwater infiltration; if the use of the material results in nuisances; or if the material erodes and results in waste being exposed.

d. If the landfill accepts asbestos-containing waste material for disposal, the waste shall be covered upon receipt in accordance with the requirements of 9VAC20-81-620 C.

e. At least three days of acceptable cover soil or approved material at the average usage rate shall be maintained as close as practicable to the landfill working face and readily available at all times to ensure materials can be accessed and applied during inclement weather conditions and to facilitate a timely response to any landfill fires should they occur.

~~d.~~ f. Intermediate cover of at least six inches of additional compacted soil shall be applied and maintained whenever an additional lift of refuse is not to be applied within 30 days. Intermediate cover shall be graded to prevent ponding and accelerate surface runoff in order to minimize infiltration of water into solid waste cells. Further, all areas with intermediate cover exposed shall be inspected as needed, but not less than weekly. Additional cover material shall be placed on all cracked, eroded, and uneven areas as required to maintain the integrity of the intermediate cover system.

~~e.~~ g. Final cover construction will be initiated and maintained in accordance with the requirements of 9VAC20-81-160 ~~D~~ E 2 when the following pertain:

(1) An additional lift of solid waste is not to be applied within one year, or a longer period as required by the facility's phased development.

(2) Any area of a landfill attains final elevation and within 90 days after such elevation is reached or longer if specified in the landfill's approved closure plan.

(3) An entire landfill's permit is terminated for any reason, and within 90 days of such denial or termination.

~~f.~~ h. Vegetation shall be established and maintained on all exposed final cover material within four months after placement, or as specified by the department when seasonal conditions do not permit. Mowing will be conducted a minimum of once a year or ~~at a frequency~~ more frequent as suitable for the vegetation and climate. Unless the approved final cover design includes the use of woody vegetation, the facility shall prevent establishment of woody vegetation and control vegetative height in order to maintain the integrity of the final cover and allow for access and adequate inspection of cover and other landfill infrastructure. The facility shall make repairs to the cover as necessary to correct the effects of settlement, subsidence, erosion, or other events.

~~g.~~ i. Areas where waste has been disposed that have not received waste within 30 days will not have slopes exceeding the final cover slopes specified in the permit or 33% unless steeper slopes are approved in the permit.

~~2. The active working face of a sanitary landfill shall be kept as small as practicable, determined by the tipping demand for unloading.~~

~~3.~~ 2. A sanitary landfill that is located within 10,000 feet of any airport runway used for turbojet aircraft or 5,000 feet of any airport runway used by only piston type aircraft, shall operate in such a manner that the landfill does not increase or pose additional bird hazards to aircraft.

~~4.~~ 3. Sanitary landfills shall not dispose of the following wastes, except as specifically authorized by the landfill permit or by the department:

a. Free liquids.

(1) Bulk or noncontainerized liquid waste, unless:

(a) The waste is household waste; or

(b) The waste is gas condensate derived from that landfill;

(c) The waste is leachate derived from that landfill and the landfill is designed with a composite liner and leachate collection system as described in 9VAC20-81-130 ~~J~~ K 1 a and 9VAC20-81-130 ~~L~~ M; or

(2) Containers holding liquid waste, unless:

(a) The container is a small container similar in size to that normally found in household waste;

(b) The container is designed to hold liquids for use other than storage; or

(c) The waste is household waste.

b. Regulated hazardous wastes as defined by the Virginia Hazardous Waste Management Regulations (9VAC20-60).

c. Solid wastes, residues, or soils containing more than 1.0 ppb (parts per billion) TEF (dioxins).

d. Solid wastes, residues, or soils containing 50.0 ppm (parts per million) or more of PCB's except as allowed under the provisions of 9VAC20-81-630.

e. Sludges that have not been dewatered.

f. Contaminated soil unless approved by the department in accordance with the requirements of 9VAC20-81-610 or 9VAC20-81-660.

g. Regulated medical waste as specified in the Regulated Medical Waste Management Regulations (9VAC20-120).

~~5.~~ 4. Chloroflourocarbons, hydrochlorofluorocarbons, and PCBs must be removed from white goods prior to placement on the working face.

~~C.~~ D. In addition to the standards in subsection ~~A~~ B of this section, ~~Construction/demolition/debris~~ construction/demolition/debris landfills shall also comply with the following:

1. Compaction and cover requirements.

a. Waste materials shall be compacted in shallow layers during the placement of disposal lifts to minimize differential settlement.

b. Compacted soil cover shall be applied as ~~needed for safety and aesthetic purposes~~ necessary to control fires, odors, blowing litter, and stormwater infiltration. A minimum one-foot thick progressive cover shall be maintained weekly such that the top of the lift is fully covered at the end of the work week. If the landfill accepts Category I or II nonfriable asbestos-containing material for disposal, ~~daily soil cover shall be placed upon all exposed Category I or II nonfriable asbestos-containing material prior to the end of each operating day.~~ the waste shall be covered upon receipt in accordance with the requirements of 9VAC20-81-620 C. The open working face of a landfill shall be kept as small as practicable, determined by the tipping demand for unloading.

c. At least three days of acceptable cover soil shall be maintained as close as practicable to the landfill working face and readily available at all times to ensure materials can be accessed and applied during inclement weather conditions, and to facilitate a timely response to any landfill fires, should they occur.

d. When waste deposits have reached final elevations, or disposal activities are interrupted for 15 days or more, waste deposits shall receive a one-foot thick intermediate cover unless soil has already been applied in accordance with subdivision 1 b of this subsection and be graded to prevent ponding and to accelerate surface ~~run-off~~ runoff in order to minimize infiltration of water into solid waste cells. Further, all areas with intermediate cover exposed shall be inspected as needed but not less than weekly and additional cover material shall be placed on all cracked, eroded, and uneven areas as required to maintain the integrity of the intermediate cover system.

~~d.~~ e. Final cover construction will be initiated and maintained in accordance with the requirements of 9VAC20-81-160 ~~D~~ E 2 when the following pertain:

(1) An additional lift of solid waste is not to be applied within one year, or a longer period as required by the facility's phased development.

(2) Any area of a landfill attains final elevation and within 90 days after such elevation is reached or longer if specified in the landfill's approved closure plan.

(3) An entire landfill's permit is terminated for any reason, and within 90 days of such denial or termination.

~~e.~~ f. Vegetation shall be established and maintained on all exposed final cover material within four months after placement, or as specified by the department when seasonal conditions do not permit. Mowing will be conducted a minimum of once a year or ~~at a frequency~~ more frequent as suitable for the vegetation and climate. Unless the approved final cover design includes the use of

woody vegetation, the facility shall prevent establishment of woody vegetation and control vegetative height in order to maintain the integrity of the final cover and allow for access and adequate inspection of cover and other landfill infrastructure. The facility shall make repairs to the cover as necessary to correct the effects of settlement, subsidence, erosion, or other events.

~~f.~~ g. Areas where waste has been disposed that have not received waste within 30 days will not have slopes exceeding the final cover slopes specified in the permit or 33%.

2. Chloroflourocarbons, hydrochlorofluorocarbons, and PCBs must be removed from white goods prior to placement on the working face.

~~D.~~ E. In addition to the standards in subsection A of this section, Industrial Landfills shall also comply with the following:

1. Compaction and cover requirements.

a. Unless provided otherwise in the permit, solid waste shall be spread and compacted at the working face, which shall be confined to the smallest area practicable.

b. Lift heights shall be sized according to the volume of waste received daily and the nature of the industrial waste. A lift height is not required for materials such as fly ash that are not compactable.

~~c. Where it is necessary for the specific waste, such as Category I or II nonfriable asbestos containing material, daily soil cover, or other suitable material shall be placed upon all exposed solid waste prior to the end of each operating day. For wastes such as fly ash and bottom ash from burning of fossil fuels, periodic cover to minimize exposure to precipitation and control dust or dust control measures such as surface wetting or crusting agents shall be applied. At least three days of acceptable cover soil or approved material at the average usage rate shall be maintained at the fill at all times at facilities where daily cover is required unless an offsite supply is readily available on a daily basis.~~

c. Cover consisting of at least six inches of compacted soil shall be placed upon all exposed solid waste at a minimum of once a week, unless the owner or operator demonstrates to the satisfaction of the department that alternate methods are effective to control fires, odors, blowing litter, stormwater infiltration, and prevent erosion and displacement of waste. Requests to use alternate methods shall be submitted to the department in writing. Alternate methods shall be specific to the type, nature, and quantity of wastes disposed and may include an alternate weekly cover material, alternate frequency for cover soil application, or other site-specific strategies to control fires, odors, and blowing litter, to minimize infiltration of water into solid waste cells, and to prevent erosion and displacement of waste. Alternate methods shall be utilized in accordance with the site-specific conditions approved by the department. The use of an alternate method shall cease if it is not effective in controlling fires, odors, blowing litter, and stormwater infiltration; if it is not effective in preventing erosion and displacement of waste; if the use of the material results in nuisances; or if the method presents a threat to human health and the environment.

d. If the landfill accepts asbestos-containing waste material for disposal, the waste shall be covered upon receipt in accordance with the requirements of 9VAC20-81-620 C.

e. At least three days of acceptable cover soil or approved material at the average usage rate shall be maintained as close as practicable to the landfill working face and readily available at all times to ensure materials can be accessed and applied during inclement weather conditions, and to facilitate a timely response to any landfill fires, should they occur.

~~d.~~ f. Intermediate cover of at least one foot of compacted soil shall be applied whenever an additional lift of refuse is not to be applied within 30 days ~~unless the owner or operator demonstrates to the satisfaction of the director that an alternate cover material or an alternate schedule will be protective of public health and the environment.~~ In the case of facilities where fossil fuel combustion products are removed for beneficial use, intermediate cover must be applied in any area where ash has not been placed or removed for 30 days or more. Intermediate cover shall be graded to prevent ponding and accelerate surface runoff in order to minimize infiltration of water into solid waste cells. Further, all areas with intermediate cover exposed shall be inspected as needed but not less than weekly and additional cover material shall be placed on all cracked, eroded, and uneven areas as required to maintain the integrity of the intermediate cover system.

~~e.~~ g. Final cover construction will be initiated in accordance with the requirements of 9VAC20-81-160 ~~D~~ E 2 when the following pertain:

(1) When an additional lift of solid waste is not to be applied within two years or a longer period as required by the facility's phased development.

(2) When any area of a landfill attains final elevation and within 90 days after such elevation is reached or longer if specified in the landfill's approved closure plan.

(3) When a landfill's permit is terminated within 90 days of such denial or termination.

~~f.~~ h. Vegetation shall be established and maintained on all exposed final cover material within four months after placement, or as ~~otherwise~~ specified by the department when seasonal conditions do not ~~otherwise~~ permit. Mowing will be conducted a minimum of once a year or ~~at a frequency~~ more frequent as suitable for the vegetation

and climate. Unless the approved final cover design includes the use of woody vegetation, the facility shall prevent establishment of woody vegetation and control vegetative height in order to maintain the integrity of the final cover and allow for access and adequate inspection of cover and other landfill infrastructure. The facility shall make repairs to the cover as necessary to correct the effects of settlement, subsidence, erosion, or other events.

2. Incinerator and air pollution control residues containing no free liquids shall be incorporated into the working face and covered at such intervals as necessary to minimize them from becoming airborne. Dust control measures such as surface wetting, crusting agents, or other strategies shall be utilized in a manner and frequency suitable to control dust from other wastes that could become airborne, such as fly ash and bottom ash from burning of fossil fuels.

9VAC20-81-160. Closure requirements.

A. The closure of all sanitary, CDD and industrial landfills shall be governed by the standards set forth in this section.

~~A.~~ B. Closure purpose. The owner or operator shall close the landfill in a manner that minimizes the need for further maintenance and provides for the protection of human health and the environment. Closure shall eliminate the ~~postclosure~~ post-closure escape of uncontrolled leachate or of waste decomposition products to the groundwater or surface water to the extent necessary to protect human health and the environment. Closure shall also control ~~and/or~~ or minimize surface runoff and the escape of waste decomposition products to the atmosphere.

~~B.~~ C. Closure plan and modification of plan.

1. The owner or operator of a solid waste disposal facility shall have a written closure plan. This plan shall identify the steps necessary to completely close the landfill at the time when the operation will be the most extensive and at the end of its intended life. The closure plan shall include, at least:

a. A schedule for final closure that shall include, as a minimum, the anticipated date when wastes will no longer be received, the date when completion of final closure is anticipated, and intervening milestone dates that will allow tracking of the progress of closure;

b. An estimate of waste disposed onsite over the active life of the landfill;

c. An estimate of the largest area ever requiring a final cover as required at any time during the active life;

d. Description of Final Cover System design in accordance with subsection D of this section;

e. Description of storm water management to include design, construction, and maintenance controls; and

f. Closure cost estimate in accordance with 9VAC20-70-111 and 9VAC20-70-112, to include removal costs associated with any stockpiles of material for beneficial use for the purpose of financial assurance.

2. The owner or operator may amend the closure plan at any time during the active life of the landfill. The owner or operator shall so amend his plan any time changes in operating plans or landfill design affect the closure plan. The amended closure plan shall be placed in the operating record and a copy provided to the department.

3. Closure plans and amended closure plans not previously approved by the director shall be submitted to the department at least 180 days before the date the owner or operator expects to begin construction activities related to closure. The director will approve or disapprove the plan within 90 days of receipt.

4. If the owner or operator intends to use an alternate final cover design, he shall submit a proposed design meeting the requirements of subdivision ~~D~~ E 2 f of this section to the department at least 180 days before the date he expects to begin closure. The department will approve or disapprove the plan within 90 days of receipt.

5. At least 180 days prior to beginning closure of each solid waste disposal unit, the owner or operator shall notify the department and the solid waste planning unit of the intent to close.

~~C.~~ D. Time allowed for closure.

1. The owner or operator shall begin closure activities of each unit no later than 30 days after the date on which the unit receives the known final receipt of wastes or, if the unit has remaining capacity and there is a reasonable likelihood that the unit will receive additional wastes, no later than one year after the most recent receipt of wastes. Extensions beyond the one-year deadline for beginning closure may be granted by the director if the owner or operator demonstrates that the unit has the capacity to receive additional wastes and the owner or operator has taken and will continue to take all steps necessary to prevent threats to human health and the environment from the unclosed unit.

2. The owner or operator shall complete closure activities of each unit in accordance with the closure plan and within six months after receiving the final volume of wastes. The director may approve a longer closure period if the owner or operator can demonstrate that the required or planned closure activities will, of necessity, take longer than six months to complete; and that he has taken all steps to eliminate any significant threat to human health and the environment from the unclosed but inactive landfill.

~~D.~~ E. Closure implementation.

1. The owner or operator shall close each unit with a final cover as specified in subdivision 2 of this subsection, grade the fill area to prevent ponding, and provide a suitable vegetative cover. Vegetation shall be deemed properly

established when there are no large areas void of vegetation and it is sufficient to control erosion.

2. Final cover system.

a. The owner or operator shall install a final cover system that is designed to achieve the performance requirements of this section.

b. Owners or operators of CDD landfill units used for the disposal of wastes consisting only of stumps, wood, brush, and leaves from ~~landclearing~~ land-clearing operations may apply two feet of compacted soil as final cover material in lieu of the final cover system specified in this section. The provisions of this section shall not be applicable to any landfill with respect to which the director has made a finding that continued operation of the landfill constitutes a threat to the public health or the environment.

c. The final cover system shall be designed and constructed to:

(1) Minimize infiltration through the closed disposal unit by the use of an infiltration layer that is constructed of at least 18 inches of earthen material; and ~~which~~ that has a hydraulic conductivity less than or equal to the hydraulic conductivity of any bottom liner system or natural subsoils present, or a hydraulic conductivity no greater than $1x10^{-5}$ cm/sec, whichever is less; and

(2) Minimize erosion of the final cover by the use of an erosion layer that contains a minimum of six inches of earthen material that is capable of sustaining native plant growth, and provide for protection of the infiltration layer from the effects of erosion, frost, and wind.

d. The owner or operator of a sanitary landfill may choose to use this alternate final cover system, which shall consist of at least the following components:

(1) An 18-inch soil infiltration layer with a hydraulic conductivity no greater than $1x10^{-5}$ cm/sec or a geosynthetic clay liner installed over the intermediate cover;

(2) A barrier layer consisting of a geosynthetic membrane having a minimum thickness of 40-mils;

(3) A protective cover layer for protection of the barrier and infiltration ~~layer~~ layers from the effects of erosion, frost, and wind, and consisting of a minimum of 18 inches of soil; and

(4) A vegetative support layer that contains a minimum of six inches of earthen material that is capable of sustaining native plant growth.

e. The owner or operator of a CDD or industrial landfill may choose to use this alternate final cover system, which shall consist of at least the following components:

(1) A barrier layer consisting of a geosynthetic clay liner or a geosynthetic membrane having a minimum thickness of 40 mils (or 30 mils if using PVC);

(2) A protective cover layer for protection of the ~~infiltration~~ barrier layer from the effects of erosion, frost, and wind, and consisting of a minimum of 18 inches of soil; and

(3) A vegetative support layer that contains a minimum of six inches of earthen material that is capable of sustaining native plant growth.

f. The director may approve an alternate final cover design that includes:

(1) An infiltration layer that achieves an equivalent reduction in infiltration as the infiltration layer specified in subdivision 2 c (1) of this subsection; and

(2) A minimum 24-inch erosion layer that is capable of sustaining native plant growth and provide for protection of the infiltration layer from the effects of erosion, frost, and wind.

3. Finished side slopes shall be stable and be configured to adequately control erosion and runoff. Slopes of 33% will be allowed provided that adequate runoff controls are established. Steeper slopes may be considered if supported by necessary stability calculations and appropriate erosion and runoff control features. All finished slopes and runoff management facilities shall be supported by necessary calculations and included in the design manual. To prevent ponding of water, the top slope shall be at least 2.0% after allowance for settlement.

4. Following construction of the final cover system for each unit, the owner or operator shall submit to the department a certification, signed by a professional engineer verifying that closure has been completed in accordance with the closure plan requirements of this part. ~~This certification shall include the results of the CQA/QC requirements under 9VAC20-81-130 Q 1 b (6).~~ A separate certification signed by the CQA officer that the CQA plan has been successfully carried out shall be provided. Documentation supporting the CQA officer's certification shall be submitted to the department.

5. Following the closure of all units the owner or operator shall:

a. Post one sign at the entrance of the landfill notifying all persons of the closing, and the prohibition against further receipt of waste materials. Further, suitable barriers shall be installed at former accesses to prevent new waste from being deposited.

b. Within 90 days after closure is completed, submit to the local land recording authority a survey plat prepared by a professional land surveyor registered by the Commonwealth or a person qualified in accordance with Title 54.1 of the Code of Virginia indicating the location and dimensions of landfills. Groundwater monitoring well and landfill gas monitoring probe locations shall be included and identified by the number on the survey plat. The plat filed with the local land recording authority shall

contain a note, prominently displayed, which states the owner's or operator's future obligation to restrict disturbance of the site as specified.

c. Record a notation on the deed to the landfill property, or on some other instrument which is normally examined during title searches, notifying any potential purchaser of the property that the land has been used to manage solid waste and its use is restricted under 9VAC20-81-170 ~~A~~ B 2 c. A copy of the deed notation as recorded shall be submitted to the department.

d. Submit to the department a certification, signed by a professional engineer, verifying that closure has been completed in accordance with the requirements of subdivisions 5 a, b, and c of this subsection and the landfill closure plan.

6. The department shall inspect all solid waste management facilities at the time of closure to confirm that the closing is complete and adequate. It shall notify the owner or operator of a closed landfill, in writing, if the closure is satisfactory, and shall require any construction or such other steps necessary to bring unsatisfactory sites into compliance with these regulations. Notification by the department that the closure is satisfactory does not relieve the owner or operator of responsibility for corrective action to prevent or abate problems caused by the landfill.

9VAC20-81-170. ~~Postclosure~~ Post-closure care requirements..

A. The ~~postclosure~~ post-closure of all sanitary, CDD, and industrial landfills shall be governed by the standards as set forth in this section.

~~A. Postclosure~~ B. Post-closure care requirements.

1. Following closure of the landfill, the owner or operator shall conduct ~~postclosure~~ post-closure care of the landfill. ~~Postclosure~~ Post-closure care shall consist of at least the following:

a. Maintaining the integrity and effectiveness of any final cover, including making repairs to the cover as necessary to correct the effects of settlement, subsidence, erosion, or other events, and preventing run-on and ~~run-off~~ runoff from eroding or otherwise damaging the final cover. Mowing will be conducted a minimum of once a year or more frequent as suitable for the vegetation and climate. Unless the approved final cover design includes the use of woody vegetation, the facility shall prevent establishment of woody vegetation and control vegetative height in order to maintain the integrity of the final cover and allow for access and adequate inspection of cover and other landfill infrastructure;

b. Maintaining and operating the leachate collection system, as applicable, in accordance with the requirements in 9VAC20-81-210. The director may allow the owner or operator to stop managing leachate if the owner or operator demonstrates that leachate no longer poses a threat to human health and the environment;

c. Maintaining the groundwater monitoring system and monitoring the groundwater, as applicable, in accordance with the requirements in 9VAC20-81-250; and

d. Maintaining and operating the gas monitoring system, as applicable, in accordance with the requirements in 9VAC20-81-200.

2. The owner or operator shall prepare a written ~~postclosure~~ post-closure plan or review and revise the approved ~~postclosure~~ post-closure plan to insure that it includes, at a minimum, the following information:

a. A description of the monitoring and maintenance activities required in subdivision 1 of this subsection for the landfill, and the frequency at which these activities will be performed;

b. Name, address, and telephone number of the person or office to contact about the landfill during the ~~postclosure~~ post-closure period; ~~and~~

c. A description of the planned uses of the property during the ~~postclosure~~ post-closure period. ~~Postclosure~~ Post-closure use of the property shall not disturb the integrity of the final cover, liners, or any other components of the containment system, or the function of the monitoring systems unless necessary to comply with the requirements of this chapter. The director may approve any other disturbance if the owner or operator demonstrates that disturbance of the final cover, liner, or other component of the containment system, including any removal of waste, will not increase the potential threat to human health or the environment; and

d. An inspection checklist to use during the post-closure care period, which includes all applicable major aspects of facility post-closure care necessary to ensure compliance with the requirements of this chapter. Records of these inspections must be maintained in the operating record and available for review. At a minimum, the following aspects of the facility shall be inspected on at least a quarterly basis: security control devices; final cover integrity; run-on and runoff controls; and leachate collection system. The groundwater monitoring system and gas management system shall be inspected at a rate consistent with the system's monitoring frequency.

3. The owner or operator shall submit a ~~postclosure~~ post-closure care plan for review and approval by the department whenever a ~~postclosure~~ post-closure care plan has been prepared or amended. Those ~~postclosure~~ post-closure care plans that have been placed in a landfill's operating record must be reviewed and approved by the director prior to implementation.

~~B. Postclosure~~ C. Post-closure period.

1. Unless a landfill completes all provisions of 9VAC20-81-160 ~~D~~ E, the department will not consider the landfill closed, and the beginning of the ~~postclosure~~ post-closure care period will be postponed until all provisions have been completed. The ~~postclosure~~ post-closure care period begins on the date of the certification signed by a professional engineer as required in 9VAC20-81-160 ~~D~~ E 5 d.

2. The ~~postclosure~~ post-closure care shall be conducted:

a. For a minimum of 10 years for sanitary landfill facilities that ceased to accept wastes before October 9, 1993;

b. For a minimum of 30 years for sanitary landfill facilities that received wastes on or after October 9, 1993;

c. For a minimum of 10 years for CDD and industrial landfill facilities; or

d. As provided in subdivision 3 of this subsection.

3. The length of the ~~postclosure~~ post-closure care period may be decreased if the owner or operator demonstrates that the reduced period is equally protective of human health and the environment, the owner or operator submits a justifying demonstration, and the department approves this demonstration. The owner or operator shall submit this demonstration to the department for review and approval, and shall also include the following information:

a. A certification, signed by the owner or operator and a professional engineer or professional geologist, verifying that decreasing the ~~postclosure~~ post-closure care period will be equally protective of human health and the environment.

b. The certificate shall be accompanied by an evaluation, prepared by a professional engineer or professional geologist, assessing and evaluating the landfill's potential for increased risk to human health and the environment in the event that ~~postclosure~~ post-closure period is decreased.

4. The owner or operator will continue ~~postclosure~~ post-closure care and monitoring until such time that the department approves termination of the ~~postclosure~~ post-closure care ~~and/or~~ or monitoring activity.

~~C. Postclosure~~ D. Post-closure care termination.

1. The owner or operator may submit a request for termination of any or all portions of ~~postclosure~~ post-closure care and monitoring following completion of the ~~postclosure~~ post-closure care period (as defined in subdivision ~~B~~ C 2 of this section) for the landfill. The owner or operator shall demonstrate that termination of ~~postclosure~~ post-closure care ~~and/or~~ or monitoring ~~activity/activities~~ activity shall be protective of human health and the environment. The owner or operator shall submit this demonstration for termination to the department for review and approval, and shall also include the following information:

a. A certification, signed by the owner or operator and a professional engineer or professional geologist, verifying that ~~postclosure~~ post-closure care has been completed in accordance with the ~~postclosure~~ post-closure plan.

b. The certificate shall be accompanied by an evaluation, prepared by a professional engineer or professional geologist, assessing and evaluating the landfill's potential for increased risk to human health and the environment in the event that ~~postclosure~~ post-closure monitoring and maintenance are discontinued.

2. If the department does not approve termination of the ~~postclosure~~ post-closure care ~~and/or~~ or monitoring, the owner or operator shall continue ~~postclosure~~ post-closure monitoring and maintenance in accordance with the approved plan. Additionally, the owner or operator shall review and revise, as necessary, the ~~postclosure~~ post-closure plan for modifications necessary to meet the current regulatory requirements, and submit this revised plan to the department for review and approval.

3. If the department deems the certification and evaluation to be complete and technically adequate, the owner or operator will be notified of the tentative approval. The owner or operator shall then send written notice of the tentative decision to all adjacent property owners and occupants stating that post-closure care monitoring at the facility may be terminated and provide an opportunity for public participation. The notice must include:

a. The name and location of the facility;

b. A list of post-closure care activities to be terminated;

c. The purpose of the public participation, which is to acquaint the public with the technical aspects of the proposal and how the standards and the requirements of this chapter will be met, to identify issues of concern, to facilitate communication, and to establish a dialogue between the permittee and persons who may be affected by the facility;

d. Announcement of a 30-day comment period, and the name, telephone number, and address of the owner's or operator's representative who can be contacted by interested persons to answer questions or where comments shall be sent;

e. Procedures for requesting a public meeting; and

f. Location where copies of the documentation submitted to the department in support of the termination of post-closure activity evaluation can be viewed and copied.

4. The public shall be provided 30 days to comment on the technical and the regulatory aspects of the proposal. The comment period shall begin no earlier than five days after written notice is sent to adjacent property owners and occupants.

5. Following the completion of the public comment period, the owner or operator must submit to the department a certification, signed by the owner or operator, verifying that the public participation requirements have been completed,

attaching a copy of the adjacent property owner notification and the names and addresses of those to whom the notices were sent. A summary of the results of public participation and the applicant's response to any comments received during the public participation shall be provided to the department. Based on a review of the public participation information, the department will either issue a final approval of termination or request additional information to address public comments prior to final approval.

~~D.~~ E. Owner or operator ~~postclosure~~ post-closure plan review.

1. The owner or operator shall review and revise, as necessary, the ~~postclosure~~ post-closure care plan for modifications to meet the current regulatory requirements and reflect the current landfill conditions when:

a. The department does not approve the termination of all ~~postclosure~~ post-closure care monitoring and maintenance activities; or

b. The minimum ~~postclosure~~ post-closure period has been met, and there are ongoing corrective action measures per 9VAC20-81-260 for the landfill.

2. The owner or operator shall submit this revised plan to the department for review and approval, and shall continue ~~postclosure~~ post-closure monitoring and maintenance in accordance with the approved plan.

9VAC20-81-200. Control of decomposition gases.

A. Owners or operators of solid waste disposal facilities shall develop a gas management plan in accordance with this section. Venting and control of decomposition gases shall be implemented for sanitary and other landfills in order to protect the landfill cap and prevent migration into facility structures or beyond the facility boundary, subject to exceptions at 9VAC20-81-130 ~~K~~ L. The contents of the plan shall also reflect the requirements contained in ~~40 CFR 60.33c and 40 CFR 60.750, (Standards of performance for new and guidelines for control of existing municipal solid waste landfills) and 9VAC5-40-5800, as applicable~~ 40 CFR Part 60 as adopted by reference in Article 5 (9VAC5-50-400 et seq.) of 9VAC5-50; 40 CFR Part 63 as adopted in Article 2 (9VAC5-60-90 et seq.) of 9VAC5-60; Article 43 (9VAC5-40-5800 et seq.) of 9VAC5-40, Emission Standards for Municipal Solid Waste Landfills; and Article 43.1 (9VAC5-40-5925 et seq.) of 9VAC5-40, Emission Standards for Municipal Solid Waste Landfills for which Construction, Reconstruction, or Modification was Commenced on or before July 17, 2014, as applicable.

~~A.~~ B. General requirements.

1. To provide for the protection of public health and safety, and the environment, the owner or operator shall ensure that decomposition gases generated at a landfill are controlled during the periods of operation, closure and ~~postclosure~~ post-closure care, in accordance with the following requirements:

a. The concentration of methane gas generated by the landfill shall not exceed 25% of the lower explosive limit (LEL) for methane (1.25% methane by volume) in landfill structures (excluding gas control or recovery system components); and

b. The concentration of methane gas migrating from the landfill shall not exceed the lower explosive limit for methane ~~at~~ (5.0% methane by volume) within the facility boundary gas monitoring network.

2. The program implemented pursuant to subsections ~~B~~ C through ~~E~~ F of this section shall continue throughout the active life of the landfill and the closure and ~~postclosure~~ post-closure care periods or until the operator receives written authorization by the department to discontinue. Authorization to cease gas monitoring and control shall be based on a demonstration by the operator that there is no potential for gas migration beyond the facility boundary or into landfill structures. The demonstration to cease quarterly landfill gas monitoring requires a minimum of 12 consecutive calendar quarters of monitoring events resulting in no exceedances of the action level or the compliance level for methane in the gas monitoring network, during which time no active gas control or remediation activities had occurred.

3. Gas monitoring and control systems shall be modified, during the closure and ~~postclosure~~ post-closure maintenance period, to reflect changing on-site and adjacent land uses. ~~Postclosure~~ Post-closure land use at the site shall not interfere with the function of gas monitoring and control systems.

4. The operator may request a reduction of monitoring or control activities based upon the results of collected monitoring data. The request for reduction of monitoring or control activities shall be submitted in writing to the department.

~~B.~~ C. The operator shall implement a gas monitoring program at the landfill in accordance with the following requirements:

1. The gas monitoring network shall be designed to ensure detection of the presence of decomposition gas migrating beyond the landfill facility boundary and into landfill structures.

2. The monitoring network shall be designed to account for the following specific site characteristics, and potential migration pathways or barriers, including~~, but not limited to~~:

a. Local soil and rock conditions;

b. Hydrogeological and hydraulic conditions surrounding the landfill;

c. Locations of buildings and structures relative to the waste deposit area;

d. Adjacent land use, and inhabitable structures within 1,000 feet of the landfill facility boundary;

e. Manmade pathways, such as underground construction; and

f. The nature and age of waste and its potential to generate decomposition gas.

3. Owners or operators of certain large sanitary landfills and landfills located in nonattainment areas may be required to perform additional monitoring as provided in ~~40 CFR 60.33c, 40 CFR 60.750, and 9VAC5-40-5800.~~ 40 CFR Part 60 as adopted by reference in Article 5 (9VAC5-50-400 et seq.) of 9VAC5-50; 40 CFR Part 63 as adopted in Article 2 (9VAC5-60-90 et seq.) of 9VAC5-60; and Article 43 (9VAC5-40-5800 et seq.) of 9VAC5-40, Emission Standards for Municipal Solid Waste Landfills.

4. At a minimum, the gas monitoring frequency shall be quarterly (i.e., during each calendar quarter and within 60 to 120 days from the previous event). The department may require more frequent monitoring at locations where monitoring results indicate gas migration or gas accumulation in devices or structures designed to detect migrating gas.

5. Gas monitoring probes shall be operated and maintained as designed throughout the duration of the gas monitoring program. At a minimum:

a. Probes shall be permanently labeled or tagged with the identification number;

b. The probe casings shall be capped or locked to prevent tampering and to protect the probes from exposure to the elements;

c. Probes shall be sealed to prevent venting to the atmosphere between monitoring events. Ambient and external air shall not be allowed to enter the probe prior to or during gas monitoring events; and

d. Functionality and integrity of the probes shall be checked during monitoring events. Probes must be repaired or replaced upon recognition of damage or nonperformance. Repairs and replacements of probes shall be completed and documented prior to the next gas monitoring event unless an alternate timeframe is requested and approved.

~~C.~~ D. Gas ~~Remediation~~ remediation.

1. When the gas monitoring results indicate concentrations of methane in excess of the action levels, 25% of the lower explosive limit (LEL) for methane (1.25% methane by volume) in landfill structures (excluding gas control or recovery system components) or 80% of the LEL for methane ~~at~~ (4.0% methane by volume) within the facility boundary~~,~~ gas monitoring network, the operator shall:

a. Take all immediate steps necessary to protect public health and safety including those required by the contingency plan.

b. Notify the department in writing within five working days of learning that action levels have been exceeded, and indicate what has been done or is planned to be done to resolve the problem.

c. Increase the gas monitoring frequency of the exceeding probe or structure and those probes immediately adjacent, including at least one probe on each side, if necessary to monitor the risk to public health and safety. The monitoring frequency following an action level exceedance and timeframe for increased monitoring, if required, shall be coordinated with the department based on the proximity to receptors and potential migration pathways.

2. When the gas monitoring results indicate concentrations of methane in excess of the compliance levels, 25% of the LEL for methane (1.25% methane by volume) in landfill structures (excluding gas control or recovery system components) or the LEL for methane ~~at~~ (5.0% methane by volume) within the facility boundary gas monitoring network, the operator shall~~, within 60 days of detection, implement a remediation plan for the methane gas releases and submit it to the department for modification of the landfill permit. The plan shall describe the nature and extent of the problem and the proposed remedy. The plan shall include an implementation schedule specifying timeframes for implementing corrective actions, an evaluation of the effectiveness of such corrective actions, and milestones for proceeding in implementation of additional corrective actions, if necessary to reestablish compliance.~~:

a. Take all immediate steps necessary to protect public health and safety, including those required by the contingency plan.

b. Notify the department within 24-hours (orally) and in writing within five working days of learning that compliance levels have been exceeded, in accordance with 9VAC20-81-530 C 3.

c. Increase the gas monitoring frequency of the exceeding probe or structure and those probes immediately adjacent, including at least one probe on each side. The monitoring frequency following a compliance level exceedance and timeframe for increased monitoring shall be coordinated with the department based on the proximity to receptors and potential migration pathways.

d. Within 10 days of detection, provide written notification of the compliance level exceedance to adjacent property owners and occupants of occupied structures within 500 feet of the exceeding probe or structure. The notification shall include a brief description of steps being taken to correct the issue and shall offer to provide methane monitoring for the occupied structure. Additional

notifications are not required after each subsequent monitoring event while the facility is developing and implementing the gas remediation plan to address the exceedance. However, if the exceedance continues after one year, the facility shall provide written re-notification to the property owners and occupants of the continued exceedance and shall include a brief description of steps being taken to correct the issue. The facility shall also provide written notification to adjacent property owners and occupants once the department has approved for the facility to resume a quarterly monitoring frequency of the exceeding probe or structure after the facility has demonstrated a return-to-compliance.

e. Within 60 days of detection, implement a remediation plan for the methane gas releases and submit it to the department for modification of the landfill permit. The plan shall describe the nature and extent of the problem and the proposed remedy. The plan shall include an implementation schedule specifying timeframes for implementing corrective actions, an evaluation of the effectiveness of such corrective actions, and milestones for proceeding in implementation of additional corrective actions if necessary to reestablish compliance. The plan shall include an assessment of probe spacing in the monitoring network. The lateral spacing between probes shall not exceed 250 feet unless otherwise approved by the department based on site-specific factors. The department may require installation of additional monitoring probes to address the proximity to receptors or potential migration pathways.

3. A gas remediation system shall:

a. Prevent methane accumulation in onsite structures.

b. Reduce methane concentrations at monitored facility boundaries to below compliance levels in the timeframes specified in the gas remediation plan.

c. Provide for the collection and treatment ~~and/or~~ or disposal of decomposition gas condensate produced at the surface. Condensate generated from gas control systems may be recirculated into the landfill provided the landfill complies with the liner and leachate control systems requirements of this part. Condensate collected in condensate traps and drained by gravity into the waste mass will not be considered recirculation.

4. Extensive systems to control emissions of nonmethane organic compounds may be required under the Clean Air Act (~~40 CFR 60.33c and 40 CFR 60.750) and 9VAC5-40-5800.~~ 40 CFR Part 60 as adopted by reference in Article 5 (9VAC5-50-400 et seq.) of 9VAC5-50; 40 CFR Part 63 as adopted in Article 2 (9VAC5-60-90 et seq.) of 9VAC5-60; and Article 43 (9VAC5-40-5800 et seq.) of 9VAC5-40, Emission Standards for Municipal Solid Waste Landfills. Facilities that are required to construct and operate systems designed to comply with those regulations will be considered to be in compliance with the requirements of subdivisions ~~C~~ 3 a and b of this subsection, unless monitoring data continues to indicate an exceedance of compliance levels. Gas control systems also may be subject to the Virginia Permits for Stationary Sources Program 9VAC5-80 or other state air pollution control regulations.

5. The landfill shall ~~notify the department of an exceedance of the compliance level or unusual condition that may endanger human health and the environment in accordance with 9VAC20-81-530 C 3, such as when an active gas remediation system is no longer operating in such a manner as to maintain compliance with this section~~ take immediate actions as necessary to investigate and control any unusual conditions that may endanger human health and the environment, such as when an active gas remediation system is no longer operating in such a manner as to maintain compliance with this section and when conditions are indicative of or could cause subsurface fire or combustion or subsurface reaction or oxidation.

~~D.~~ E. Odor management.

1. ~~When an odor nuisance or hazard is created under normal operating conditions and upon notification from the department, the permittee shall, within 90 days, develop and implement an odor management plan to address odors that may impact citizens beyond the facility boundaries. The permittee shall place the plan in the operating record and a copy shall be submitted to the department for its records. Odor management plans developed in accordance with Virginia Air Regulations, 9VAC5-40-140, 9VAC5-50-140 or other state air pollution control regulations will suffice for the provisions of this subsection. 2. The plan shall identify a contact at the landfill that citizens can notify about odor concerns.~~ Odor complaints. When a facility receives an odor complaint, either directly from the public or through contact by the department, the facility shall:

a. Document the odor complaint in the facility's operating record, noting the address or general area where the odor is detected, time of day, and weather conditions, as well as a description of the odor and its intensity;

b. Promptly investigate the complaint to determine the potential sources of odor and employ remedial measures as appropriate to control or minimize those odors; and

c. Document in the facility's operating record all areas investigated, a summary of findings including potential sources of odor, and remedial actions taken.

2. Odor management plan. When an odor nuisance or hazard is created under normal operating conditions and upon notification from the department, the permittee shall, within 90 days, develop and implement an odor management plan to address odors that may impact citizens beyond the facility boundaries. The plan shall identify a contact at the facility who citizens can notify about odor concerns, procedures for responding to odor complaints, and remedial measures to

control or minimize odor. The permittee shall place the plan in the operating record and a copy shall be submitted to the department for its records. Odor management plans developed in accordance with Virginia Air Regulations, 9VAC5-40-140, 9VAC5-50-140 or other state air pollution control regulations will suffice for the provisions of this subsection.

3. Annual review. Facilities shall perform and document ~~an annual~~ a review ~~and update~~ of the odor management plan~~,~~ on an annual basis (at least once every 12 months) to assess the effectiveness of remedial measures employed and ensure consistency with current operations and regulatory requirements. The facility shall update the odor management plan as necessary, to include additional actions to address ongoing odor management issues. The department may require the facility to take additional actions to minimize odors, such as, but not limited to:

a. Modifying operating procedures to address incoming odorous wastes;

b. Applying and maintaining more frequent cover soil or alternate materials over areas of exposed waste;

c. Investigating installation of, or improvements to, landfill gas control systems, odor control systems, or leachate collection and storage systems; and

d. Sampling and analysis, or other investigations, to determine the source of the odor.

~~E.~~ F. Recordkeeping. The owner or operator shall keep the records of the results of gas monitoring and any gas remediation issues throughout the active life of the landfill and the ~~postclosure~~ post-closure care period. The records shall include:

1. The initial and steady-state concentrations of the methane as measured at each probe and within each onsite structure~~;~~. The steady-state concentration shall be used for comparison to action and compliance levels in accordance with the requirements of this section;

2. The documentation of date, time, barometric pressure, atmospheric temperatures, general weather conditions, and probe pressures;

3. The names of sampling personnel, apparatus utilized, and a brief description of the methods used, including calibration procedures. Field calibration information shall include the date, time, calibration gas types and concentrations, expiration date of field calibration gas canisters, and calibration results. Records of factory calibration, performed at a frequency as indicated by the manufacturer, shall also be maintained with the gas monitoring records;

4. A numbering system to correlate monitoring results to a corresponding probe location; and

5. Monitoring and design records for any gas remediation or control system.

9VAC20-81-210. Leachate control.

A. Design plan. The design plan shall provide for leachate management. This design plan shall include the following:

1. An estimate of the quality and quantity of leachate to be produced annually by the facility. The estimate shall include the 30-day leachate volume and average flow rate of each month of the year. A separate estimate shall be submitted for anticipated leachate generation at the end of five year increments of operation for 20 years, or until closure, whichever date is earlier. For existing facilities, current leachate generation shall be included with this separate estimate.

2. The leachate collection system shall be designed ~~and~~, constructed, and operated to maintain less than a 30 cm depth of leachate over the liner, excluding manifold trenches and sumps.

3. Plans, designs, and cross sections for the proposed collection and handling system.

4. Plans, designs, and cross sections for onsite leachate storage or treatment systems, including system appurtenances for storage, pretreatment, or treatment of leachate from the facility.

B. Tanks and surface impoundments used for storage of leachate shall have a flow equalization and surge capacity at least equal to the maximum expected production of leachate for any seven-day period for the life of the facility estimated under subdivision A 1 of this section. Leachate storage capacity may not be considered to include leachate that may have collected in or on the liner system. Storage tanks and impoundments shall be aerated, as necessary, to prevent and control odors.

C. Surface impoundments used for storage of leachate shall be equipped with a liner system that shall provide equal or greater protection of human health and the environment than that provided by the liner of the landfill producing the leachate.

D. The collected leachate shall be:

1. Discharged directly or after pretreatment into a line leading to the publicly owned treatment works or other permitted wastewater treatment facility;

2. Transported by a vehicle to an offsite permitted wastewater treatment facility;

3. Recirculated within the landfill, provided that the irrigated area is underlain by a composite liner or other liner system approved by EPA or Research, Development, and Demonstration plan for recirculation, and that the operation causes no runoff, ponding, or nuisance odors;

4. Treated onsite and discharged into surface water when authorized under VPDES permit; or

5. Other methods of treatment or disposal as approved by the department.

E. The collected leachate shall not be discharged to an underground drain field.

F. Leachate seeps. If a leachate ~~seep(s)~~ seep occurs, the owner or operator shall repair the ~~seep(s)~~ seep and do the following:

1. Take all immediate steps necessary to protect public health and safety including those required by the contingency plan.

2. Take immediate action to minimize, control, or eliminate the seep, and to contain and properly manage the leachate at the source of the seep.

3. Any leachate released outside the lined area permitted for waste disposal shall be properly collected and disposed.

G. The department may require the facility to conduct sampling and analysis if necessary to characterize and demonstrate the presence or absence of leachate in a surface water or stormwater collection system or other receptor if a release or discharge of leachate is suspected. The department will determine on a case-by-case basis which tests are appropriate.

9VAC20-81-250. Groundwater monitoring program.

A. General requirements.

1. Applicability.

a. Existing landfills. Owners or operators of all existing landfills shall be in compliance with the groundwater monitoring requirements specified in this section, except as provided for in subdivision 1 c of this subsection. Owners or operators of landfills that were permitted prior to December 21, 1988, but were closed in accordance with the requirements of their permit or existing regulation prior to December 21, 1988, are not required to be in compliance with the groundwater monitoring requirements specified in this section, unless conditions are recognized that classify the landfill as an ~~Open Dump~~ open dump as defined under 9VAC20-81-45.

b. New landfills. Owners or operators of new facilities shall be in compliance with the groundwater monitoring requirements specified in this section before waste can be placed in the landfill except as provided for in subdivision 1 c of this subsection.

c. No migration potential exemption. Groundwater monitoring requirements under this section may be suspended by the director if the owner or operator can demonstrate that there is no potential for migration of any Table 3.1 constituents to the uppermost aquifer during the active life and the ~~postclosure~~ post-closure care period of the landfill. This demonstration shall be certified by a qualified groundwater scientist and shall be based upon:

(1) Site-specific field collected measurements including sampling and analysis of physical, chemical, and biological processes affecting contaminant fate and transport; and

(2) Contaminant fate and transport predictions that maximize contaminant migration and consider impacts on human health and the environment.

2. General requirements.

a. Purpose. Owners or operators shall install, operate, and maintain a groundwater monitoring system that is capable of determining the landfill's impact on the quality of groundwater in the uppermost aquifer at the disposal unit boundary during the active life and ~~postclosure~~ post-closure care period of the landfill.

b. Program requirements. The groundwater monitoring program shall meet the requirements of subdivision 3 of this subsection and comply with all other applicable requirements of this section.

c. Director authority. The groundwater monitoring, sampling, and reporting requirements set forth here are minimum requirements. The director may require, by modifying the permit as allowed under 9VAC20-81-600 E, any owner or operator to install, operate, and maintain a groundwater monitoring system and conduct a monitoring and sampling program that contains requirements more stringent than this chapter imposes whenever it is determined that such requirements are necessary to protect human health and the environment.

3. Groundwater monitoring system.

a. System requirements. A groundwater monitoring system shall be installed consisting of a sufficient number of monitoring wells, at appropriate locations and depths, capable of yielding sufficient quantities of groundwater for sampling and analysis purposes from the uppermost aquifer that:

(1) Ensures detection of groundwater contamination in the uppermost aquifer unless a variance to this location has been granted by the director under 9VAC20-81-740.

(2) Represent the quality of background groundwater that has not been affected by a release from the landfill; and

~~(2)~~ (3) Represent the quality of groundwater at the disposal unit boundary. ~~The downgradient monitoring system shall be installed at the disposal unit boundary in a manner that ensures detection of groundwater contamination in the uppermost aquifer unless a variance has been granted by the director under 9VAC20-81-740.~~

~~(3)~~ (4) When physical obstacles preclude installation of groundwater monitoring wells at the disposal unit boundary, the downgradient monitoring wells may be installed at the closest practicable distance hydraulically downgradient from the boundary in locations that ensure

detection of groundwater contamination in the uppermost aquifer.

b. Multiunit systems. The director may approve a groundwater monitoring system that covers multiple waste disposal units instead of requiring separate groundwater monitoring systems for each unit when the landfill has several units, provided the multiunit groundwater monitoring system meets the requirement of subdivision 3 of this subsection and can be demonstrated to be equally protective of human health and the environment as individual monitoring systems. The system for each waste disposal unit would be based on the following factors:

(1) Number, spacing, and orientation of the waste disposal units;

(2) Hydrogeologic setting;

(3) Site history;

(4) Engineering design of the waste disposal units; and

(5) Type of waste accepted at the waste disposal units.

c. Well construction. ~~All monitoring wells shall be of a size adequate for sampling and shall be cased and grouted in a manner that maintains the integrity of the monitoring well bore hole. This casing shall be screened or perforated, and packed with gravel or sand where necessary, to enable sample collection at depths where appropriate aquifer flow zones exist. The annular space above the sampling depth shall be sealed with a suitable material to prevent contamination of samples and the groundwater.~~ The site-specific methods for monitoring well installation and construction shall be described in detail within a site-specific groundwater monitoring plan. All monitoring wells shall be:

(1) Of a size adequate for sampling;

(2) Cased and grouted in a manner that maintains the integrity of the monitoring well bore hole with the casing screened or perforated and packed with gravel or sand where necessary, to enable sample collection at depths where appropriate aquifer flow zones exist;

(3) Installed with an annular space above the sampling depth that is sealed with a suitable material to prevent contamination of samples and the groundwater; and

(4) Installed with a screened interval at a depth that ensures the screened interval remains completely submerged at all times during the monitoring program.

d. Boring logs. A log shall be made of each newly installed monitoring well describing the soils or rock encountered, and the hydraulic conductivity of the geologic units (formations) encountered. A copy of the final ~~log(s)~~ log with appropriate maps, including at a minimum a site plan showing the location of all monitoring wells, the total depth of monitoring well, the location of the screened interval, the top and bottom of sand or gravel pack, and the top and bottom of the seal shall be sent to the department with the certification required under subdivision 3 g of this subsection.

e. Well maintenance. The monitoring wells, piezometers, and other groundwater measurement, sampling, and analytical devices shall be operated and maintained in a manner ~~that~~ consistent with that described in the site-specific groundwater monitoring plan, which allows them to perform to design specifications throughout the duration of the groundwater monitoring program. ~~Nonfunctioning monitoring wells must be replaced or repaired upon recognition of damage or nonperformance. Well repair or replacement shall be coordinated with the department prior to initiating the action~~ Monitoring well maintenance includes, at a minimum:

(1) Locking and labeling the well; and

(2) Maintaining the concrete apron to be free of damage, sediment, vegetation, debris, or surface infiltration that could impair function or contaminate the well.

f. Nonfunctioning monitoring wells must be replaced or repaired upon recognition of damage or nonperformance. The schedule for well repair or replacement shall be coordinated with the department prior to initiating the action. Abandonment actions shall be consistent with the approved groundwater monitoring plan or established EPA RCRA guidance.

~~f.~~ g. Network specifics. The network shall include at least one upgradient monitoring well and at least three downgradient monitoring wells. The number, spacing, and depths of monitoring wells included in a landfill's network shall be determined based on:

(1) Site-specific technical information that shall include thorough characterization by the owner or operator of:

(a) The thickness of any unsaturated geologic units or fill materials that may overlay the uppermost aquifer;

(b) The thickness and description of materials comprising the uppermost aquifer;

(c) Materials comprising ~~the~~ any confining unit defining the lower boundary of the uppermost aquifer, including~~, but not limited to,~~ its thicknesses, stratigraphy, lithology, hydraulic conductivities, porosities, and effective porosities; ~~and~~

(d) The calculated groundwater flow rate and direction within the uppermost aquifer ~~including any seasonal and temporal fluctuations in groundwater flow.~~; and

(e) Identification of any seasonal and temporal fluctuations in groundwater elevations or flow rate.

(2) The lateral spacing between downgradient monitoring wells based on site-specific information supplied under subdivision 3 ~~f~~ g (1) of this subsection.

~~g.~~ h. Monitoring well certification. The groundwater monitoring ~~well(s)~~ wells shall, within 30 days of ~~well(s)~~ well installation ~~be~~:

(1) Be certified by a qualified groundwater scientist noting that all wells have been installed in accordance with the documentation submitted under subdivision 3 d of this subsection~~.~~; and

(2) Within 14 days of completing this certification, the owner or operator shall transmit the certification to the department.

4. The groundwater sampling and analysis requirements for the groundwater monitoring system are as follows:

a. Quality assurance and control. The groundwater monitoring program shall include consistent field sampling and laboratory analysis procedures that are designed to ensure monitoring results that provide an accurate representation of the groundwater quality at the background and downgradient wells. At a minimum the program, which shall be described in detail in a groundwater monitoring plan, shall include procedures and techniques for:

(1) Sample collection;

(2) Sample preservation and shipment;

(3) Analytical procedures;

(4) Chain of custody control; and

(5) Quality assurance and quality control.

b. Analytical methods. The groundwater monitoring program shall include sampling and analytical methods that are appropriate for groundwater sampling and that accurately measure solid waste constituents in groundwater samples.

(1) Groundwater samples obtained pursuant to 9VAC20-81-250 B or C shall not be filtered prior to laboratory analysis.

(2) The sampling, analysis and quality ~~control/quality~~ control or quality assurance methods set forth in EPA document SW-846, as amended, shall be used for all constituents found in Columns A and B of Table 3.1.

(3) The department may require ~~re-sampling~~ resampling if it believes the groundwater samples were not properly ~~sampled~~ obtained, preserved, transported, or analyzed during a groundwater monitoring event.

c. Groundwater rate and flow. Groundwater elevations at each monitoring well shall be determined immediately prior to purging each time a sample is obtained. The owner or operator shall determine the rate and direction of groundwater flow each time groundwater is sampled pursuant to subsection B or C of this section or 9VAC20-81-260. Groundwater elevations in wells that monitor the same waste disposal unit ~~or units~~ shall be measured within a period of time short enough to avoid temporal variations, which could preclude accurate determination of groundwater flow rate and direction.

d. Background data. The owner or operator shall establish background groundwater quality in a hydraulically upgradient or background well, or wells, for each of the monitoring parameters or constituents required in the particular groundwater monitoring program that applies to the landfill. Background groundwater quality may be established at wells that are not located hydraulically upgradient from the landfill if they meet the requirements of subdivision 4 e of this subsection.

e. Alternate well provision. A determination of background quality may be based on sampling of wells that are not upgradient from the waste disposal unit or units where:

(1) Hydrogeologic conditions do not allow the owner or operator to determine what wells are upgradient; and

(2) Sampling at these wells will provide an indication of background groundwater quality that is as representative or more representative than that provided by the upgradient wells.

f. Sampling and statistics. The number of samples collected to establish groundwater quality data shall be consistent with the appropriate statistical procedures determined pursuant to subdivision 4 g of this subsection. The collection of groundwater samples via dedicated bailers is prohibited unless the department has issued written approval to a site-specific request demonstrating a geotechnical need, certified by a qualified groundwater scientist, submitted by the owner or operator.

g. Statistical methods. The owner or operator shall specify in the Groundwater Monitoring Plan the statistical ~~method(s)~~ method listed in subsection D of this section that will be used in evaluating groundwater monitoring data for each monitoring constituent. The statistical ~~test(s)~~ test chosen shall be applied separately for each groundwater constituent in each well after each individual sampling event required under subdivision B 2 or 3, C 2 or 3, or as required under 9VAC20-81-260 E 1.

h. Evaluation and response. After each sampling event required under subsection B or C of this section, the owner or operator shall determine whether or not there is a statistically significant increase over background values for each groundwater constituent required in the particular groundwater monitoring program by comparing the groundwater quality of each constituent at each monitoring well installed pursuant to subdivision 3 a of this subsection to the background value of that constituent. In determining whether a statistically significant increase has occurred, the owner or operator shall:

(1) Ensure the sampling result comparisons are made according to the statistical procedures and performance standards specified in subsection D of this section;

(2) Ensure that within 30 days of completion of sampling and laboratory analysis actions, the determination of whether there has been a statistically significant increase over background at each monitoring well has been completed; and

(3) If identified, the statistically significant increase shall be reported to the department within the notification timeframes identified in subsection B or C of this section and discussed in the quarterly or semi-annual report submission described under subdivision E 2 c of this section. Notifications qualified as being "preliminary," "suspect," "unverified," or otherwise not a final determination of a statistical exceedance will not be accepted by the department.

i. Verification sampling. The owner or operator may at any time within the 30-day statistically significant increases determination period defined under subdivision A 4 h (2) of this section, obtain verification samples if the initial review of analytical data suggests results that might not be an accurate reflection of groundwater quality at the disposal unit boundary at the well in question. Undertaking verification sampling is a voluntary action on the part of the owner or operator and shall not alter the timeframes associated with determining or reporting a statistically significant increase as otherwise defined under subdivision A 4 h (2), B 2 or 3, or C 2 or 3 of this section.

j. Data validation. The owner or operator may at any time within the 30-day statistically significant increases determination period defined under subdivision A 4 h (2) of this subsection, undertake third-party data validation of the analytical data received from the laboratory. Undertaking such validation efforts is a voluntary action on the part of the owner or operator and shall not alter the timeframes associated with determining or reporting a statistically significant increase as otherwise defined under subdivision A 4 h (2), B 2 or 3, or C 2 or 3 of this section.

5. Alternate source demonstration allowance.

a. Allowance. As a result of any statistically significant increase identified while monitoring groundwater under subdivision B 2 or 3, or C 2 or 3 of this section, or at ~~anytime~~ any time within the ~~Corrective Action~~ corrective action process under 9VAC20-81-260, the owner or operator has the option of submitting an Alternate Source Demonstration report, certified by a qualified groundwater scientist, demonstrating:

(1) A source other than the landfill caused the statistical exceedance;

(2) The exceedance resulted from error in sampling, analysis, or evaluation; or

(3) The exceedance resulted from a natural variation in groundwater quality.

b. Timeframes. A successful demonstration must be made within 90 days of noting a statistically significant increase. The director may approve a longer timeframe for submittal and approval of the Alternate Source Demonstration with appropriate justification.

c. Evaluation and response. Based on the information submitted in accordance with subdivision 5 a of this subsection, the director will:

(1) In the case of the successful demonstration of an error in sampling, analysis, or evaluation, allow the owner or operator to continue monitoring groundwater in accordance with the monitoring program in place at the time of the statistical exceedance.

(2) In the case of a successful demonstration of an alternate source for the release or natural variability in the aquifer matrix:

(a) Require changes in the groundwater monitoring system as needed to accurately reflect the groundwater conditions and allow the owner or operator to continue monitoring groundwater in accordance with the monitoring program in place at the time of the statistical exceedance;

(b) Require any changes to the monitoring system be completed prior to the next regularly scheduled groundwater monitoring event or ~~within 90 days (whichever is greater)~~ a date selected by the director; and

(c) Require any changes to the monitoring system be approved via the modification process under 9VAC20-81-600 ~~within 90 days of the approval of the alternate source demonstration~~.

(3) In the case of an unsuccessful Alternate Source Demonstration, require the owner or operator to initiate the actions that would otherwise be required as a result of the statistically significant increase noted under subdivision B 2 or 3, or C 2 or 3 of this section as appropriate.

6. Establishment of groundwater protection standards.

a. Requirement. Upon recognition of a statistically significant increase over background and while monitoring in the Assessment or Phase II monitoring programs defined under subdivision B 3 or C 3 of this section, the owner or operator shall propose a groundwater protection standard for all detected Table 3.1 ~~Column~~ Columns B and C constituents. The proposed standards shall be submitted to the department by a qualified groundwater scientist and be accompanied by relevant historical groundwater sampling data to justify the proposed concentration levels.

b. Establishment process. The groundwater protection standards shall be established in the following manner:

(1) For constituents for which a maximum contaminant level (MCL) has been promulgated under § 1412 of the Safe Drinking Water Act (40 CFR Part 141) or by Virginia

Department of Health regulation, the MCL for that constituent shall be automatically established as the groundwater protection standard upon submission of the proposed standards.

(2) If the owner or operator determines that a site-specific background concentration is greater than the MCL associated with that constituent under subdivision 6 b (1) of this subsection, the background value may be substituted for use as the groundwater protection standard in lieu of the MCL for that constituent upon receiving written department approval.

(3) For constituents for which no MCL has been promulgated, site-specific background concentration ~~value(s)~~ values may be used upon receiving written department approval.

(4) For constituents for which no MCL has been promulgated, a risk-based alternate concentration levels may be used if approved by the director as long as:

(a) The owner or operator submits a request to the department asking for approval to use risk-based alternate concentration levels for a specific list of constituents and identifies that these constituents lack an MCL. In the request the owner or operator shall specify whether site-specific, independently calculated, risk-based alternate concentration levels will be applied, or if the facility will accept the default department-provided limits.

(b) The alternate concentration levels that may be provided as default values by the department and those independently calculated by the owner or operator are demonstrated to meet the following criteria or factors before they can be used as groundwater protection standards:

(i) Groundwater quality - The potential for adverse quality effects considering the physical and chemical characteristics of the waste in the landfill, its potential for migration in the aquifer; the hydrogeological characteristics of the facility and surrounding land; the rate and direction of groundwater flow; the proximity and withdrawal rates of groundwater users; the current and future uses of groundwater in the area; the existing quality of groundwater, including other sources of contamination and their cumulative impact on the groundwater quality.

(ii) Human exposure - Potential for health risks caused by exposure to waste constituents released from the landfill using federal guidelines for assessing the health risks of environmental pollutants; scientifically valid studies conducted in accordance with the Toxic Substances Control Act Good Laboratory Practice Standards (40 CFR Part 792); or equivalent standards. For carcinogens, the alternate concentration levels must be set based on a lifetime cancer risk level due to continuous lifetime exposure within the $1x10^{-4}$ to $1x10^{-6}$ range. For systemic toxicants, alternate concentration levels must be demonstrated to be levels to which the human population (including sensitive subgroups) could be exposed to on a daily basis without the likelihood of appreciable risk of deleterious effects during a lifetime.

(iii) Surface water - The potential adverse effect on hydraulically connected surface water quality based on the volume, physical and chemical characteristics of the waste in the landfill; the hydrogeological characteristics of the facility and surrounding land; the rate and direction of groundwater flow; the patterns of rainfall in the region; the proximity of the landfill to surface waters; the current and future uses of surface waters in the area and any water quality standards established for those surface waters; the existing quality of surface water, including other sources of contamination and the cumulative impact on surface water quality.

(iv) Other adverse effects - Potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents; the persistence and permanence of the potential adverse effects; and the potential for health risks caused by human exposure to waste constituents using factors shown in subdivision b (4) (b) (ii) of this subsection.

(5) In making any determination regarding the use of alternate concentration levels under this section, the director will:

(a) Consider any identification of underground sources of drinking water as identified by EPA under 40 CFR 144.7,

(b) Consider additional or modified monitoring requirements or control measures,

(c) Include a schedule for the periodic review of the alternate concentration levels, or

(d) Approve the alternate concentration levels as proposed or issue modified alternate concentration levels.

c. Implementation. Groundwater protection standards shall be considered established for the facility upon completion of the actions described under either subdivision A 6 b (1), (2), (3) or if necessary (4) and shall be placed in the facility Operating Record and shall be used during subsequent comparisons of groundwater sampling data consistent with the requirements of subdivision B 3 f or C 3 e of this section.

d. MCL and background revisions. After establishment of groundwater protection standards under subdivision B 6 b, if the standards are modified as a result of revisions to any MCL or department-approved background, the facility shall update its listing of groundwater protection standards and shall place the new list in the Operating Record and shall use the new values during subsequent comparisons of sampling data consistent with the requirements of subdivision B 3 f or C 3 e of this section.

e. Alternate concentration levels revisions. After establishment of groundwater protection standards under subdivision B 6 b of this section, if the department-

approved alternate concentration levels change based on information released by EPA, to the extent practical, the department will issue revisions to the alternate concentration levels for facility use no more often than an annual basis. The facility shall use the department approved alternate concentration levels ~~listing~~ in effect at the time the sampling event takes place when comparing the results against the groundwater protection standards under subdivision B 3 f or C 3 e of this section.

B. Monitoring for sanitary landfills.

1. Applicability.

a. Existing facilities. Except for those sanitary landfills identified in subdivision C 1 of this section, existing sanitary landfill facilities and closed facilities that have accepted waste on or after October 9, 1993, and in the case of ~~'small'~~ "small" landfills on or after April 9, 1994, shall be in compliance with the detection monitoring requirements specified in subdivision 2 of this subsection unless existing sampling data requires a move to assessment monitoring described under subdivision 3 of this subsection.

b. New facilities. Facilities placed in operation to receive waste after October 9, 1993, shall be in compliance with the detection monitoring requirements specified in subdivision 2 of this section before waste can be placed in the landfill unless existing sampling data requires a move to assessment monitoring described under subdivision 3 of this subsection.

c. Closed facilities. Unless an extension to the deadline above has been granted by the director, closed facilities that have ceased to accept any waste on or before October 9, 1993, and in the case of a "small" landfill, before April 9, 1994, may comply with the "State Monitoring Program" monitoring requirements specified in subdivision C 2 or 3 of this section.

d. Other facilities. Owners or operators of disposal facilities not subject to the federal groundwater monitoring requirements prescribed under 40 CFR Parts 257 and 258 must perform the groundwater monitoring described in subdivision C 2 or 3 of this section.

e. Proximity to wetlands. Owners or operators of sanitary landfills that accepted waste after June 30, 1999, must:

(1) Perform quarterly groundwater monitoring unless the director determines that less frequent monitoring is necessary consistent with the requirements of the special provisions regarding wetlands in § 10.1-1408.5 of the Code of Virginia.

(2) The quarterly monitoring frequency shall remain in effect until the department is notified waste is no longer being accepted at the sanitary landfill.

(3) This requirement will not limit the authority of the Waste Management Board or the director to require more frequent groundwater monitoring if required to protect human health and the environment.

(4) For purposes of this subdivision "proximity to wetlands" shall be defined as landfills that were constructed on a wetland, have a potential hydrologic connection to such a wetland in the event of an escape of liquids from the facility, or are within a mile of such a wetland.

2. Detection monitoring program.

a. Sampling requirements. All sanitary landfills shall implement detection monitoring except as otherwise provided in subdivision 1 of this subsection. The monitoring frequency for all constituents listed in Table 3.1 ~~Column~~ Columns A and C shall be as follows:

(1) Initial sampling period.

(a) For facilities that monitor groundwater on a semi-annual basis, a minimum of ~~four~~ eight independent samples from each well (background and downgradient) shall be collected and analyzed for the Table 3.1 ~~Column~~ Columns A and C constituents prior to the facility becoming active or during the first semi-annual sampling period. A semi-annual period is defined under 9VAC20-81-10.

(b) For facilities that monitor groundwater on a quarterly basis as a result of subdivision 1 e of this subsection, a minimum of four samples from each well (background and downgradient) shall be collected and analyzed for the Table 3.1 ~~Column~~ Columns A and C constituents. The samples shall be collected within the first quarterly period, using a schedule that ensures, to the greatest extent possible, an accurate calculation of background concentrations.

(2) Subsequent sampling events. At least one sample from each well (background and downgradient) shall be collected and analyzed during subsequent semi-annual or quarterly events during the active life and ~~postclosure~~ post-closure period. ~~Data from subsequent background sampling events may be added to the previously calculated background data so that the facility maintains the most accurate representation of background groundwater quality with which to carry out statistical analysis required under subdivision A 4 h of this section.~~

(3) Alternate sampling events. The director may specify an appropriate alternate frequency for repeated sampling and analysis during the active life (including closure) and the ~~postclosure~~ post-closure care period. The alternate frequency during the active life (including closure) and the ~~postclosure~~ post-closure period shall be no less than annual. The alternate frequency shall be based on consideration of the following factors:

(a) Lithology of the aquifer and unsaturated zone;

(b) Hydraulic conductivity of the aquifer and unsaturated zone;

(c) Groundwater flow rates;

(d) Minimum distance between upgradient edge of the disposal unit boundary and downgradient monitoring well screen (minimum distance of travel); and

(e) Resource value of the aquifer.

(4) Data from the background wells during each subsequent sampling event shall be added to the previously calculated background data for the recalculation of site background once every four years, unless approval for a longer timeframe is obtained from the department, to maintain the most accurate representation of background groundwater quality for statistical purposes required under subdivision A 4 h of this section.

b. Evaluation and response. If the owner or operator determines under subdivision A 4 h of this section, that there is:

(1) A statistically significant increase over background as determined by a method meeting the requirements of subsection D of this section, for one or more of the constituents listed in Table 3.1 ~~Column~~ Columns A and C at any of the monitoring wells at the disposal unit boundary during any detection monitoring sampling event, the owner or operator shall:

(a) Within 14 days of this finding, notify the department of this fact, indicating which constituents have shown statistically significant increases over background levels; and

(b) Within 90 days, (i) establish an assessment monitoring program meeting the requirements of subdivision 3 of this subsection, or (ii) submit an Alternate Source Demonstration as specified in subdivision A 5 of this section. ~~If, after 90 days, a successful demonstration has not been made, the owner or operator shall initiate an assessment monitoring program as otherwise required in subdivision 3 of this subsection. The 90-day Alternate Source Demonstration period may be extended by the director for good cause.~~

(c) If, after 90 days, a successful demonstration has not been made, initiate an assessment monitoring program as otherwise required in subdivision 3 of this subsection. The 90-day Alternate Source Demonstration period may be extended by the director for good cause.

(2) No statistically significant increase over background as determined by a method meeting the requirements of subsection D of this section, for any of the constituents listed in Table 3.1 ~~Column~~ Columns A and C at any of the monitoring wells at the disposal unit boundary during any detection monitoring sampling event; the owner or operator may remain in detection monitoring and include a discussion of the sampling results and statistical analysis in the semi-annual or quarterly report required under subdivision E 2 c of this section.

3. Assessment monitoring program. The owner or operator shall implement the assessment monitoring program whenever a statistically significant increase over background has been detected during monitoring conducted under the detection monitoring program.

a. Sampling requirements. Within 90 days of recognizing a statistically significant increase over background for one or more of the constituents listed in Table 3.1 ~~Column~~ Columns A~~,~~ and C the owner or operator shall, unless in receipt of an approval to an Alternate Source Demonstration under subdivision A 5 of this section or a director-approved extension, conduct the initial assessment monitoring sampling event for the constituents found in Table 3.1 ~~Column~~ Columns B and C. A minimum of one sample from each well installed under subdivision A 3 a of this section shall be collected and analyzed during the initial and all subsequent annual Table 3.1 ~~Column~~ Columns B and C sampling events.

b. Director provisions:

(1) ~~The~~ Subset establishment. Based on the results of the initial site-wide Table 3.1 Columns B and C assessment monitoring event, the owner or operator may request that the director approve an appropriate subset of monitoring wells that ~~may~~ remain in detection monitoring defined under subdivision 2 of this subsection~~, based on the results of the initial, or subsequent~~. Subsequent to this initial annual Table 3.1 ~~Column~~ Columns B and C sampling ~~events.~~ event, any new downgradient compliance well installed shall be allowed the opportunity to join the subset based on the results of the initial Table 3.1 Columns B and C monitoring event completed at the new well. Monitoring wells under either option described in this subdivision b (1) may be considered for the subset if:

(a) They show no detections of Table 3.1 ~~Column~~ Columns B and C constituents other than those already previously detected in detection monitoring defined under subdivision 2 of this subsection; and

(b) They display no statistically significant increases over background for any constituents on the Table 3.1 ~~Column~~ Columns A and C list. If ~~an~~ statistically significant increase is subsequently recognized in a well already approved for the subset, the well shall no longer be considered part of the detection monitoring subset.

(2) Modifications to the constituent list. The owner or operator may request the director delete any of the Table 3.1 ~~Column~~ Columns B and C monitoring constituents from the assessment monitoring program if the owner or operator demonstrates that the deleted constituents are not reasonably expected to be in or derived from the waste.

(3) Sampling frequency. The director may specify an appropriate alternate frequency for repeated sampling and analysis for the full set of Table 3.1 ~~Column~~ Columns B and C constituents required by subdivision 3 a of this subsection during the active life and ~~postclosure~~ post-

closure care period based on the consideration of the following factors:

(a) Lithology of the aquifer and unsaturated zone;

(b) Hydraulic conductivity of the aquifer and unsaturated zone;

(c) Groundwater flow rates;

(d) Minimum distance between upgradient edge of the disposal unit boundary and downgradient monitoring well screen (minimum distance of travel);

(e) Resource value of the aquifer; and

(f) Nature (fate and transport) of any constituents detected in response to subdivision 3 f of this subsection.

c. Development of background. After obtaining the results from the initial or subsequent annual sampling events required in subdivision 3 a of this subsection, the owner or operator shall:

(1) Within 14 days, notify the department identifying the Table 3.1 ~~Column~~ Columns B and C constituents that have been detected;

(2) Within 90 days, and on at least a semi-annual basis thereafter~~, resample~~:

(a) Resample all wells installed under subdivision A 3 a of this section, conduct analyses for all constituents in Table 3.1 ~~Column~~ Columns A and C as well as those constituents in Column B that are detected in response to subdivision 3 a of this subsection and subsequent Table 3.1 ~~Column~~ Columns B and C sampling events as may be required of this section~~;~~ and ~~report~~

(b) Report this data in the semi-annual or quarterly report defined under subdivision E 2 c of this section;

(3) Within 180 days of the initial sampling event, establish background concentrations for any Table 3.1 ~~Column~~ Columns B and C constituents detected pursuant to subdivision B 3 a of this subsection. A minimum of ~~four~~ eight independent samples from each well (background and downgradient) shall be collected and analyzed to establish background for the detected constituents unless a lessor number of samples has been approved by the department based on a site-specific request certified by a qualified groundwater scientist and submitted by the owner or operator.

d. Establishment of groundwater protection standards. Within 30 days of establishing background under subdivision 3 c (3) of this subsection, submit proposed groundwater protection standards for all constituents detected under Assessment monitoring. The groundwater protection standards shall be approved by the director in accordance with the provisions of subdivision A 6 of this section.

e. Groundwater monitoring plan. No later than 60 days after approval of the groundwater protection standards in accordance with subdivision A 6 of this section, the owner or operator shall submit an updated Groundwater Monitoring Plan that details the site monitoring well network and sampling and analysis procedures undertaken during groundwater monitoring events. ~~The owner or operator shall additionally:~~

~~(1) No later than 30 days after the submission of the Groundwater Monitoring Plan, request a permit modification to incorporate the plan and related groundwater monitoring modules into the landfill's permit in accordance with 9VAC20-81-600.~~ The department may waive the requirement for a permit modification if the Groundwater Monitoring Plan included in the landfill's permit reflects current site conditions in accordance with the regulations.

~~(2) If the 30-day timeframe specified in subdivision 3 e (1) of this subsection is exceeded, the director will modify the permit in accordance with 9VAC20-81-600 E.~~

f. Evaluation and response.

(1) If the concentrations of all Table 3.1 ~~Column~~ Columns B and C constituents at all downgradient compliance wells are shown to be at or below background values, using the statistical procedures in subsection D of this section, for two consecutive Table 3.1 ~~Column~~ Columns B and C sampling events, the owner or operator shall notify the director of this finding in the semi-annual or quarterly monitoring report and may return to detection monitoring defined under subdivision 2 of this subsection.

(2) If the concentrations of any Table 3.1 ~~Column~~ Columns B and C constituents are found at all downgradient compliance wells to be above background values, but below the groundwater protection standards established under subdivision A 6 of this section using the statistical procedures in subsection D of this section, the owner or operator shall continue in assessment monitoring in accordance with this section and present the findings to the department in the semi-annual or quarterly report.

(3) If one or more Table 3.1 ~~Column~~ Columns B and C constituents are detected at any downgradient compliance well onsite at statistically significant levels above the groundwater protection standard established under subdivision A 6 of this section using the statistical procedures in subsection D of this section, the owner or operator shall:

(a) Within 14 days of this finding, notify the department identifying the exceeding monitoring well and the Table 3.1 ~~Column~~ Columns B and C constituents that have exceeded the groundwater protection standard. The notification will include a statement that within 90 days the owner or operator will either:

(i) Undertake characterization and assessment actions required under 9VAC20-81-260 C 1; or

(ii) Submit an Alternate Source Demonstration as specified in subdivision A 5 of this section. If a successful demonstration is made within 90 days, the owner or operator may continue monitoring in accordance with the assessment

monitoring program pursuant to subdivision 3 of this subsection. If the 90-day period passes without demonstration approval, the owner or operator shall comply with the actions under 9VAC20-81-260 C within the timeframes specified unless the director has granted an extension to those timeframes.

(b) Describe the sampling results in the semi-annual or quarterly report.

C. Monitoring for CDD, industrial, and State Monitoring Program sanitary landfills.

1. Applicability.

a. Sanitary landfills. Owners or operators of sanitary disposal facilities that have ceased to accept solid waste prior to the federally imposed deadline of October 9, 1993, or in the case of a "small landfill" before April 9, 1994, are eligible, with the director's approval, to conduct the state groundwater monitoring program described in this section in lieu of the groundwater monitoring program required under subdivision B 2 or 3 of this section.

b. CDD and industrial landfills. Owners or operators of CDD and industrial landfills not subject to the federal groundwater monitoring requirements prescribed under 40 CFR Parts 257 and 258 shall perform the groundwater monitoring described in this section.

c. Other landfills. All other landfills excluding sanitary landfills, including those that accepted hazardous waste from very small quantity generators after July 1, 1998, shall perform the groundwater monitoring described in this section.

2. First determination monitoring program.

a. Sampling requirements. A first determination monitoring program shall consist of a background-establishing period followed by semi-annual sampling and analysis for the constituents shown in Table 3.1 ~~Column~~ Columns A and C at all wells installed under subdivision A 3 a of this section. Within 14 days of each event during first determination monitoring, notify the department identifying the Table 3.1 ~~Column~~ Columns A and C constituents that have been detected.

b. Development of background. Within 360 days of the initial first determination sampling event:

(1) Establish background concentrations for any constituents detected pursuant to subdivision 2 a of this subsection.

(a) A minimum of ~~four~~ eight independent samples from each well (background and downgradient) shall be collected and analyzed to establish background concentrations for the detected constituents using the procedures in subsection D of this section.

(b) In those cases where new wells are installed downgradient of waste disposal units that already have received waste, but these wells have not yet undergone their initial sampling event, collection of ~~four independent~~ samples for background development will not be required.

(2) Within 30 days of completing the background calculations required under subdivision 2 b (1) (a) of this subsection, submit a first determination report, signed by a qualified groundwater scientist, to the department which must include a summary of the background concentration data developed during the background sampling efforts as well as the statistical calculations for each constituent detected in the groundwater during the background sampling events.

c. Semi-annual sampling and analysis. Within 90 days of the last sampling event during the background-establishing period and at least semi-annually thereafter, sample each monitoring well in the compliance network for analysis of the constituents in Table 3.1 ~~Column~~ Columns A and C.

d. Evaluation and response. Upon determination of site background under subdivision 2 b (1) (a) of this subsection, the results of all subsequent first determination monitoring events shall be assessed as follows:

(1) If no Table 3.1 ~~Column~~ Columns A and C constituents are found to have entered the groundwater at statistically significant levels over background, the owner or operator shall:

(a) Remain in first determination monitoring; and

(b) May request the director delete any Table 3.1 ~~Column~~ Columns A and C constituents from the semi-annual sampling list if the owner or operator demonstrates that the proposed deleted constituents are not reasonably expected to be in or derived from the waste.

(2) If the owner or operator recognizes a statistically significant increase over background for any Table 3.1 ~~Column~~ Columns A or C constituent, within 14 days of this finding, the owner or operator shall notify the department identifying the Table 3.1 ~~Column~~ Columns A or C constituents that have exceeded background levels. The notification will include a statement that within 90 days the owner or operator shall:

(a) Initiate a Phase II sampling program; or

(b) Submit an Alternate Source Demonstration under subdivision A 5 of this section.

(3) If a successful demonstration is made and approved within the timeframes established under subdivision A 5 of this section, the owner or operator may remain in First Determination monitoring. The director may approve a longer timeframe for completion of actions under subdivision A 5 with appropriate justification.

(4) If a successful demonstration is not made and approved within the timeframes established under subdivision A 5 of this section, the owner or operator shall initiate Phase II monitoring in accordance with the timeframes in subdivision C 3 of this section. ~~The director may approve a longer timeframe with appropriate justification.~~

3. Phase II monitoring.

a. Sampling requirements. The owner or operator shall:

(1) Within 90 days of noting the exceedance over background determined under subdivision C 2 d of this section, sample

the groundwater in all monitoring wells installed under subdivision A 3 a of this section for all Table 3.1 ~~Column~~ Columns B and C constituents;

(2) After completing the initial Phase II sampling event, continue to sample and analyze groundwater on a semi-annual basis within the Phase II monitoring program;

b. Background development. If no additional Table 3.1 ~~Column~~ Columns B or C constituents are detected other than those previously detected under Column A sampling, which already have established their background levels, the owner or operator shall follow the requirements under subdivision 3 c of this subsection regarding groundwater protection standard establishment while continuing to sample for the Table 3.1 Column A list on a semi-annual basis.

c. If one or more additional Table 3.1 ~~Column~~ Columns B and C constituents are detected during the initial Phase II sampling event:

(1) Within 360 days, establish a background value for each additional detected Table 3.1 ~~Column~~ Columns B and C constituent.

(2) Submit a Phase II Background report within 30 days of completing the background calculations including a summary of the background concentration data for each constituent detected in the groundwater during the Table 3.1 ~~Column~~ Columns B and C background sampling events.

(3) If any detected Table 3.1 Column B constituent is subsequently not detected for a period of two years, the owner or operator may petition the director to delete the constituent from the list of detected Table 3.1 ~~Column~~ Columns B and C constituents that must be sampled semi-annually.

~~c.~~ d. Establishment of groundwater protection standards. No later than:

(1) Thirty days after submitting the Phase II Background report required under the provisions of subdivision 3 b (2) of this subsection, or within 30 days of obtaining the results from the initial Table 3.1 ~~Column~~ Columns B and C sampling event indicating no further sampling for background determination is necessary, the owner or operator shall propose a groundwater protection standard for all detected Table 3.1 constituents.

(2) The groundwater protection standard proposed shall be established in a manner consistent with the provisions in subdivision A 6 of this section.

~~d.~~ e. Groundwater monitoring plan. No later than 60 days after establishment of groundwater protection standards in accordance with subdivision A 6 of this section, the owner or operator shall submit an updated Groundwater Monitoring Plan that details the site monitoring well network and sampling and analysis procedures undertaken during groundwater monitoring events. The department may waive the requirement for an updated plan if the Groundwater Monitoring Plan included in the landfill's permit reflects current site conditions in accordance with the regulations.

~~(1) No later than 30 days after the submission of the Groundwater Monitoring Plan, the owner or operator shall request a permit modification to incorporate the updated plan and related groundwater monitoring modules into the landfill's permit in accordance with 9VAC20-81-600.~~

~~(2) If the 30-day timeframe specified in subdivision 3 d (1) of this subsection is exceeded, the director will modify the permit in accordance with 9VAC20-81-600 E.~~

~~e.~~ f. Evaluation and response. After each subsequent Phase II monitoring event following establishment of groundwater protection standards, the concentration of Table 3.1 ~~Column~~ Columns B and C constituents found in the groundwater at each monitoring well installed pursuant to subdivision A 3 a of this section will be evaluated against the groundwater protection standards. The evaluation will be presented to the department in a semi-annual Phase II report. The evaluation will be as follows:

(1) If all Table 3.1 constituents are shown to be at or below background values at all downgradient compliance wells, using the statistical procedures in subsection D of this section, for two consecutive Table 3.1 ~~Column~~ Columns B and C sampling events, the owner or operator shall notify the director of this finding in the semi-annual report and may return to first determination monitoring;

(2) If any Table 3.1 ~~Column~~ Columns B and C constituents at all downgradient compliance wells are found to be above background values, but are below the established groundwater protection standard using the statistical procedures in subsection D of this section, the owner or operator shall continue semi-annual Phase II monitoring and present the findings in a semi-annual report;

(3) If one or more Table 3.1 ~~Column~~ Columns B and C constituents are found at any compliance well above the established groundwater protection standard using the statistical procedures in subsection D of this section, the owner or operator shall:

(a) Notify the department within 14 days of this finding. The notification will include ~~a statement that within 90 days the owner or operator will either: (i) undertake the characterization and assessment actions required under 9VAC20-81-260 C 1; or (ii) submit an alternate source demonstration as specified in subdivision A 5 of this section. If a successful demonstration is made within 90 days, the owner or operator may continue monitoring in accordance with Phase II monitoring program. If the 90-day period is exceeded, the owner or operator shall comply with the timeframes of 9VAC20-81-260 C unless the director has granted an extension to those timeframes; and~~ (i) the wells in which the exceedance was identified and the constituent names; and (ii) a statement that within 90 days the owner or operator will either undertake the characterization and assessment actions required under 9VAC20-81-260 C 1 or submit an alternate source demonstration as specified in subdivision A 5 of this section.

(b) If a successful demonstration is made within 90 days, the owner or operator may continue monitoring in accordance with the Phase II monitoring program. If the 90-day period is exceeded, the owner or operator shall comply with the

timeframes of 9VAC20-81-260 C unless the director has granted an extension to those timeframes; and

(c) Present the ~~findings~~ sampling results in the semi-annual report.

D. Statistical methods and constituent lists.

1. Acceptable test methods. The following statistical test methods may be used to evaluate groundwater monitoring data:

a. A parametric analysis of variance (ANOVA) followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each compliance well's mean and the background mean levels for each constituent.

b. An analysis of variance (ANOVA) based on ranks followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each compliance well's median and the background median levels for each constituent.

c. A tolerance or prediction interval procedure in which an interval for each constituent is established from the distribution of the background data, and the level of each constituent in each compliance well is compared to the upper tolerance or prediction limit.

d. A control chart approach that gives control limits for each constituent.

e. Another statistical test method that meets the performance standards specified below. Based on the justification submitted to the department, the director may approve the use of an alternative test. The justification must demonstrate that the alternative method meets the performance standards in subdivision 2 of this subsection.

2. Performance standards. Any statistical method chosen by the owner or operator shall comply with the following performance standards, as appropriate:

a. The statistical method used to evaluate groundwater monitoring data shall be appropriate for the distribution of monitoring parameters or constituents. If the distribution is shown by the owner or operator to be inappropriate for a normal theory test, then the data shall be transformed or a distribution-free theory test shall be used. If the distributions for the constituents differ, more than one statistical method may be needed.

b. If an individual well comparison procedure is used to compare an individual compliance well constituent concentration with background constituent concentrations or a groundwater protection standard, the test shall be done at a Type I error level no less than 0.01 for each testing period. If a multiple comparisons procedure is used, the Type I experiment-wise error rate for each testing period shall be no less than 0.05; however, the Type I error of no less than 0.01 for individual well comparisons must be maintained.

c. If a control chart approach is used to evaluate groundwater monitoring data, the specific type of control chart and its associated parameter values shall be protective of human health and the environment. The parameters shall be determined after considering the number of samples in the background data base, the data distribution, and the range of the concentration values for each constituent of concern.

d. If a tolerance interval or a predictional interval is used to evaluate groundwater monitoring data, the levels of confidence and, for tolerance intervals, the percentage of the population that the interval must contain, shall be protective of human health and the environment. These parameters shall be determined after considering the number of samples in the background data base, the data distribution, and the range of the concentration values for each constituent of concern.

e. The statistical method shall account for data below the limit of detection with one or more statistical procedures that are protective of human health and the environment. Any estimated quantitation limit (EQL) that is used in the statistical method shall be the lowest concentration level that can be reliably achieved within specified limits of precision and accuracy during routine laboratory operating conditions that are available to the landfill.

f. If necessary, the statistical method shall include procedures to control or correct for seasonal and spatial variability as well as temporal correlation in the data.

E. Recordkeeping and reporting.

1. Records pertaining to groundwater monitoring activities shall be retained at a specified location by the owner or operator throughout the active life and ~~postclosure~~ post-closure care period of the landfill, and shall include at a minimum:

a. All historical groundwater surface elevation data obtained from wells installed pursuant to subdivision A 3 a of this section;

b. All historical laboratory analytical results for groundwater sampling events required under the groundwater monitoring programs as described in this section;

c. All records of well installation, repair, or abandonment actions;

d. All department correspondence to the landfill; and

e. All approved variances, well subsets, wetlands, or other such ~~director/department~~ director or department approvals.

2. Reporting requirements.

a. Annual report.

(1) An Annual Groundwater Monitoring Report shall be submitted by the owner or operator to the department no later than 120 days from the completion of sampling and analysis conducted under subdivision A 4 h of this section for the second semi-annual event or fourth quarterly event during each calendar year and shall by accompanied by:

(a) A signature page; and

(b) A completed QA/QC DEQ Form ARSC-01.

(2) The technical content of the annual report shall at a minimum, contain the following topical content:

(a) The landfill's name, type, permit number, current owner or operator, and location keyed to a USGS topographic map;

(b) Summary of the design type (i.e., lined versus unlined), operational history (i.e., trench fill versus area fill), and size (acres) of the landfill including key dates such as beginning and termination of waste disposal actions and dates different groundwater monitoring phases were entered;

(c) Description of the surrounding land use noting whether any adjoining land owners utilize private wells as a potable water source;

(d) A discussion of the topographic, geologic, and hydrologic setting of the landfill including a discussion on the nature of the uppermost aquifer (i.e., confined versus unconfined) and proximity to surface waters;

(e) A discussion of the monitoring wells network noting any modifications that were made to the network during the year or any nonperformance issues and a statement noting that the monitoring well network meets (or did not meet) the requirements of subdivision A 3 of this section;

(f) A listing of the groundwater sampling events undertaken during the previous calendar year;

(g) A table listing the constituents identified during the year's sampling events, their concentrations at the respective monitoring well, and if applicable, the related groundwater protection standard in effect during the sampling event;

~~(g)~~ (h) A historical table listing the detected constituents, and their concentrations identified in each well during the sampling period; and

~~(h)~~ (i) Evaluations of and appropriate responses to the groundwater elevation data; groundwater flow rate as calculated using the prior year's elevation data; groundwater flow direction (as illustrated on a potentiometric surface map); and sampling and analytical data obtained during the past calendar year.

b. Semi-annual or quarterly report.

(1) After each sampling event has been completed for the ~~1st~~ first semi-annual or first, second and third quarterly groundwater sampling events, a semi-annual or quarterly monitoring report shall be submitted under separate cover by the owner or operator to the department no later than 120 days from the completion of sampling and analysis conducted under subdivision A 4 h of this section, unless as allowed under a director-approved extension. The report shall at a minimum contain the following items:

(a) Signature page signed by a professional geologist or qualified groundwater scientist;

(b) Landfill name and permit number;

(c) Statement noting whether or not all monitoring points within the permitted network installed to meet the requirements of subdivision A 3 a of this section were sampled as required under subdivision B 2 or 3 or C 2 or 3 during the event;

(d) Calculated rate and direction of groundwater flow as calculated using information obtained during the sampling period as required under subdivision A 4 c of this section~~; (e) The groundwater flow direction as determined during the sampling period as required under subdivision A 4 c of this section~~. This information shall be presented ~~as~~ in either plain text within the report or graphically as a potentiometric surface map;

~~(f)~~ (e) Statement noting whether or not there were statistically significant increases over background or groundwater protection standards during the sampling period, the supporting statistical calculations, and reference to the date the director was notified of the increase pursuant to timeframes in subdivision B 2 or 3 or C 2 or 3, if applicable;

~~(g)~~ (f) Copy of the full Laboratory Analytical Report including dated signature page (laboratory manager or representative) to demonstrate compliance with the timeframes of subdivision A 4 h of this section. ~~The department will accept the lab report in CD-ROM format.~~

(2) In order to reduce the reporting burden on the owner or operator and potential redundancy within the operating record, a discussion of the second semi-annual or fourth quarterly sampling event results may be presented in the Annual Report submission.

c. Other submissions. Statistically significant increase notifications, well certifications, the first determination report, alternate source demonstration, nature and extent study, assessment of corrective measures, presumptive remedy proposal, corrective action plan or monitoring plan, or other such report or notification types as may be required under 9VAC20-81-250 or 9VAC20-81-260, shall be submitted in a manner which achieves the timeframe requirements as listed in 9VAC20-81-250 or 9VAC20-81-260.

TABLE 3.1
~~GroundWater~~ Ground Water Solid Waste Constituent Monitoring List

Column A – Common Name[1, 2]	Column B – Common Name[1, 2]	Column C - Common Name	CAS RN[3]
	Acenaphthene		83-32-9
	Acenaphthylene		208-96-8
Acetone	Acetone		67-64-1
	Acetonitrile; Methyl cyanide		75-05-8
	Acetophenone		98-86-2
	2-Acetylaminofluorene; 2-AAF		53-96-3
	Acrolein		107-02-8
Acrylonitrile	Acrylonitrile		107-13-1
	Aldrin		309-00-2
	Allyl chloride		107-05-1
	4-Aminobiphenyl		92-67-1
	Anthracene		120-12-7
Antimony	Antimony		(Total)
Arsenic	Arsenic		(Total)
Barium	Barium		(Total)
Benzene	Benzene		71-43-2
	Benzo[a]anthracene; Benzanthracene		56-55-3
	Benzo[b]fluoranthene		205-99-2
	Benzo[k]fluoranthene		207-08-9
	Benzo[ghi]perylene		191-24-2
	Benzo[a]pyrene		50-32-8
	Benzyl alcohol		100-51-6
Beryllium	Beryllium		(Total)
	alpha-BHC		319-84-6
	beta-BHC		319-85-7
	delta-BHC		319-86-8

	gamma-BHC; Lindane		58-89-9
	Bis(2-chloroethoxy)methane		111-91-1
	Bis(2-chloroethyl) ether; Dichloroethyl ether		111-44-4
	Bis(2-chloro-1-methylethyl) ether; 2, 2'-Dichlorodiisopropyl ether; DCIP		108-60-1, See note 4
	Bis(2-ethylhexyl)phthalate		117-81-7
Bromochloromethane;.Chlorobromomethane	Bromochloromethane;.Chlorobromomethane		74-97-5
Bromodichloromethane;.Dibromochloromethane	Bromodichloromethane;.Dibromochloromethane		75-27-4
Bromoform; Tribromomethane	Bromoform; Tribromomethane		75-25-2
	4-Bromophenyl phenyl ether		101-55-3
	Butyl benzyl phthalate; Benzyl butyl phthalate		85-68-7
Cadmium	Cadmium		(Total)
Carbon disulfide	Carbon disulfide		75-15-0
Carbon tetrachloride	Carbon tetrachloride		56-23-5
	Chlordane		Note 5
	p-Chloroaniline		106-47-8
Chlorobenzene	Chlorobenzene		108-90-7
	Chlorobenzilate		510-15-6
	p-Chloro-m-cresol; 4-Chloro-3-methylphenol		59-50-7
Chloroethane; Ethyl chloride	Chloroethane; Ethyl chloride		75-00-3
Chloroform; Trichloromethane	Chloroform; Trichloromethane		67-66-3
	2-Chloronaphthalene		91-58-7
	2-Chlorophenol		95-57-8
	4-Chlorophenyl phenyl ether		7005-72-3
	Chloroprene		126-99-8
Chromium	Chromium		(Total)
	Chrysene		218-01-9
Cobalt	Cobalt		(Total)

Copper	Copper		(Total)
	m-Cresol; 3-methyphenol		108-39-4
	o-Cresol; 2-methyphenol		95-48-7
	p-Cresol; 4-methyphenol		106-44-5
	Cyanide		57-12-5
	2,4-D; 2,4-Dichlorophenoxyacetic acid		94-75-7
	4,4'-DDD		72-54-8
	4,4'-DDE		72-55-9
	4,4'-DDT		50-29-3
	Diallate		2303-16-4
	Dibenz[a,h]anthracene		53-70-3
	Dibenzofuran		132-64-9
Dibromochloromethane; Chlorodibromomethane	Dibromochloromethane; Chlorodibromomethane		124-48-1
1,2-Dibromo-3-chloropropane; DBCP	1,2-Dibromo-3-chloropropane; DBCP		96-12-8
1,2-Dibrimoethane; Ethylene dibromide; EDB	1,2-Dibrimoethane; Ethylene dibromide; EDB		106-93-4
	Di-n-butyl phthalate		84-74-2
o-Dichlorobenzene; 1,2-Dichlorobenzene	o-Dichlorobenzene; 1,2-Dichlorobenzene		95-50-1
	m-Dichlorobenzene; 1,3-Dichlorobenzene		541-73-1
p-Dichlorobenzene; 1,4-Dichlorobenzene	p-Dichlorobenzene; 1,4-Dichlorobenzene		106-46-7
	3,3'-Dichlorobenzidine		91-94-2
trans-1,4-Dichloro-2-butene	trans-1,4-Dichloro-2-butene		110-57-6
	Dichlorodifluoromethane; CFC 12;		75-71-8
1.1-Dichloroethane; Ethylidene chloride	1,1-Dichloroethane; Ethylidene chloride		75-34-3
1,2-Dichloroethane; Ethylene dichloride	1,2-Dichloroethane; Ethylene dichloride		107-06-2
1,1-Dichloroethylene; 1,1-Dichloroethene; Vinylidene chloride	1,1-Dichloroethylene; 1,1-Dichloroethene; Vinylidene chloride		75-35-4

cis-1,2-Dichloroethylene; cis-1,2-Dichloroethene	cis-1,2-Dichloroethylene; cis-1,2-Dichloroethene		156-59-2
trans-1,2-Dichloroethylene	trans-1,2-Dichloroethylene; trans-1,2-Dichroroethene		156-60-5
	2,4-Dichlorophenol		120-83-2
	2,6-Dichlorophenol		87-65-0
1,2-Dichloropropane; Propylene dichloride	1,2-Dichloropropane; Propylene dichloride		78-87-5
	1,3-Dichloropropane; Trimethylene dichloride		142-28-9
	2, 2-Dichloropropane; isopropylidene chloride		594-20-7
	1,1-Dichloropropene		563-58-6
cis-1,3-Dichloropropene	cis-1,3-Dichloropropene		10061-01-5
trans-1,3-Dichloropropene	trans-1,3-Dichloropropene		10061-02-6
	Dieldrin		60-57-1
	Diethyl phthalate		84-66-2
	O,O-Diethyl O-2-pyrazinyl phosphorothioate; Thionazin		297-97-2
	Dimethoate		60-51-5
	p-(Dimethylamino)azobenzene		60-11-7
	7,12-Dimethylbenz[a]anthracene		57-97-6
	3,3'-Dimethylbenzidine		119-93-7
	2,4-Dimethylphenol; m-Xylenol		105-67-9
	Dimethyl phthalate		131-11-3
	m-Dinitrobenzene		99-65-0
	4,6-Dinitro-o-cresol; 4,6-Dinitro-2-methylphenol		534-52-1
	2,4-Dinitrophenol		51-28-5
	2,4-Dinitrotoluene		121-14-2
	2,6-Dinitrotoluene		606-20-2
	Dinoseb; DNBP; 2-sec-Butyl-4,6-dinitrophenol		88-85-7

	Di-n-octyl phthalate		117-84-0
		1,4-dioxane	123-91-1
	Diphenylamine		122-39-4
	Disulfoton		298-04-4
	Endosulfan I		959-96-8
	Endosulfan II		33213-65-9
	Endosulfan sulfate		1031-07-8
	Endrin		72-20-8
	Endrin aldehyde		7421-93-4
Ethylbenzene	Ethylbenzene		100-41-4
	Ethyl methacrylate		97-63-2
	Ethylmethanesulfonate		62-50-0
	Famphur		52-85-7
	Fluoranthene		206-44-0
	Fluorene		86-73-7
	Heptachlor		76-44-8
	Heptachlor epoxide		1024-57-3
	Hexachlorobenzene		118-74-1
	Hexachlorobutadiene		87-68-3
	Hexachlorocyclopentadiene		77-47-4
	Hexachloroethane		67-72-1
	Hexachloropropene		1888-71-7
2-Hexanone; Methyl butyl ketone	2-Hexanone; Methyl butyl ketone		591-78-6
	Indeno[1,2,3-cd]pyrene		193-39-5
	Isobutyl alcohol		78-83-1
	Isodrin		465-73-6
	Isophorone		78-59-1
	Isosafrole		120-58-1

	Kepone		143-50-0
Lead	Lead		(Total)
	Mercury		(Total)
	Methacrylonitrile		126-98-7
	Methapyrilene		91-80-5
	Methoxychlor		72-43-5
Methyl bromide; Bromomethane	Methyl bromide; Bromomethane		74-83-9
Methyl chloride; Chloromethane	Methyl chloride; Chloromethane		74-87-3
	3-Methylcholanthrene		56-49-5
Methyl ethyl ketone; MEK; 2-Butanone	Methyl ethyl ketone; MEK; 2-Butanone		78-93-3
Methyl iodide; Iodomethane	Methyl iodide; Iodomethane		74-88-4
	Methyl methacrylate		80-62-6
	Methyl methanesulfonate		66-27-3
	2-Methylnaphthalene		91-57-6
	Methyl parathion; Parathion methyl methyl		298-00-0
4-Methyl-2-pentanone; Methyl isobutyl ketone	4-Methyl-2-pentanone; Methyl isobutyl ketone		108-10-1
Methylene bromide; Dibromomethane	Methylene bromide; Dibromomethane		74-95-3
Methylene chloride; Dichloromethane	Methylene chloride; Dichloromethane		75-09-2
	Naphthalene		91-20-3
	1,4-Naphthoquinone		130-15-4
	1- Naphthylamine		134-32-7
	2-Napthylamine		91-59-8
Nickel	Nickel		(Total)
	o-Nitroaniline; 2-Nitroaniline		88-74-4
	m-Nitroaniline; 3-Nitroaniline		99-09-2
	p-Nitroaniline; 4-Nitroaniline		100-01-6
	Nitrobenzene		98-95-3

	o-Nitrophenol; 2-Nitrophenol		88-75-5
	p-Nitrophenol; 4-Nitrophenol		100-02-7
	N-Nitrosodi-n-butylamine		924-16-3
	N-Nitrosodiethylamine		55-18-5
	N-Nitrosodimethylamine		62-75-9
	N-Nitrosodiphenylamine		86-30-6
	N-Nitrosodipropylamine; N-Nitroso-N-dipropylamine; Di-n-propylnitrosamine		621-64-7
	N-Nitrosomethylethalamine		10595-95-6
	N-Nitrosopiperidine		100-75-4
	N-Nitrosopyrrolidine		930-55-2
	5-Nitro-o-toluidine		99-55-8
	Parathion		56-38-2
	Pentachlorobenzene		608-93-5
	Pentachloronitrobenzene		82-68-8
	Pentachlorophenol		87-86-5
	Phenacetin		62-44-2
		Perfluorobutanoic acid; PFBA; Perfluorobutyrate	375-22-4
		perfluoroheptanoic acid PFHpA	375-85-9
		Perfluorohexanesulfonic acid; perfluorohexane sulfonate; PFHxS	108427-53-8
		perfluorononanoic acid; PFNA	375-95-1

		perfluorooctanesulfonate acid; PFOS	1763-23-1
		perfluorooctanoic acid: PFOA	335-67-1
	Phenanthrene		85-01-8
	Phenol		108-95-2
	p-Phenylenediamine		106-50-3
	Phorate		298-02-2
	Polychlorinated biphenyls; PCBS; Aroclors		Note 6
	Pronamide		23950-58-5
	Propionitrile; Ethyl cyanide		107-12-0
	Pyrene		129-00-0
	Safrole		94-59-7
Selenium	Selenium		(Total)
Silver	Silver		(Total)
	Silvex; 2,4,5-TP		93-72-1
Styrene	Styrene		100-42-5
	Sulfide		18496-25-8
	2,4,5-T; 2,4,5-Trichlorophenoxyacetic acid		93-76-5
	1,2,4,5-Tetrachlorobenzene		95-94-3
1,1,1,2-Tetrachloroethane	1,1,1,2-Tetrachloroethane		630-20-6
1,1,2,2-Tetrachloroethane	1,1,2,2-Tetrachloroethane		79-34-5
Tetrachloroethylene; Tetrachloroethene; Perchloroethylene	Tetrachloroethylene; Tetrachloroethene; Perchloroethylene		127-18-4
	2,3,4,6-Tetrachlorophenol		58-90-2
Thallium	Thallium		(Total)
	Tin		(Total)

Toluene	Toluene		108-88-3
	o-Toluidine		95-53-4
	Toxaphene		Note 7
	1,2,4-Trichlorobenzene		120-82-1
1,1,1-Trichloroethane; Methychloroform	1,1,1-Trichloroethane; Methychloroform		71-55-6
1,1,2-Trichloroethane	1,1,2-Trichloroethane		79-00-5
Trichloroethylene; Trichloroethene ~~ethene~~ ethane	Trichloroethylene; Trichloroethene ethane		79-01-6
Trichlorofluoromethane; CFC-11	Trichlorofluoromethane; CFC-11		75-69-4
	2,4,5-Trichlorophenol		95-95-4
	2,4,6-Trichlorophenol		88-06-2
1,2,3-Trichloropropane	1,2,3-Trichloropropane		96-18-4
	O,O,O-Triethyl phosphorothioate		126-68-1
	sym-Trinitrobenzene		99-35-4
Vanadium	Vanadium		(Total)
Vinyl acetate	Vinyl acetate		108-05-4
Vinyl chloride; Chloroethene	Vinyl chloride; Chloroethene		75-01-4
Xylene(total)	Xylene(total)		Note 8
Zinc	Zinc		(Total)

NOTES:

[1]Common names are those widely used in government regulations, scientific publications, and commerce; synonyms exist for many chemicals.

[2]The corresponding Chemical Abstracts Service Index name as used in the 9th Collective Index, may be found in Appendix II of 40 CFR 258.

[3]Chemical Abstracts Service Registry Number. Where "Total" is entered, all species in the groundwater that contains this element are included.

[4]This substance is often called Bis(2-chloroisopropyl) ether, the name Chemical Abstracts Service applies to its noncommercial isomer, Propane, 2.2'-oxybis2-chloro (CAS RN 39638-32-9).

[5]Chlordane: This entry includes alpha-chlordane (CAS RN 5103-71-9), beta-chlordane (CAS RN 5103-74-2), gamma-chlordane (CAS RN 5566-34-7), and constituents of chlordane (CAS RN 57-74-9 and CAS RN 12739-03-6).

[6]Polychlorinated biphenyls (CAS RN 1336-36-3); this category contains congener chemicals, including constituents of Aroclor 1016 (CAS RN 12674-11-2), Aroclor 1221 (CAS RN 11104-28-2), Aroclor 1232 (CAS RN 11141-16-5), Aroclor 1242 (CAS RN 53469-21-9), Aroclor 1248 (CAS RN 12672-29-6), Aroclor 1254 (CAS RN 11097-69-1), and Arclor 1260 (CAS RN 11096-82-5).

[7]Toxaphene: This entry includes congener chemicals contained in technical toxaphene (CAS RN 8001-35-2), i.e., chlorinated camphene.

[8]Xylene (total): This entry includes o-xylene (CAS RN 96-47-6), m-xylene (CAS RN 108-38-3), p-xylene (CAS RN 106-42-3), and unspecified xylenes (dimethylbenzenes) (CAS RN 1330-20-7).

9VAC20-81-260. Corrective action program.

A. Corrective action is required whenever one or more groundwater protection standard is exceeded at statistically significant levels. An owner or operator of a landfill may elect to initiate corrective action at any time; however, prior to such initiation, the appropriate groundwater protection standards for all Table 3.1 constituents shall be established consistent with 9VAC20-81-250 A 6. ~~At any time during the corrective action process, the owner or operator may elect to pursue, or the director can determine that, interim measures as defined under subsection F of this section are required in accordance with subdivision E 3 of this section.~~

B. ~~The director may require periodic progress reports when a corrective action program is required but not yet implemented.~~ At any time during the corrective action process:

1. The owner or operator may elect to pursue, or the director can determine that, interim measures as defined under subsection F of this section are required in accordance with subdivision E 3 of this section;

2. The director may require periodic progress reports when a corrective action program is required but not yet implemented.

C. Characterization and assessment requirements.

1. Upon notifying the department that one or more of the constituents listed in Table 3.1 Column B has been detected at a statistically significant level exceeding the groundwater protection standards, the owner or operator shall, unless department approval of an Alternate Source Demonstration has been received as noted under 9VAC20-81-250 B 3 f (3) (a) (ii) or 9VAC20-81-250 C 3 e (3) (a) (ii):

a. Characterization. Within 90 days, install additional monitoring wells as necessary sufficient to define the vertical and horizontal extent of the release of constituents at statistically significant levels exceeding the groundwater protection standards including the installation of at least one additional monitoring well at the facility boundary in the direction of contaminant migration.

b. Notification. Notify all persons who own the land or reside on the land that directly overlies any part of the release ~~if~~ that contaminants, including their names and concentrations, have migrated offsite ~~as indicated by~~ based on the results of sampling of the characterization wells installed under subdivision 1 a of this subsection. This notification must be made within 15 days of completion of the characterization sampling and analysis efforts.

c. Assessment. Within 90 days, initiate an assessment of corrective measures or a proposal for presumptive remedy.

d. Financial assurance. Within 120 days, provide additional financial assurance ~~in the amount of $1 million~~ to the department as required by 9VAC20-70-113 using the mechanisms required in 9VAC20-70-140 of the Financial Assurance Requirements for Solid Waste Disposal, Transfer, and Treatment Facilities.

e. Public meeting. Prior to submitting the document required under subdivision 1 f of this subsection, schedule and hold a public meeting to discuss the draft results of the corrective measures assessment or the proposal for presumptive remedy, prior to the final selection of remedy. The meeting shall be held to the extent practicable in the vicinity of the landfill. The process to be followed for scheduling and holding the public hearing is described under subdivision 4 of this subsection.

f. Submission requirements. Within 180 days, submit the completed assessment of corrective measures defined under subdivision 3 of this subsection, or the proposal for presumptive remedies defined under subdivision 2 of this subsection, including any responses to public comments received.

g. Director allowance. The submission timeframe noted in subdivision 1 f of this subsection may be extended by the director for good cause upon request of the owner or operator.

2. Presumptive remedy allowance.

a. Applicability. To expedite corrective action, in lieu of an analysis meeting the requirements of subdivision 3 of this subsection, the owner or operator of any facility monitoring groundwater in accordance with 9VAC20-81-250 C may propose a presumptive remedy for the landfill.

b. Options. The presumptive remedy for solid waste landfills shall be limited to one or more of the following:

(1) Containment of the landfill mass, including an impermeable cap;

(2) Control of the landfill leachate;

(3) Control of the migration of contaminated groundwater;

(4) Collection and treatment of landfill gas; and

(5) Reduction of saturation of the landfill mass.

Containment may be selected as a sole or partial remedy until a determination is made under subdivision F 1 of this section that another remedy shall be employed to meet the requirements of subdivision G 1 of this section concerning remediation completion. Upon recognition that presumptive remedies may not be able to achieve the groundwater protection standards, an assessment of corrective measures shall be initiated within 90 days.

c. Restrictions. Presumptive remedies are not applicable to:

(1) Landfills monitoring groundwater under the Federal Subtitle D equivalent program defined under 9VAC20-81-250 B when the use of the presumptive remedy will be the sole remedy applied to the groundwater release; or

(2) Landfills that may monitor groundwater under 9VAC20-81-250 C but that exhibit contamination beyond facility boundaries unless the proposed presumptive remedy option under subdivision 2 b of this subsection can be demonstrated to show it will address the reduction of contamination already present beyond the facility boundary, and the demonstration is approved by the department.

d. Submission requirements. Owner or operators who wish to propose use of the presumptive remedy allowance shall submit with the proposal, signed by a qualified groundwater professional, an:

(1) Assessment of risks resulting from the groundwater contamination identified at the disposal unit boundary ~~and at~~ as well as the permitted facility boundary;

(2) Evaluation of the ~~current~~ trends in groundwater quality data with respect to site background and the established groundwater protection standards; and

(3) Anticipated schedule for initiating and completing presumptive remedy-based remedial activities.

e. Implementation. Upon conducting a public meeting as required under subdivision 4 of this subsection, submitting a corrective action monitoring plan meeting subdivision D 1 of this section, and modifying the landfill permit in accordance with 9VAC20-81-600 F 2, the owner or operator may proceed with the implementation of the remedy in accordance with subdivision E 1 of this section.

f. Evaluation and response. The owner or operator shall provide an evaluation of the performance of the implemented presumptive remedy every three years, unless an alternate schedule is approved by the director, in a Corrective Action Site Evaluation report containing, at a minimum, the following information:

~~(a)~~ (1) A description of how the presumptive remedy is performing with respect to the conditions in subdivision H 1 of this section;

~~(b)~~ (2) Current and historical groundwater data and analysis;

~~(c)~~ (3) An evaluation of the changes seen in groundwater contamination after the implementation of the remedy and a projection of when the conditions in subdivision H 1 of this section will be achieved; and

~~(d)~~ (4) The progress toward achieving the schedule required in subdivision C 2 d (3) of this section.

3. Assessment of corrective measures.

a. Purpose. The assessment shall include an analysis of the effectiveness of several potential corrective measures in meeting all of the requirements and objectives of the remedy as described under this subsection, addressing at least the following:

(1) The performance, reliability, implementation ease, and potential impacts of appropriate potential remedies, including safety impacts, cross-media impacts, and control of exposure to any residual contamination;

(2) The time required to begin and complete the remedy;

(3) The costs of remedy implementation; and

(4) The institutional requirements such as state or local permit requirements or other environmental or public health requirements that may substantially affect implementation of the remedies.

b. Requirements. As part of the assessment of corrective measures submitted to the department for review, the owner or operator must demonstrate that one or more possible groundwater remedy has been evaluated for potential application on site. These remedies may include a specific technology or combination of technologies that achieve or may achieve the standards for remedies specified in subdivision 3 c (1) of this subsection given appropriate consideration of the factors specified in subdivision D 1 a of this section.

c. Selection of remedy. As part of submission of the assessment of corrective measures document, the owner or operator shall select a remedy that, at a minimum, meets the standards listed in subdivision H 1 of this section. ~~(1)~~ The selected remedies to be included in the corrective action plan shall:

~~(a)~~ (1) Be protective of human health and the environment;

~~(b)~~ (2) Attain the groundwater protection standard as specified pursuant to 9VAC20-81-250 A 6;

~~(c)~~ (3) Control the sources of releases so as to reduce or eliminate, to the maximum extent practicable, further releases of solid waste constituents into the environment that may pose a threat to human health or the environment; and

~~(d)~~ (4) Comply with standards for management of investigatively derived wastes.

d. Evaluation and response. The department shall review the assessment of corrective measures to evaluate the proposed remedy and may require revisions to the assessment. If the assessment is approved ~~without revision~~, the department will notify the owner or operator to prepare a written corrective action plan based on the proposed remedy and such plan will be submitted within 180 days of the department's notification of approval of the assessment of corrective measures.

4. Public meeting process. As part of the public meeting process completed prior to the submission of a proposal for presumptive remedy or assessment of corrective measures:

a. Newspaper notice. The owner or operator must publish a notice once a week for two consecutive weeks in a major local newspaper of general circulation inviting public comment on the results of the corrective measures assessment or proposal for presumptive remedy as applicable. The notice shall include:

(1) The name of the landfill, its location, and the date, time, and place for the public meeting, and the beginning and ending dates for the 30-day comment period. The public meeting shall be held at a time convenient to the public. The comment period will begin on the date the owner or operator publishes the notice in the local newspaper;

(2) The name, telephone, and address of the owner's or operator's representative who can be contacted by the interested persons to answer questions or where comments shall be sent;

(3) Location where copies of the documentation to be submitted to the department in support of the corrective measures assessment or proposal of presumptive remedy can be viewed by the public and copied prior to the meeting;

(4) A statement indicating that the need to perform the corrective measures assessment or presumptive remedy is a result of a statistically significant increase in one or more groundwater protection standards; and

(5) A statement that the purpose of the public meeting is to acquaint the public with the technical aspects of the proposal, describe how the requirements of these regulations will be met, identify issues of concern, facilitate communication, and establish a dialogue between the permittee and persons who may be affected by the landfill.

b. Document review. The owner or operator shall place a copy of the report and supporting documentation in a location accessible to the public during the public comment period in the vicinity of the proposed landfill.

c. Meeting timeframe. The owner or operator shall hold a public meeting within a timeframe that allows for the submission of a completed assessment of corrective measures or presumptive remedy within 180 days of notifying the department of a groundwater protection standard exceedance or as granted under subdivision 1 g of this subsection. The meeting must be scheduled and held:

(1) No earlier than 15 days after the publication of the notice; and

(2) No later than seven days before the close of the 30-day comment period.

D. Corrective action plan and monitoring plan.

1. The owner or operator shall submit to the department a ~~Corrective Action Plan~~ corrective action plan (CAP) and related ~~Corrective Action Monitoring Plan~~ corrective action monitoring plan (CAMP) consistent with the findings as presented in the assessment of corrective measures required under subdivision C 3 of this section, or proposal for presumptive remedy described under subdivision C 2 of this section.

a. Requirements. In preparing a proposed corrective action plan, the owner or operator will consider the following evaluation factors:

(1) The long-term and short-term effectiveness and protectiveness of the potential remedies, along with the degree of certainty that the remedy will prove successful based on consideration of the following:

(a) Magnitude of reduction of existing risks;

(b) Magnitude of residual risks in terms of likelihood of further releases due to waste remaining following implementation of a remedy;

(c) The type and degree of long-term management required, including monitoring, operation, and maintenance;

(d) Short-term risks that might be posed to the community, workers, or the environment during implementation of such a remedy, including potential threats to human health and the environment associated with excavation, transportation, and redisposal or containment;

(e) Time until full protection is achieved;

(f) Potential for exposure of humans and environmental receptors to remaining wastes, considering the potential threat to human health and the environment associated with excavation, transportation, re-disposal, or containment;

(g) Long-term reliability of the engineering and institutional controls; and

(h) Potential need for replacement of the remedy.

(2) The effectiveness of the remedy in controlling the source to reduce further releases based on consideration of the following factors:

(a) The extent to which containment practices will reduce further releases;

(b) The extent to which treatment technologies may be used;

(c) Magnitude of reduction of existing risks; and

(d) Time until full protection is achieved.

(3) The ease or difficulty of implementing a potential remedy based on consideration of the following types of factors:

(a) Degree of difficulty associated with constructing the technology;

(b) Expected operational reliability of the technologies;

(c) Need to coordinate with and obtain necessary approvals and permits from other agencies;

(d) Availability of necessary equipment and specialists; and

(e) Available capacity and location of needed treatment, storage, and disposal services.

(4) Practicable capability of the owner or operator, including a consideration of the technical and economic capability. At a minimum the owner or operator must consider capital costs, operation and maintenance costs, net present value of capital and operation and maintenance costs, and potential future remediation costs.

(5) Ensure that all solid wastes that are managed while undergoing corrective action or an interim measure shall be managed in a manner:

(a) That is protective of human health and the environment; and

(b) That complies with all applicable federal and Virginia requirements.

(6) The degree to which community concerns raised as the result of the public meeting required by subdivision C 4 of this section are addressed by the potential remedy.

b. Implementation and completion timeframes. The owner or operator shall specify as part of the selected remedy a schedule for initiating and completing remedial activities. Such a schedule shall require the initiation of remedial activities within a reasonable period of time taking into consideration the factors set forth in this section. The owner or operator shall consider the following factors in determining the schedule of remedial activities:

(1) Nature and extent of contamination;

(2) Practical capabilities of remedial technologies in achieving compliance with groundwater protection standards established under 9VAC20-81-250 A 6 and other objectives of the remedy;

(3) Availability of treatment or disposal capacity for wastes managed during implementation of the remedy;

(4) Desirability of utilizing technologies that are not currently available, but which may offer significant advantages over already available technologies in terms of effectiveness, reliability, safety, or ability to achieve remedial objectives;

(5) Potential risks to human health and the environment from exposure to contamination prior to completion of the remedy;

(6) Resource value of the aquifer including:

(a) Current and future uses;

(b) Proximity and withdrawal rates of users;

(c) Groundwater quantity and quality;

(d) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to the waste constituents;

(e) The hydrological characteristics of the landfill and surrounding land;

(f) Groundwater ~~removal~~ extraction and treatment costs; and

(g) The cost and availability of alternate water supplies;

(7) Practical capability of the owner or operator;

(8) Timeframes for periodic progress reports during design, construction, operation, and maintenance. Items to consider when preparing the reports include ~~but are not limited to~~:

(a) Progress of remedy implementation;

(b) Results of monitoring and sampling activities;

(c) Progress in meeting cleanup standards;

(d) Descriptions of remediation activities;

(e) Problems encountered during the reporting period and actions taken to resolve problems;

(f) Work ~~for~~ anticipated for completion during the next reporting period;

(g) Copies of laboratory reports including drilling logs, QA/QC documentation, and field data; and

(9) Other relevant factors.

c. Corrective action monitoring program. Any groundwater monitoring program to be employed during the corrective action process:

(1) Shall at a minimum, meet the requirements of the applicable groundwater monitoring program described under 9VAC20-81-250 B 3 or C 3;

(2) Shall determine the horizontal and vertical extent of the plume of contamination for constituents at statistically significant levels exceeding background concentrations;

(3) Can be used to demonstrate the effectiveness of the implemented corrective action remedy; and

(4) Shall demonstrate compliance with the groundwater protection standard established under 9VAC20-81-250 A 6.

2. The proposed corrective action plan shall be submitted to the director for approval. Prior to rendering his approval, the director may:

a. Request an evaluation of one or more alternative remedies;

b Request technical modification of the monitoring program;

c. Request a change in the time schedule; or

d. Determine that the remediation of the release of Table 3.1 constituents is not necessary if the owner or operator demonstrates to the satisfaction of the director that:

(1) The groundwater is additionally contaminated by substances that have originated from a source other than the landfill in a demonstration meeting the requirements of 9VAC20-81-250 A 5 and those substances are present in concentrations such that cleanup of the release from the landfill would provide no significant reduction in risk to actual or potential receptors;

(2) The constituent is present in groundwater that is not currently or reasonably expected to be a source of drinking

water and not hydraulically connected with waters to which the constituents are migrating or are likely to migrate in a concentration that would exceed the groundwater protection standards established~~;~~. A uniform environmental covenant in accordance with the Uniform Environmental Covenants Act Regulation (9VAC15-90) may be accepted for the purposes of restricting contaminated groundwater from being used as a source of drinking water.

(3) Remediation of the release is technically impracticable; or

(4) Remediation results in unacceptable cross-media impacts.

3. A determination by the director pursuant to subdivision 2 d of this subsection shall not affect the authority of the state to require the owner or operator to undertake source control measures or other measures that may be necessary to eliminate or minimize further releases to the groundwater, to prevent exposure to the groundwater, or to remediate the groundwater to concentrations that are technically practicable and significantly reduce threats to human health or the environment.

4. After an evaluation of the proposed or revised plan, the director will:

a. Approve the proposed corrective action plan as written~~;~~ ~~b. Approve the proposed corrective action plan as modified by the owner or operator; c. Proceed with the permit modification process in accordance with 9VAC20-81-600 F 2~~ or modified by the owner or operator and amend the facility permit in accordance with 9VAC20-81-600 F 3; or

~~d.~~ b. Disapprove the proposed corrective action plan and undertake appropriate containment or clean up actions in accordance with subdivision 18 of § 10.1-1402 ~~(18)~~ of the Virginia Waste Management Act.

E. Remedy implementation. Upon completion of the permit modification action described under subdivision D 4 c of this section, the owner or operator shall:

1. Monitoring program. Implement a corrective action groundwater monitoring program meeting the requirements of subdivision D 1 c of this section;

2. Remedy. Implement the remedy described in the Corrective Action Plan and the Permit as amended under subdivision D 4 c of this section; and

3. Interim measures. Take any interim measures necessary to ensure the protection of human health and the environment as described in subsection F of this section.

F. Interim measures.

1. To the greatest extent practicable, interim measures shall be consistent with the objectives of and contribute to the performance of any remedy that may be required pursuant to meeting the groundwater protection standard.

2. Should the director require interim measures pursuant to this section, the director will notify the owner or operator of the necessary actions required. Such actions will be implemented as soon as practicable in accordance with a schedule as specified by the director.

3. The following factors shall be considered in determining whether interim measures are necessary:

a. Timeframes. Time required to develop or implement a final remedy;

b. Exposure. Actual or potential exposure of nearby populations or environmental receptors to ~~hazardous~~ groundwater constituents~~;~~ exceeding groundwater protection standards.

c. Drinking water. Actual or potential contamination of drinking water supplies;

d. Resource degradation. Further degradation of the groundwater that may occur if remedial action is not initiated expeditiously;

e. Migration potential. ~~Weather conditions~~ Conditions that may cause the groundwater constituents to further migrate or be released to other media such as surface water;

f. Accident. Risks of fire or explosion, or potential for exposure to constituents as a result of an accident or failure of a container or handling system; and

g. Other. Situations including the presence of wastes or other contaminants that may pose threats to human health, sensitive ecosystems, and the environment.

G. Remedy performance.

1. The owner or operator shall provide an evaluation of the performance of the remedy consistent with the timeframes established in the permit and present the findings in a Corrective Action Site Evaluation report. The evaluation shall describe the progress toward achieving the groundwater protection standards since implementation of the remedy.

2. An owner or operator or the director may determine, based on information developed after implementation of the remedy or other information contained in the evaluation, that compliance with requirements of subdivision H 1 of this section are not being achieved through the remedy selected. In such cases, the owner or operator shall implement other methods or techniques that could practicably achieve compliance with the requirements, unless the owner or operator makes the determination under subdivision G 3 of this section.

3. If the owner or operator determines that groundwater protection standards cannot be practically achieved with any currently available methods, the owner or operator shall, within 90 days of recognizing that condition:

a. Submit a report, certified by a qualified groundwater scientist, for director approval, that demonstrates that compliance with groundwater protection standards established under 9VAC20-81-250 A 6 cannot be practically achieved with any currently available groundwater remedial methods;

b. Upon receiving director approval under subdivision 3 a of this subsection, implement alternate measures to control exposure of humans or the environment to residual contamination that will remain as a result of termination of remedial actions, as necessary to protect human health and the environment;

c. Implement alternate measures for removal or decontamination of any remediation-related equipment, units, devices, or structures that are:

(1) Technically practicable; and

(2) Consistent with the overall objective of the remedy; and

d. At least 14 days prior to implementing the alternate measures, submit a request for approval to the director describing and justifying the alternate measures to be applied.

H. Remedy completion.

1. The groundwater remedy implemented under corrective action shall be considered complete when:

a. The owner or operator complies with the groundwater protection standards at all points within the plume of contamination that lie at or beyond the disposal unit boundary by demonstrating that no Table 3.1 Column B constituents have exceeded groundwater protection standards for a period of three consecutive years using the appropriate statistical procedures and performance standards as described under 9VAC20-81-250 D; and

b. All other actions required as part of the remedy have been satisfied or completed, and the owner or operator obtains the certification required under subdivision H 2 of this section.

2. Upon completion of the remedy, the owner or operator shall notify the director within 14 days by submitting a certification that the remedy has been completed in compliance with the requirements of the Corrective Action Plan and the permit as modified under subdivision D 4 c of this section.

3. The certification shall be signed by the owner or operator and by a qualified groundwater scientist, and shall include all data relevant to the demonstration of a successful remedy completion in a report titled Corrective Action Completion Report.

4. If the director, based on the review of information presented under subdivision H 3 of this section, determines that:

a. The corrective action remedy has been completed in accordance with the requirements of the Corrective Action Plan, the permit as amended, and subdivision H 1 of this section, the director will release the owner or operator from the requirements for financial assurance for corrective action under 9VAC20-70; or

b. The remedy has not yet achieved completion, the owner or operator shall ~~remain in~~ be required to continue corrective ~~action~~ actions as defined in the solid waste permit and meet the financial assurance requirements until such time as a successful demonstration and certification can be made.

Part IV

Other Solid Waste Management Facility Standards~~: Compost Facilities; Solid Waste Transfer Stations; Centralized Waste Treatment Facilities; Materials Recovery Facilities; Waste to Energy; Incineration Facilities; Surface Impoundments and Lagoons; Waste Piles; Remediation Waste Management Units; Landfill Mining; Miscellaneous Units; and Exempt Management Facilities~~

9VAC20-81-300. General.

A. Any person who designs, constructs, or operates any solid waste treatment or storage facility not otherwise exempt under 9VAC20-81-95 shall comply with the requirements of this part. In addition, this part sets forth conditions that yard waste composting facilities must meet to maintain their exempt status, where applicable, under 9VAC20-81-95 D 6. Further, all applications pursuant to these standards shall demonstrate specific means proposed for compliance with requirements set forth in this part.

B. All facilities, except exempted facilities, shall be maintained and operated in accordance with the permit issued or permit-by-rule status pursuant to this regulation. All facilities shall be maintained and operated in accordance with the approved design and intended use of the facility.

C. Hazardous wastes shall not be disposed or managed in facilities subject to this regulation unless specified in the permit or by specific approval of the ~~executive~~ director.

D. Solid waste management facilities regulated under this part that place solid wastes or residues on site for disposal, or leave such wastes or residues in place after closure, are subject to the provisions of Part III (9VAC20-81-100 et seq.) and Part VIII (9VAC20-81-800 et seq.) of this chapter, as applicable, including:

1. Groundwater monitoring requirements in 9VAC20-81-250 or 9VAC20-81-800;

2. Closure and ~~postclosure~~ post-closure care requirements in 9VAC20-81-160 and 9VAC20-81-170, or 9VAC20-81-800; and

3. Permitting requirements of Part V (9VAC20-81-400 et seq.) of this chapter.

E. All other facilities shall close in accordance with the closure plan prepared per the requirements described in this part and 9VAC20-81-480, as applicable.

F. Control program for unauthorized waste. Facilities managing solid waste per activities exempted under the provisions of 9VAC20-81-95 are not required to implement the control program for unauthorized waste as provided in this section.

1. Solid waste treatment or storage facilities regulated under this part shall implement a control program for unauthorized waste in accordance with the following provisions. The owner or operator of the facility shall:

a. Place a written description of the control program for unauthorized waste in the facility's ~~operating~~ operations manual;

b. Institute a control program (including measures such as signs at all maintained access points indicating hours of operation and the types of solid waste accepted and not accepted, monitoring, alternate collection programs, passage of local laws, etc.) to assure that only solid waste authorized by the department to be managed at the solid waste management facility is being managed there; and

c. Develop and implement a program to teach the solid waste management facility's staff to recognize, remove, and report receipt of solid waste not authorized by the department to be managed at the solid waste management facilities. Refresher training on the unauthorized waste control program shall be provided on an annual basis (at least once every 12 months).

2. If unauthorized waste is observed in the waste delivered to the facility prior to unloading, the owner or operator may refuse to accept the waste. If the unauthorized waste is observed in the waste delivered to the facility, the owner or operator shall segregate it, notify the generator, document the incident in the operating record, make necessary arrangements to have the material managed in accordance with applicable federal and state laws, and notify the department of the incident in accordance with 9VAC20-81-530 C 3 to include the means of proper handling. If the unauthorized waste is accepted, the owner or operator shall remove it, segregate it, and provide to the department a record identifying that waste and its final disposition. Any unauthorized waste accepted by the owner or operator shall be managed in accordance with applicable federal or state laws and regulations. Unauthorized waste that has been segregated shall be adequately secured and contained to prevent leakage or contamination to the environment. The solid waste management facility owner or operator shall have the unauthorized waste removed or properly managed as soon as practicable, but not to exceed 90 days after discovery. Removal shall be by a person authorized to transport such waste to a waste management facility approved to receive it for treatment, disposal, or transfer.

3. Owners or operators of waste to energy or incinerator facilities receiving waste generated outside of Virginia shall also comply with the increased random inspection provisions in 9VAC20-81-340 ~~E 3~~ G.

G. Solid waste management facilities regulated under this part that store waste tires shall also adhere to the requirements of 9VAC20-81-640 for the waste tire storage.

9VAC20-81-310. Applicability.

A. Solid waste compost facilities.

1. The standards in this part shall apply to owners and operators of facilities producing compost from municipal solid ~~waste/refuse~~ waste or refuse or combinations of municipal solid waste/refuse with animal manures.

a. Composting facilities that employ the enclosed vessel method are referred to as Type A (confined) compost facilities. Facilities that employ the windrow or aerated static pile method are referred to as Type B compost facilities. The only composting processes that may be employed are those with prior operational performance in the United States. Any other proposed composting process shall conform to the standards contained in 9VAC20-81-395 and will require an experimental solid waste management facility permit.

b. Use of solid waste containing hazardous waste, regulated medical waste, or nonbiodegradable waste is prohibited.

2. The standards contained in this part are not applicable to composting exempt under 9VAC20-81-95.

3. The feedstocks for composting are classified on the basis of the type of waste used in the composting process. The categories of feedstocks are as follows:

a. Category I - Plant or plant-derived preconsumer materials such as:

(1) Agriculture crop residues including~~, but not limited to,~~ harvesting residuals, straw, and cornstalks;

(2) Livestock feed including~~, but not limited to,~~ hay, grain, silage, cottonseed meal, soybean meal;

(3) Nonfood agricultural processing waste including~~, but not limited to,~~ cotton gin trash, wool carding residue, field corn cobs;

(4) Source-separated preconsumer food wastes including ~~but not limited to~~ wholesale and retail market residuals (e.g., overripe, damaged, or otherwise rejected fruit or vegetables, food preparation wastes including prepared but unserved foods) and institutional kitchen culls;

(5) Food processing wastes including culls, peelings, hulls, stems, pits, seed, pulp, shucks, nut shells, apple pomace, corn cobs, cranberry filter cake, olive husks, potato tops, cocoa shells, fruit and vegetable processing waste, rejected products, and bakery wastes;

(6) Source-separated clean waste paper;

(7) Vegetative waste; and

(8) Yard waste.

b. Category II - Animal-derived waste material such as:

(1) Dairy processing wastes including ~~but not limited to~~ spoiled milk, cheese, curd, and yogurt.

(2) Fish processing wastes including ~~but not limited to~~ eggs, fish gurry and racks, clam bellies, fish shells, fish processing sludge, fish breading crumbs, mussel, crab, lobster, and shrimp wastes.

c. Category III - Animal and postconsumer food wastes with pathogen potential such as:

(1) Source-separated wastes including ~~but not limited to~~ restaurant waste, institutional kitchen wastes, plate scrapings;

(2) Animal manures including ~~but not limited to~~ spoiled stable straw bedding, livestock feedlot, holding pen and cage scrapings, dairy manure semi-solids, poultry litter and manure; ~~and~~

(3) Rendered animals; and

(4) Compostable or biodegradable food containers and utensils.

d. Category IV - Other wastes such as:

(1) Nonrendered animal meat waste including ~~but not limited to~~ animal carcasses, slaughterhouse waste, paunch manure;

(2) Mixed nonsource separated organic wastes including ~~but not limited to~~ municipal solid waste; and

(3) Industrial sludge.

B. Solid waste transfer stations. The standards in this part shall apply to owners and operators of solid waste transfer stations.

C. Centralized waste treatment facilities. The standards in this part shall apply to owners and operators of solid waste management facilities who operate a treatment system to solidify nonhazardous solid waste to meet the disposal criteria of 9VAC20-81-140 where the waste is generated offsite, and such treatment system must have no discharge. The requirements of this section shall not apply to solidification operations at active landfills that are authorized in the landfill's solid waste permit.

D. Materials recovery facilities.

1. The standards in this part shall apply to owners and operators of solid waste management facilities that operate to reclaim solid waste.

2. The regulations of this part do not apply to:

a. The landfill gas recovery systems operated at active and closed solid waste disposal facilities that are regulated under 9VAC20-81-200;

b. The storage and treatment facilities associated with the management of materials conditionally exempt from this chapter on the basis of 9VAC20-81-95 F;

c. The facilities that use materials in a manner that constitutes disposal that are regulated under Part VI (9VAC20-81-610 et seq.) of this chapter; or

d. The disposal of residues from the materials recovery facilities that is regulated under Part III (9VAC20-81-100 et seq.) of this chapter.

E. Waste to energy and incineration facilities.

1. The standards in this part shall apply to owners and operators of solid waste and process residue storage and handling facilities associated with the energy recovery from or incineration of solid wastes.

2. The regulations of this part do not apply to:

a. The design and operation of the combustor units regulated by the Air Pollution Control Board; or

b. The disposal of residues from the waste to energy or incineration facilities that is regulated under Part III (9VAC20-81-100 et seq.) of this chapter.

F. Surface impoundments and lagoons.

1. Lagoons and surface impoundments are regulated under State Water Control Law. During the operating life of these facilities, this chapter does not apply. If the operator intends to close such a facility by burial of sludges and residue in place, this chapter shall not apply where the regulating agency establishes the closure requirements in accordance with water pollution control regulations. The standards in this section shall apply to owners and operators of lagoons and surface impoundments only if new wastes, not contained in the lagoon or impoundment, are proposed to be disposed with the residue. In those cases, the operation and closure of the facility constitutes construction and operation of a landfill and must be accomplished as specified in Part III (9VAC20-81-100 et seq.) of this chapter.

2. Leachate lagoons are regulated under Part III (9VAC20-81-100 et seq.) of this chapter and are subject to the requirements for liners in 9VAC20-81-210 C.

3. Notwithstanding the provisions of subdivision 1 of this subsection, this chapter, in accordance with 9VAC20-81-45, applies to CCR surface impoundments in addition to the requirements under the State Water Control Law.

G. Waste piles.

1. The standards in this part shall apply to owners and operators of facilities that store or treat nonputrescible solid waste in piles.

2. Owners or operators of waste piles that will be closed with wastes left in place are subject to regulations contained in Part III (9VAC20-81-100 et seq.) of this chapter.

3. This part does not apply if materials will be actively composted according to all the requirements for compost facilities in Part IV (9VAC20-81-300 et seq.) of this chapter.

4. The regulations in this part do not apply to the management of industrial co-products in piles. A material shall be considered an industrial co-product if a demonstration can be made consistent with 9VAC20-81-95 or 9VAC20-81-97 that the material is not a solid waste.

5. The regulations in this part do not apply to active logging operations subject to regulation under the provisions of §§ 10.1-1181.1 and 10.1-1181.2 of the Code of Virginia.

9VAC20-81-320. Siting requirements.

A. The siting of all compost facilities, solid waste transfer stations, centralized waste treatment facilities, materials recovery facilities, waste to energy and incineration facilities, and waste piles shall be governed by the standards as set forth in this section.

~~A.~~ B. Facilities shall be adjacent to or have direct access to roads that are paved or surfaced and capable of withstanding anticipated load limits. Solid waste management facilities storing or treating solid waste in piles such as but not limited to compost facilities and waste piles may also have direct access to gravel roads.

~~B.~~ C. Facilities shall not be sited or constructed in areas subject to base floods. For materials recovery facilities, this siting prohibition does not apply to facilities recovering materials from industrial wastewater received from offsite.

~~C.~~ D. No facility activity shall be closer than:

1. 50 feet to its property boundary;

2. 200 feet to any residence, a health care facility, school, recreational park area, or similar type public institution;

3. 50 feet to any perennial stream or river. For materials recovery facilities, this siting prohibition does not apply to those facilities recovering materials from industrial wastewater received from offsite; and

4. For facilities treating or storing solid waste in piles, no closer than 50 feet to any wetland.

~~D.~~ E. Sites shall provide room to minimize traffic congestion and allow for safe operation.

~~E.~~ F. In addition to subsections ~~A~~ B through ~~D~~ E of this section, for waste piles, unless the waste piles are located inside or under a structure that provides protection from precipitation so that neither ~~run-off~~ runoff nor leachate is generated, such waste piles shall be provided with an adequate area to allow for proper management in accordance with 9VAC20-81-330 ~~F~~ G and 9VAC20-81-340 ~~F~~ H.

~~F.~~ G. In addition to subsections A through D of this section, for compost facilities:

1. Acceptable sites must have area and terrain to allow for proper management of run-on, ~~run-off~~ runoff, and leachate, and to allow for a buffer zone with the minimum size of 100 feet between the property boundary and the actual composting activity.

2. Type B facilities shall not be located in areas that are geologically unstable or where the site topography is heavily dissected.

3. Composting facilities are prohibited on airport property. Off-airport composting facilities, except those only composting vegetative waste and yard waste, shall be located no closer than the greater of the following distances as defined by the FAA:

a. 1,200 feet from any air operations area; or

b. The distance called for by airport design requirements.

9VAC20-81-330. Design and construction requirements.

A. The design and construction of all compost facilities, solid waste transfer stations, centralized waste treatment facilities, materials recovery facilities, waste to energy and incineration facilities, and waste piles shall be governed by the standards as set forth in this section.

~~A.~~ B. Compost facilities.

1. For facilities that will compost only Category I feedstocks:

a. A handling area and equipment shall be provided to segregate the Category I waste from noncompostable components and to store such components in appropriate containers prior to proper management and disposal.

b. If the facility is located in any area where the seasonal high water table lies within two feet of the ground surface, the composting and handling areas shall be hard-surfaced and diked or bermed to prevent run-on, collect runoff, and provided with a drainage system to route the collected runoff to a treatment, disposal or holding facility, discharged under a VPDES permit, or recirculated within the composting process.

c. Engineering controls shall be incorporated into design of facilities located on sites with:

(1) Springs, seeps, and other groundwater intrusions;

(2) Gas, water, or sewage lines under the active areas; or

(3) Electrical transmission lines above or below the active areas.

d. Areas used for mixing, composting, curing, screening, and storing shall be graded to prevent run-on, collect runoff, and provided with a drainage system to route the collected runoff to a treatment, disposal or holding facility, discharged under a VPDES permit, or recirculated within the composting process.

e. Roads serving the unloading, handling, composting, and storage areas shall be usable under all weather conditions.

2. Facilities for the composting of ~~Category~~ Categories II, III, and IV feedstocks, including those that will mix these feedstocks with Category I feedstocks, shall be provided with:

a. Covered areas for receiving, segregation, and grading of the waste shall be provided to segregate the waste from noncompostable components and to store such components in properly constructed containers prior to proper management and disposal.

b. Areas used for mixing, composting, curing, screening, and storing shall be graded to prevent run-on, collect runoff, and provided with a drainage system to route the collected runoff to a treatment, disposal or holding facility, discharged under a VPDES permit, or recirculated within the composting process.

c. If the facility is located in any area where the seasonal high water table lies within two feet of the ground surface, the composting and handling areas shall be hard-surfaced and diked or bermed to prevent run-on, collect runoff, and provided with a drainage system to route the collected runoff to a treatment, disposal or holding facility, discharged under a VPDES permit, or recirculated within the composting process.

d. Where any Category IV feedstocks are received, or where more than 1,000 total tons/quarter of ~~Category~~ Categories II and III feedstocks are received, all receiving, mixing, composting, curing, screening, and storing operations shall be provided with one of the following:

(1) An asphalt or concrete area that drains directly to a wastewater storage, treatment, or disposal facility;

(2) An asphalt, or concrete, and diked or bermed area to prevent entry of run-on or escape of ~~run-off~~ runoff, leachate, or other liquids, and a sump with either a gravity discharge or an adequately sized pump located at the low point of the hard-surfaced area to convey liquids to a wastewater treatment, disposal or holding facility, discharged under a VPDES permit, or recirculated within the composting process;

(3) A lime stabilized area may be substituted for the asphalt or concrete specified under subdivision ~~A~~ 2 d (2) of this subsection. The lime stabilized clay/soil area must be a minimum of six inches thick and have a lab-tested permeability of $1x10^{-7}$ cm/sec; or

(4) A 12" compacted gravel pad underlain by a continuous high density polyethylene (HDPE) liner of a minimum 60-mil thickness and equipped with leachate collection above the liner and leak detection below the liner.

e. Area and equipment shall be provided to segregate nonbiodegradable or otherwise undesirable components from the municipal solid waste to be processed.

f. For Type B facilities, engineering controls shall be incorporated into design of facilities located on sites with:

(1) Springs, seeps, and other groundwater intrusions;

(2) Gas, water, or sewage lines under the active areas; or

(3) Electrical transmission lines above or below the active areas.

g. Roads serving the unloading, composting, and storage areas shall be of all-weather construction.

h. Auxiliary power, standby equipment, or contingency arrangements shall be required to ensure continuity of composting operations.

i. For uncovered sites, calculations for sizing of surface water control features will be based on a rainfall intensity of one hour duration and a 10-year return period.

~~B.~~ C. Solid waste transfer stations.

1. An all-weather road suitable for loaded collection vehicles shall be provided from the entrance gate to the unloading, receiving, or tipping area.

2. The floors in the unloading, receiving, or tipping areas shall be constructed of easily cleanable materials, provided with a water supply for transfer area cleaning purposes, and equipped with drains or pumps, or equivalent means to facilitate the removal of wastewater to proper storage or disposal.

3. Truck wheel curbs or other safety facilities shall be provided to prevent backing or falling into a pit if one is used for tipping.

4. The transfer unloading, receiving, tipping, and storage structures, buildings, and ramps shall be of a material that can be easily cleaned.

5. Internal areas for unloading and management of incoming solid waste shall be provided to ensure an environmentally sound operation and afford space to allow for proper processing based on the facility's daily process rate.

6. Onsite queuing capacity shall be provided for the expected traffic so that the waiting collection vehicles do not back up onto the public road.

~~6.~~ 7. Portions of the transfer station used solely for storage of household hazardous waste shall have a containment system designed in accordance with 40 CFR 267.173, as amended. The requirements of this section do not apply to household hazardous waste packaged in U.S. Department of Transportation-approved shipping containers and removed from the site within 10 days from the date of collection.

~~7.~~ 8. If the transfer station is used to store waste materials, storage units shall be designed to reduce the potential for fires and migration of vectors, and to prevent escape of wastes, wash waters, odors, dust, and litter from the facility.

~~C.~~ D. Centralized waste treatment facilities.

1. A centralized waste treatment facility shall be so designed to reduce the potential of elements that may degrade health or the environment from crossing the facility boundaries.

Such elements include fire, vectors, wash water, odor, and litter.

2. An all-weather road suitable for loaded delivery vehicles shall be provided from the entrance gate to the unloading area.

3. Mixing tanks shall be located inside a building or have covers provided that can be deployed rapidly under the threat of inclement weather.

4. Tanks constructed in the ground shall be placed a minimum of two feet above the seasonal high ground-water table and a minimum of two feet vertical separation shall be maintained between bedrock and the lowest point of the tank.

5. Tanks constructed in the ground shall provide secondary containment and have a witness zone to immediately detect leakage. Leaks shall be repaired immediately and the department shall be notified within 24 hours.

6. Tanks constructed above ground shall allow easy access beneath the tank to allow quick leak detection and cleaning. Leaks shall be repaired immediately and the department shall be notified within 24 hours.

7. Mixing tanks shall be underlain and/or surrounded by an apron consisting of hard impermeable surface that is easily cleanable and prevent runoff of any spills.

8. Internal storage areas for processed waste shall be provided to insure an environmentally sound operation and afford space to allow for proper processing ~~of maximum anticipated daily incoming solid waste~~ based on the facility's daily process rate.

9. Facility shall be designed in a manner that will prevent the migration of odors and dust offsite. The facility must meet all applicable requirements of the regulations of the Air Pollution Control Board where air releases are contemplated.

10. Onsite queuing capacity shall be provided for the expected traffic so that the waiting delivery vehicles do not back up onto the public road.

11. Facilities shall be designed with perimeter security fencing, or natural barriers, and gate controls to prevent unauthorized access to the site.

~~D.~~ E. Materials recovery facilities.

1. A materials recovery facility shall be so designed to reduce the potential of elements that may degrade health or the environment from crossing the facility boundaries. Such elements include fire, vectors, wash water, odor, and litter.

2. An all-weather road suitable for loaded delivery vehicles shall be provided from the entrance gate to the unloading area.

3. The unloading, receiving, or tipping areas shall be constructed of impervious materials, provided with a water supply for storage and transfer area cleaning purposes, and equipped with drains or pumps, or equivalent means to facilitate the removal of wastewater to proper storage or disposal.

4. Truck wheel curbs or other safety facilities shall be provided to prevent backing or falling into a pit if one is used for tipping.

5. The unloading, tipping, receiving, and storage structures, buildings, and ramps shall be of material that can be easily cleaned.

6. Internal storage areas for unprocessed incoming solid waste will be provided to ensure an environmentally sound operation and afford space to allow for proper processing ~~of maximum anticipated daily incoming solid waste~~ based on the facility's daily process rate.

7. Facility shall be designed in a manner that will prevent the migration of odors and dust offsite. The facility must meet all applicable requirements of the regulations of the Air Pollution Control Board where air releases are contemplated.

8. Onsite queuing capacity shall be provided for the expected traffic so that the waiting delivery vehicles do not back up onto the public road.

9. Fire alarm and protection systems capable of detecting, controlling, and extinguishing any and all fires shall be provided.

10. Facilities shall be designed with perimeter security fencing, or natural barriers, and gate controls to prevent unauthorized access to the site.

11. The owner or operator of a material recovery facility engaged in bioremediation shall design, construct, and maintain systems for application of nutrients, provision of air or oxygen, and regulation of moisture content designed to promote aerobic microbiological degradation. At a minimum the systems shall be:

a. Designed to be chemically resistant to any waste or leachate that may come into contact with the system;

b. Of sufficient strength and thickness to prevent collapse under the pressures exerted by overlying waste, waste cover materials, and by any equipment used in the area; and

c. Designed to provide operational temperatures that are favorable to the bioremediation process.

12. A design description manual will be prepared and submitted to the department describing or showing:

a. The process rate of the facility;

b. The designation of normal loading, unloading, and storage areas and their capacities;

c. The designation of emergency loading, unloading, storage, or other disposal capabilities to be used when the facility system downtime exceeds 24 hours;

d. The designation of alternate disposal areas or plans for transfer of solid wastes in the event facility downtime exceeds 72 hours;

e. The expected daily quantity of waste residue generation;

f. The proposed ultimate disposal location for all facility-generated waste residues including~~, but not limited to,~~ residues and bypass material, byproducts resulting from air pollution control devices, and the proposed alternate disposal locations for any unauthorized waste types, that may have been unknowingly accepted. The schedule for securing contracts for the disposal of these waste types at the designated locations shall be provided;

g. A descriptive statement of any materials use, reuse, or reclamation activities to be operated in conjunction with the facility, either on the incoming solid waste or the ongoing residue;

h. Plan views showing building dimensions, building setbacks, side and rear distances between the proposed structure and other existing or proposed structures, roadways, parking areas, and site boundaries; and

i. Interior floor plans showing the layout, profile view, and dimensions of the processing lines, interior unloading, sorting, storage, and loading areas as well as other functional areas.

~~E.~~ F. Waste to energy and incineration facilities.

1. The solid waste and combustion residue storage and handling facilities associated with a waste to energy or incineration system shall be designed to reduce the potential of elements that may degrade health or the environment from crossing the facility boundaries. Such elements include fire, vectors, wash water, odor, and litter.

2. An all-weather road suitable for loaded delivery vehicles shall be provided from the entrance gate to the unloading, receiving, or tipping area.

3. All tipping floors, sorting pads, waste storage areas, bunkers, and pits shall be constructed of concrete or other similar quality material that will withstand heavy vehicle usage. Floor drains shall be provided in all such areas and surfaces shall be graded to facilitate wash down operations. Floor drains shall be designed to discharge wastewater into a collection system for proper disposal. In those cases where waste or residue storage pits are to be utilized, the base and sidewalls shall be designed to prevent groundwater intrusion.

4. Truck wheel curbs or other safety facilities shall be provided to prevent backing or falling into a pit if one is used for tipping.

5. The unloading, receiving, and tipping structures; buildings; and ramps shall be of material that can be easily cleaned.

6. Facilities shall be designed with internal storage area for unprocessed incoming solid waste, facility process waste residues and effluents, and recovered materials, if applicable. The design shall allow for, at a minimum, three days of storage ~~at maximum anticipated loading rates~~ based on the facility's daily process rate.

7. The facility shall be designed in a manner that will prevent the migration of odors and dust offsite.

8. Onsite queuing capacity shall be provided for the expected traffic so that the waiting delivery vehicles do not back up onto the public road.

9. Fire alarm and protection systems capable of detecting, controlling, and extinguishing any and all fires shall be provided.

10. Facilities shall be designed with perimeter security fencing and gate controls to prevent unauthorized access to the site and to control the offsite escape of litter.

11. A design description manual will be prepared and submitted to the department describing or showing:

a. The process rate of the facility;

b. The designation of normal loading, unloading, and storage areas and their capacities;

c. The designation of emergency loading, unloading, storage or other disposal capabilities to be used when the facility system downtime exceeds 24 hours;

d. The designation of alternate disposal areas or plans for transfer of solid wastes in the event facility downtime exceeds 72 hours;

e. The expected daily quantity of waste residue generation;

f. The proposed ultimate disposal location for all facility-generated waste residues including~~, but not limited to,~~ ash residues and bypass material, byproducts resulting from air pollution control devices, and the proposed alternate disposal locations for any unauthorized waste types, which may have been unknowingly accepted. The schedule for securing contracts for the disposal of these waste types at the designated locations shall be provided;

g. A descriptive statement of any materials use, reuse, or reclamation activities to be operated in conjunction with the facility, either on the incoming solid waste or the ongoing residue;

h. Plan views showing building dimensions, building setbacks, side and rear distances between the proposed structure and other existing or proposed structures, roadways, parking areas, and site boundaries; and

i. Interior floor plans showing the layout, profile view, and dimensions of the processing lines, interior unloading,

sorting, storage, and loading areas as well as other functional areas.

~~F.~~ G. Waste piles.

1. The owner or operator of any waste pile that is inside or under a structure that provides protection from precipitation so that neither ~~run-off~~ runoff nor leachate is generated is not subject to regulation under subdivision 2 of this subsection, provided that:

a. Liquids or materials containing free liquids are not placed in the pile;

b. The pile is protected from surface water run-on by the structure or in some other manner;

c. The pile is designed and operated to control dispersal of the waste by wind, where necessary, by means other than wetting;

d. The pile will not generate leachate through decomposition or other reactions; and

e. The structures, buildings, and ramps shall be of concrete, brick, or other material that can be easily cleaned.

2. Exposed waste piles.

a. Liners. A waste pile (except for an existing portion of a waste pile) shall have:

(1) A liner that is designed, constructed, and installed to prevent any migration of wastes out of the pile into the adjacent soil or groundwater or surface water at any time during the active life (including the closure period) of the waste pile. The liner shall be:

(a) Constructed of materials that have necessary chemical properties, strength, and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces), physical contact with the waste or leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation;

(b) Placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, or uplift; and

(c) Installed to cover all surrounding earth likely to be in contact with the waste or leachate; and

(2) A leachate collection and removal system immediately above the liner that is designed, constructed, maintained, and operated to collect and remove leachate from the pile. The design and operating conditions shall ensure that the leachate depth over the liner does not exceed one foot at its lowest point. The leachate collection and removal system shall be:

(a) Constructed of materials that are (i) chemically resistant to the waste managed in the pile and the leachate expected to be generated; and (ii) of necessary strength and thickness to prevent collapse under the pressures exerted by overlaying wastes, waste cover materials, and by any equipment used at the pile; and

(b) Designed and operated to function without clogging through the scheduled closure of the waste pile.

b. The owner or operator will be exempted from the requirements of subdivision 2 a of this subsection if the director finds, based on a demonstration by the owner or operator, that alternate design and operating practices, together with location characteristics, will prevent the migration of any waste constituents into the groundwater or surface water at any future time. In deciding whether to grant an exemption, the director will consider:

(1) The nature and quantity of the wastes;

(2) The proposed alternate design and operation;

(3) The hydrogeologic setting of the facility, including attenuating capacity and thickness of the liners and soils present between the pile and groundwater or surface water; and

(4) All other factors that would influence the quality and mobility of the leachate produced and the potential for it to migrate to groundwater or surface water;

c. During construction or installation, liners shall be inspected by the owner's or operator's construction quality assurance personnel for uniformity, damage, and imperfections (e.g., holes, cracks, thin spots, or foreign materials).

d. Immediately after construction or installation.

(1) Synthetic liners shall be inspected to ensure tight seams and joints and the absence of tears, punctures, or blisters; and

(2) Soil-based liners shall be inspected for imperfections including lenses, cracks, channels, root holes, or other structural nonuniformities that may cause an increase in the hydraulic conductivity of the liner.

(3) Any imperfections in the alternate liner design approved by the director will be repaired.

e. The owner or operator shall design, construct, operate, and maintain a run-on control system capable of preventing flow onto the active portion of the pile during peak discharge from at least a 25-year storm.

f. The owner or operator shall design, construct, operate, and maintain a ~~run-off~~ runoff management system to collect and control at least the water volume resulting from a 24-hour, 25-year storm.

3. Area, facilities, and equipment shall be provided to segregate undesirable components from the incoming solid waste to be processed.

4. The storage or treatment units shall be designed to prevent fires and migration of vectors, and to prevent escape of wastes, wash waters, waste decomposition odors, dust, and litter from the facility. The storage and treatment units will

be designed to withstand the physical, chemical, and biological characteristics of the waste managed.

9VAC20-81-340. Operation requirements.

A. The operation of all compost facilities, solid waste transfer stations, centralized waste treatment facilities, materials recovery facilities, waste to energy and incineration facilities, and waste piles shall be governed by the standards as set forth in this section. Operations for these facilities ~~will~~ shall be detailed in an operations manual ~~that shall be maintained in the operating record in accordance with 9VAC20-81-485. This operations manual will include an operations plan, an inspection plan, a health and safety plan, an unauthorized waste control plan, and an emergency contingency plan~~ meeting the requirements of this section and 9VAC20-81-485. ~~This manual shall be made available to the department when requested. If~~ The facility shall operate in accordance with the operations manual, and if the applicable standards of this chapter and the facility's operations manual conflict, this chapter shall take precedence.

B. The following requirements are applicable to the operation of all facilities listed in this section in addition to requirements specified in subsections C through H of this section:

1. The facility shall operate under the direct supervision of a waste management facility operator licensed by the Board for Waste Management Facility Operators.

2. The facility shall operate within the approved hours of operation. The facility may request a temporary extension of operating hours if necessary in order to respond to an emergency or other unusual event.

3. The facility shall not exceed its approved daily process rate or waste storage limits. The facility may request a temporary increase in daily process rate or waste storage limits if necessary in order to respond to an emergency or other unusual event.

4. The facility shall be operated in a manner that reduces the potential for fires and migration of vectors and prevents escape of wastes, wash waters, odor, dusts, and litter from the facility.

5. All litter and other windblown material from facility operations shall be collected on a weekly basis.

6. The facility shall implement actions detailed in the emergency contingency plan when the types of events anticipated by the plan occur.

~~A.~~ C. Compost facilities.

1. ~~For facilities that will compost only Category I wastes:~~ All compost facilities are subject to the following requirements:

a. Only solid wastes within the permitted feedstock categories may be accepted.

b. Noncompostable or other undesirable solid waste shall be segregated from the material to be composted. Solid waste that is not composted, salvaged, reused, or sold must be disposed at a permitted solid waste management facility authorized to accept the waste.

~~b. The addition of any other solid waste including but not limited to hazardous waste, regulated medical waste, construction waste, debris, demolition waste, industrial waste, or other municipal solid waste to the Category I waste received at the composting facility is prohibited, except that the materials that are excluded under 9VAC20-81-95 may be combined with Category I waste for the purpose of producing compost under the provisions of this chapter.~~

c. Access to the composting facility shall be permitted only when an attendant is on duty.

d. Dust, odors, and vectors shall be controlled so they do not constitute nuisances or hazards. Fugitive dust and mud deposits on main offsite roads and access roads shall be minimized at all times to limit nuisances. Dust shall be controlled to meet the requirements of Article 1 (9VAC5-40-60 et seq.) of Part II of ~~9VAC5-60~~ 9VAC5-40.

e. The owner or operator shall prepare, implement, and enforce a safety program and a fire prevention and suppression program designed to minimize hazards.

f. Open burning shall be prohibited on the facility property.

g. Leachate or other runoff from the facility shall not be permitted to drain or discharge directly into surface waters, unless authorized by a VPDES permit.

h. Designed buffer zones shall be maintained.

i. Maintenance and inspections.

(1) Facility components shall be maintained and operated in accordance with the permit and intended use of the facility.

(2) Adequate numbers, types, and sizes of properly maintained equipment shall be available at the facility during all hours of operation to prevent curtailment of operations because of equipment failure except under extraordinary conditions beyond the control of the owner or operator of the facility.

(3) The facility owner or operator shall monitor and inspect the facility for malfunctions, deteriorations, operator errors, and discharges that may cause a release to the environment or a threat to human health. The facility owner or operator shall promptly remedy any deterioration or malfunction of equipment or structures or any other problems revealed by the inspections to ensure that no environmental or human health hazard develops. Where a hazard is imminent or has already occurred, remedial action shall be taken immediately.

2. Facilities ~~for the composting of~~ that compost Category II, III, or IV feedstocks, including those that mix these categories with Category I feedstocks, ~~shall be provided with~~ are subject to the following requirements in addition to the requirements of subdivision 1 of this subsection:

~~a. Noncompostable or other undesirable solid waste shall be segregated from the material to be composted. Solid waste that is not composted, salvaged, reused, or sold must be disposed at a permitted solid waste management facility authorized to accept the waste.~~

~~b.~~ a. Products will continue to be considered as solid wastes until the testing indicates that they attain finished compost standards. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity and shall be conducted in a manner consistent with SW-846, as amended, and other applicable standards. The minimum number of samples that shall be collected and analyzed ~~is~~ for the testing required under subdivisions 2 b, 2 c, and 2 d of this subsection are shown in the following table ~~below~~. Samples to be analyzed for metals shall be composited prior to the analysis.

Minimum Frequency of Analysis	
Amount of finished compost[1] (tons per 365 day period)	Frequency[2]
Less than 320	Once per year.
Equal to or greater than 320 but less than 1,653	Once per quarter (four times per year).
Equal to or greater than 1,653 but less than 16,535	Once per 60 days (six times per year).
Equal to or greater than 16,535	Once per month (12 times per year).
[1]Either the amount of finished compost applied to the land or prepared for sale or give-away for application to the land (dry weight basis). [2]After the finished compost has been monitored for two years at the frequency in the above table, the facility may request that the department reduce the frequency of monitoring.	

~~c.~~ b. All finished products will be tested for compost stability using one of the methods listed ~~below~~ in subdivisions 2 b (1) through 2 b (5) of this subsection:

(1) Temperature decline to near ambient conditions when not the result of improper management of the composting process. Composting records shall indicate schedules for turning, monitoring of moisture within the required range, and mix of composting feedstocks.

(2) Reheat potential using the Dewar Compost Self-Heating Flask. The results must indicate a stable product. Temperature rise above ambient must not exceed 10°C for stable compost. Very stable compost will not exceed 20°C above ambient.

(3) Specific oxygen uptake. To be classified as stable the product must have a specific oxygen uptake rate of less than 0.1 milligrams per gram of dry solids per hour.

(4) SolvitaTM Compost Maturity Test. To be classified as stable the product must exhibit color equal or greater than six.

(5) Carbon dioxide evolution. To be classified as stable the product must not evolve more than 1,000 milligrams of carbon dioxide per liter per day.

~~d.~~ c. In addition to testing required of this subsection, finished products produced from any ~~Category~~ Categories III and IV materials will be tested for the presence of ~~the following organisms using the methods indicated below: (1) Parasites. The density of viable helminth ova in the finished compost shall be less than one per four grams of total solids (dry weight basis) at the time the finished compost is prepared for sale or give away in a container for application to the land. Viable helminth ova reduction shall be demonstrated by testing the finished compost once per quarter for a period of one year. After the viable helminth ova reduction has been demonstrated for the composting process, additional helminth ova testing will not be required provided the composting operating parameters and incoming waste stream are consistent with the values or ranges of values documented during the initial helminth ova reduction demonstration. If the composting parameters or incoming waste stream change a new viable helminth ova reduction demonstration is required, and (2) Bacteria~~ bacteria pathogens. Either the density of fecal coliform in the finished compost shall be less than 1000 Most Probable Number (MPN) per gram of total solids (dry weight basis), or the density of Salmonella sp. bacteria in the finished compost shall be less than three MPN per four grams of total solids (dry weight basis) at the time the finished compost is prepared for sale or to give away ~~in a container~~ for application to the land. ~~(3)~~ Other test methods, or facility operating standards may be used in lieu of ~~the above parasite and~~ pathogen testing requirements as approved by the department.

~~e. Metals.~~ d. In addition to the testing requirements contained in this subsection, all finished products produced from Category IV materials shall be analyzed for the metals shown ~~below~~ in the following table. The concentration of contaminants shall not exceed the following levels:

Metal	Concentration, mg/kg dry solids
Arsenic	41
Cadmium	21
Copper	1500
Lead	300
Mercury	17
Molybdenum	54
Nickel	420
Selenium	28
Zinc	2,800

~~f. Designed buffer zones shall be maintained.~~

~~g. The owner or operator shall prepare an operation plan that shall include as a minimum:~~

~~(1) The description of types of wastes that will be managed at the facility. This description must properly categorize the compost feedstocks in accordance with 9VAC20-81-310 A 4. If the specific materials are not listed in that section, a discussion will be prepared that compares the materials that the facility will receive with the materials listed in the applicable feedstock category and justifies the categorization of the proposed feedstock. For each type of material an approximate C:N ratio will be provided. The expected quantity of any bulking agent or amendment will be provided (if applicable); and any expected recycle of bulking agent or compost. The plan shall include the annual solid waste input, the service area population (both present and projected if applicable), and any seasonal variations in the solid waste type and quantity;~~

~~(2) A discussion of the composting process including:~~

~~(a) For Type A compost facilities the following will be provided:~~

~~(i) A copy of the manufacturer's operating manual, and drawings and specifications of the composting unit.~~

~~(ii) A discussion of the unit's requirements for power, water supply, and wastewater removal, and the steps taken to accommodate these requirements.~~

~~(b) For Type B compost facilities the following will be provided:~~

~~(i) A description of the configuration of the composting process including compost pile sizing, and orientation, provisions for water supply, provisions for wastewater disposal, and an equipment list.~~

~~(ii) A discussion of procedures and frequency for moisture, and temperature monitoring, and aeration.~~

~~(iii) A discussion of pile formation, and feedstock proportioning and feedstock preparation;~~

~~(3) A discussion of the method and frequency of final product testing in accordance with this subsection will be provided;~~

~~(4) A schedule of operation, including the days and hours that the facility will be open, preparations before opening, and procedures followed after closing for the day;~~

~~(5) Anticipated daily traffic flow to and from the facility, including the number of trips by private or public collection vehicles;~~

~~(6) The procedure for unloading trucks (including frequency, rate, and method);~~

~~(7) A contingency plan detailing corrective or remedial action to be taken in the event of equipment breakdown; air pollution (odors); unacceptable waste delivered to the facility; spills; and undesirable conditions such as fires, dust, noise, vectors, and unusual traffic conditions;~~

~~(8) Special precautions or procedures for operation during wind, heavy rain, snow, and freezing conditions;~~

~~(9) A description of the ultimate use for the finished compost, method for removal from the site, and a plan for use or disposal of finished compost that cannot be used in the expected manner due to poor quality or change in market conditions;~~

~~(10) A discussion of inspections in accordance with subdivision 2 h (3) of this subsection; and~~

~~(11) A discussion of records to be maintained in accordance with 9VAC20-81-350.~~

~~h. Maintenance.~~

~~(1) Facility components shall be maintained and operated in accordance with the permit and intended use of the facility.~~

~~(2) Adequate numbers, types, and sizes of properly maintained equipment shall be available at the facility during all hours of operation to prevent curtailment of operations because of equipment failure except under extraordinary conditions beyond the control of the facility's owner or operator.~~

~~(3) The facility owner or operator shall monitor and inspect the facility for malfunctions, deteriorations, operator errors, and discharges that may cause a release to the environment or a threat to human health. The facility owner or operator shall promptly remedy any deterioration or malfunction of equipment or structures or any other problems revealed by the inspections to ensure that no environmental or human health hazard develops. Where a hazard is imminent or has already occurred, remedial action shall be taken immediately.~~

~~(4) The amount of compost stored at the facility shall not exceed the designed storage capacity.~~

~~i. Leachate or other runoff from the facility shall not be permitted to drain or discharge directly into surface waters, unless authorized by a VPDES permit.~~

~~B.~~ D. Solid waste transfer stations.

1. No uncontainerized putrescible solid waste shall remain at the transfer station at the end of the working day.

~~2. A written operating plan shall be prepared covering at the minimum:~~

~~a. Facility housekeeping, procedures for detection of regulated hazardous and medical wastes, onsite traffic control, schedules for waste delivery vehicle flow, wastewater collection, storm water collection, vector control, odor control, noise control, and methods of enforcement of traffic flow plans for the waste delivery vehicles; and/or~~

~~b. The process rate of the facility, the capacities of any waste storage areas, and the ultimate disposal location for all facility-generated waste residue.~~

~~3. A written contingency plan shall be prepared for a transfer station covering operating procedures to be employed during periods of nonoperation. This plan shall set forth procedures to be employed in the event of equipment breakdown that will require standby equipment, extension of operating hours, or diversion of solid waste to other facilities.~~

~~4.~~ 2. Leachate and wash water from a transfer station shall not be permitted to drain or discharge into surface waters except when authorized under a VPDES permit issued pursuant to 9VAC25-31.

~~5.~~ 3. No regulated hazardous wastes shall be accepted for processing unless they are received under the provisions of a hazardous waste permit or they are specifically exempted by the provisions of the Virginia Hazardous Waste Management Regulations (9VAC20-60). Storage of household hazardous waste at facilities designed in accordance with 9VAC20-81-330 ~~B 6~~ C 7 shall be accomplished in accordance with the requirements of ~~40 CFR 261.173~~ 40 CFR 267.173, as amended. Storage in such facilities may not exceed one year.

4. The floors and ramps in the unloading, receiving, tipping, and storage areas shall be cleaned at least once per week.

5. Floor drains shall be kept free of debris and allow for free draining of liquids.

6 The facility shall maintain the integrity of the tipping floors and ramps as designed, including making repairs as necessary to correct cracking, settlement, or other damage and to prevent liquids from ponding or draining away from the floor drains.

~~C.~~ E. Centralized waste treatment facilities.

1. All incoming waste shall begin treatment at the solidification facility by the end of the working day.

2. Facilities engaged in the solidification of petroleum contaminated sludge shall perform the analyses required by 9VAC20-81-660~~-C~~.

~~3. A written operating plan shall be prepared covering at the minimum:~~

~~a. Facility housekeeping, schedules for waste delivery vehicle flow, wastewater collection, storm water collection, vector control, odor control, and noise control.~~

~~b. A description of methods to determine the characteristics of the treated waste, frequency of testing and the action the facility owner or operator will take whenever the material fails to meet applicable standards.~~

~~c. The process rate of the facility, the capacities of any storage areas, and the ultimate disposal location(s).~~

~~d. For facilities engaged in the reclamation of soil, a description of the methods and frequencies of analysis of the reclaimed product shall be provided as required by 9VAC20-81-660.~~

~~4. A written contingency plan shall be prepared to establish operating procedures to be employed during periods of nonprocessing. This plan shall set forth procedures to be employed in the event of equipment breakdown that will require standby equipment, extension of operating hours, or diversion of solid waste to other facilities. The plan will include emergency loading, unloading, storage, transfer, or other disposal capabilities to be used when the facility downtime exceeds 24 hours.~~

~~5.~~ 3. Leachate and wash water from a centralized waste treatment facility shall not be permitted to drain or discharge into surface waters except when authorized under a VPDES Permit issued pursuant to 9VAC25-31.

~~6.~~ 4. Inspection and leak detection monitoring records shall be maintained and made available upon request for the lifetime of the treatment facility.

5. The floors and ramps in the unloading, receiving, tipping, and storage areas shall be cleaned at least once per week.

6. Floor drains shall be kept free of debris and allow for free draining of liquids.

7. The facility shall maintain the integrity of the tipping floors and ramps as designed, including making repairs as necessary to correct cracking, settlement, or other damage, and to prevent liquids from ponding or draining away from the floor drains.

~~D.~~ F. Materials recovery facilities.

1. No uncontainerized putrescible waste shall remain at the materials recovery facility at the end of the working day.

2. Facilities engaged in the reclamation of petroleum contaminated soils shall perform the analyses required by 9VAC20-81-660.

~~3. A written operating plan shall be prepared covering at the minimum:~~

~~a. Facility housekeeping, onsite traffic control, schedules for waste delivery vehicle flow, wastewater collection, storm water collection, vector control, odor control, noise control, and methods of enforcement of traffic flow plans for the waste delivery vehicles.~~

~~b. A description of methods to determine the usefulness of the recovered material, frequency of testing, and the action the facility owner or operator will take whenever the material fails the standards applicable to the recovered product and must be disposed of as waste.~~

~~c. The process rate of the facility, the capacities of any waste storage areas, the expected daily quantity of waste residue generation, and the ultimate disposal location for all facility generated waste residue.~~

~~d. For facilities engaged in the reclamation of soil, a description of the methods and frequencies of analysis of~~

~~the reclaimed product shall be provided as required by 9VAC20-81-660.~~

~~e. For facilities that store waste tires, the provisions of 9VAC20-81-640 B, C, and D, as applicable.~~

~~4. A written contingency plan shall be prepared for a materials recovery facility covering operating procedures to be employed during periods of nonprocessing. This plan shall set forth procedures to be employed in the event of equipment breakdown that will require standby equipment, extension of operating hours, or diversion of solid waste to other facilities. The plan will include emergency loading, unloading, storage, transfer, or other disposal capabilities to be used when the facility downtime exceeds 24 hours.~~

~~5.~~ 3. Leachate and wash water from a materials recovery facility shall not be permitted to drain or discharge into surface waters except when authorized under a VPDES Permit issued pursuant to 9VAC25-31.

4. The floors and ramps in the unloading, receiving, tipping, and storage areas shall be cleaned at least once per week.

5. Floor drains shall be kept free of debris and allow for free draining of liquids.

6. The facility shall maintain the integrity of the tipping floors and ramps as designed, including making repairs as necessary to correct cracking, settlement, or other damage, and to prevent liquids from ponding or draining away from the floor drains.

~~E.~~ G. Waste to energy and incineration facilities.

1. Unprocessed incoming waste, facility process waste residues and effluents, and recovered materials, if applicable, shall be stored in bunkers, pits, bins, or similar containment vessels and shall be kept at all times at levels that prevent spillage or overflow. Any waste materials temporarily stored on the facility's tipping floor shall be stored as stated above by the end of the working day, or other time frame approved by the director.

~~2. A written operating plan shall be prepared covering at the minimum facility housekeeping, onsite traffic control, process rate, schedules for waste delivery vehicle flow, wastewater collection, storm water collection, vector control, odor control, noise control, and methods of enforcement of traffic flow plans for the waste delivery vehicles.~~

~~3.~~ 2. The owner or operator shall implement waste receiving area control procedures that provide for the inspection of the incoming waste stream for the purpose of removing unprocessible or potentially explosive materials prior to the initiation of processing. In addition, the inspection shall effectively prevent the acceptance of unauthorized waste types by inspecting a minimum of 1.0% of the incoming loads of waste. If the facility receives waste generated outside of Virginia and the regulatory structure in the originating jurisdiction allows for the disposal of wastes at landfills or the incineration of wastes that are prohibited or restricted by Virginia's laws and regulations prohibit, a minimum of 10% of the incoming loads of waste from those jurisdictions shall be inspected. These procedures and necessary emergency contingency plans shall be incorporated into the facility's ~~operating~~ operations manual.

~~4. A written contingency plan shall be prepared for a waste to energy facility covering operating procedures to be employed during periods of nonoperation. This plan shall set forth procedures to be employed in the event of equipment breakdown that will require standby equipment, extension of operating hours, or diversion of solid waste to other facilities.~~

~~5.~~ 3. Leachate and wash water from ~~an~~ a waste to energy or incineration facility shall not be permitted to drain or discharge into surface waters except when authorized under a VPDES Permit issued pursuant to the State Water Control Board regulation (9VAC25-31).

~~6.~~ 4. Arrangements for disposal of facility-generated waste shall be established and maintained throughout the life of the waste to energy or incineration facility.

~~7.~~ 5. Chemical analyses of residues.

a. The owner or operator shall perform a chemical analyses of all residual ash, in accordance with the conditions of the solid waste management facility permit and current solid waste management regulations.

b. Samples and measurements taken for this purpose shall be representative of the process or operation and shall be performed in accordance with the procedures outlined in "Test Methods for Evaluating Solid Waste - Physical/Chemical Methods," EPA publication SW-846. At a minimum the sampling shall include analyses for toxicity and shall be performed at the frequency specified in the facility's permit.

c. The department may require the operator to perform additional analyses on ash removed from exhaust gases and collected by emission control equipment at a frequency established by the department in the facility's permit.

d. A report containing the following information shall be submitted to the department within 90 days of sample collection:

(1) The date and place of sampling and analysis;

(2) The names of the individuals who performed the sampling and analysis;

(3) The sampling and analytical methods utilized;

(4) The results of such sampling and analyses; and

(5) The signature and certification of the report by an authorized agent for the facility.

6. The floors and ramps in the unloading, receiving, tipping, and storage areas shall be cleaned at least once per week.

7. Floor drains shall be kept free of debris and allow for free draining of liquids.

8. The facility shall maintain the integrity of the tipping floors, ramps, and surfaces of sorting pads, storage areas, bunkers and pits, as designed, including making repairs as necessary to correct cracking, settlement, or other damage, and to prevent liquids from ponding or draining away from the floor drains.

~~F.~~ H. Waste piles.

1. No putrescible solid waste shall remain at the storage or treatment facility at the end of the working day unless it is stored in lined or covered waste storage areas, or interim transportation vehicles (trailers, roll-off containers) designed specifically for storage.

~~2. A written operating plan for the waste management facility shall be prepared covering at the minimum:~~

~~a. Facility housekeeping, onsite traffic control, schedules for waste delivery vehicle flow, wastewater/leachate collection, storm water collection, vector control, odor control, dust suppression, noise control, and methods of enforcement of traffic flow plans for the waste delivery vehicles.~~

~~b. A description of types of wastes that will be managed at the facility, of the storage or treatment activity, of any required testing including test methods and frequencies, and sampling techniques.~~

~~c. A description of the management and disposition of waste materials will be provided that addresses waste materials that are undesirable and will not be received at the facility.~~

~~d. Descriptions of first in, first out waste management procedures to ensure that the oldest waste materials being stored are sent offsite for re-use or disposal prior to newer materials.~~

~~e. A fire prevention and suppression program designed to minimize hazards when storing organic waste streams.~~

~~3. A written contingency plan shall be prepared covering operating procedures to be employed during periods of nonoperation. This plan shall set forth procedures to be employed in the event of equipment breakdown that will require standby equipment, extension of operating hours, or diversion of solid waste to other facilities.~~

~~4.~~ 2. Leachate and ~~run-off~~ runoff that have been in contact with the contents of the waste pile shall not be permitted to drain or discharge into surface waters except when authorized under a VPDES permit issued pursuant to 9VAC25-31.

~~5.~~ 3. Collection and holding facilities associated with run-on and ~~run-off~~ runoff control systems shall be emptied or otherwise managed expeditiously after storms to maintain design capacity of the system.

~~6.~~ 4. If the pile contains any particulate matter that may be subject to wind dispersal, the owner or operator shall cover or otherwise manage the pile to control wind dispersal.

~~7.~~ 5. While a waste pile is in operation, it shall be inspected weekly and after storms to detect evidence of any of the following:

a. Deterioration, malfunctions, or improper operation of run-on and ~~run-off~~ runoff control systems;

b. Proper functioning of wind dispersal control systems, where present; and

c. The presence of leachate in and proper functioning of leachate collection and removal systems, where present.

~~8.~~ 6. Incompatible wastes, or incompatible wastes and materials shall not be placed in the same pile.

~~9.~~ 7. Roads serving the unloading, treatment, and storage areas shall be maintained to be passable in all weather by ordinary vehicles when the facility is operating. All operation areas and units shall be accessible.

9VAC20-81-350. Recordkeeping requirements.

Recordkeeping for compost facilities, solid waste transfer stations, centralized waste treatment facilities, materials recovery facilities, waste to energy and incineration facilities, waste piles, and miscellaneous facilities shall be governed by the standards as set forth in this section. Records to be maintained include:

1. The facility owner or operator shall record self-inspections in an inspection log. At a minimum, the facility shall be inspected on at least a monthly basis and include inspection of all applicable major aspects of facility operations necessary to ensure compliance with the requirements of this chapter. These records shall be retained for at least three years from the date of inspection and be available for review. They must include the date and time of the inspection, the name of the inspector, a description of the inspection including the identity of specific equipment and structures inspected, the observations recorded, and the date and nature of any remedial actions implemented or repairs made as a result of the inspection.

2. The facility owner or operator shall record any monitoring information (including all calibration and maintenance records and copies of all reports required by this part or the permit or permit-by-rule). Records for monitoring information shall include the date, exact place, and time of sampling or measurements; the name of the individual who performed the sampling and measurement; the date analyses were performed; the name of the individual who performed the analyses; the analytical techniques or methods used; and

the result of such analyses. Additional information relating to the analysis, including records of internal laboratory quality assurance and control, shall be made available to the department at its request.

3. The facility owner or operator shall retain records of all unauthorized solid waste accepted identifying the waste and its final disposition. Such records shall include the date solid waste was received, the type of solid waste received, the date of disposal, and the disposal method and location.

4. The records shall be retained in the operating record for the facility for a period of at least three years from the date of the sample analysis, measurement, report, or application.

9VAC20-81-360. Closure requirements.

The closure of all compost facilities, solid waste transfer stations, centralized waste treatment facilities, materials recovery facilities, waste to energy and incineration facilities, and waste piles shall be governed by the standards as set forth in this section:

1. The owner or operator shall close his facility in a manner that minimizes the need for further maintenance, and controls, minimizes, or eliminates, to the extent necessary to protect human health and the environment, the ~~postclosure~~ post-closure escape of uncontrolled leachate, surface runoff, or waste decomposition products to the groundwater, surface water, or to the atmosphere.

a. At closure, the owner or operator shall remove or decontaminate all waste residues, contaminated containment system components (liners, etc.), contaminated subsoils, and structures and equipment contaminated with waste and leachate. For miscellaneous units, all waste, materials contaminated with waste constituents, and treatment residue shall be removed and disposed in a permitted facility.

b. If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in subdivision 1 a of this section, the owner or operator finds that not all contaminated subsoils can be practicably removed or decontaminated, he shall close the facility and perform ~~postclosure~~ post-closure care in accordance with the closure and ~~postclosure~~ post-closure care requirements of Part III (9VAC20-81-160 and 9VAC20-81-170, respectively). In addition, for compost facilities, other corrective measures approved by the department may be used to remediate the site.

2. Closure plan and modification of plan.

a. The owner or operator of any facility shall have a written closure plan. This plan shall identify the steps necessary to completely close the ~~facility/unit~~ facility or unit at its full operation under the permit conditions. The closure plan shall include, at least a schedule for final closure including, as a minimum, the anticipated date when wastes will no longer be received, the date when completion of final closure is anticipated, and intervening milestone dates that will allow tracking of the progress of closure. The closure plan shall also include closure cost estimates in accordance with 9VAC20-70-111, to include removal costs associated with any stockpiles of material for beneficial use, for the purpose of financial assurance.

b. The owner or operator may amend his closure plan at any time during the active life of the facility. The owner or operator shall so amend his plan any time changes in operating plans or facility design affects the closure plan. The amended closure plan shall be placed in the operating record.

c. The owner or operator shall submit to the department the amended closure plan that was placed in the operating record.

d. At least 180 days prior to beginning closure of each unit, the owner or operator shall notify the department of the intent to close.

e. The owner or operator shall provide to the department a certification from a professional engineer that the facility has been closed in accordance with the closure plan.

3. Time allowed for closure.

a. The owner or operator shall complete closure activities in accordance with the closure plan and within six months after receiving the final volume of wastes. The director may approve a longer closure period if the owner or operator can demonstrate that the required or planned closure activities will, of necessity, take longer than six months to complete; and that he has taken all steps to eliminate any significant threat to human health and the environment from the unclosed but inactive facility.

b. The owner or operator shall post one sign notifying all persons of the closing, and providing a notice prohibiting further receipt of waste materials. The sign will remain in place until closure activities are complete. Further, suitable barriers shall be installed at former accesses to prevent new waste from being delivered.

4. Inspection. The department shall inspect all facilities at the time of closure to confirm that the closing is complete and adequate. It shall notify the owner of a closed facility, in writing, if the closure is satisfactory, and shall require any necessary construction or such other steps as may be necessary to bring unsatisfactory sites into compliance with this chapter.

9VAC20-81-370. Closure requirements for surface impoundments and lagoons.

A. Closure. At closure, the owner or operator shall:

1. Remove all waste residue, contaminated containment system components (liners, etc.), contaminated subsoils, and

decontaminate structures and equipment contaminated with waste, and manage them as solid waste (or hazardous waste, if applicable) unless exempt under Part III (9VAC20-81-100 et seq.) of this chapter; or

2. Close the impoundment and provide ~~postclosure~~ post-closure care for a landfill under Part III (9VAC20-81-100 et seq.) of this chapter, including the following:

a. Eliminate free liquids by removing liquid waste and waste residue;

b. Install a groundwater monitoring system and initiate groundwater monitoring in accordance with the requirements of 9VAC20-81-250;

c. Stabilize remaining waste residues to a bearing capacity necessary to support the final cover; and

d. Cover the surface impoundment with a final cover designed and constructed in accordance with the requirements of 9VAC20-81-160 ~~D~~ E 2.

3. Close inactive, new, and existing CCR surface impoundments in accordance with the requirements of Part VIII (9VAC20-81-800 et seq.) of this chapter or this subsection, whichever is more stringent.

B. Inspection. The department shall inspect all solid waste management facilities at the time of closure to confirm that the closing is complete and adequate. It shall notify the owner of a closed facility, in writing, if the closure is satisfactory and shall require any necessary construction or such other steps as may be necessary to bring unsatisfactory sites into compliance with this chapter.

9VAC20-81-380. Remediation waste management units.

A. General.

1. For the purpose of implementing remedies under 9VAC20-81-45 or under the Voluntary Remediation Regulations (9VAC20-160), the director may designate an area of a facility as a remediation waste management unit (RWMU) as defined in Part I (9VAC20-81-10 et seq.) of this chapter. One of more RWMUs may be designated at a facility.

2. The director may designate a unit subject to this chapter as an RWMU or incorporate such a unit into a designated RWMU if:

a. The unit is closed or has begun the closure process under 9VAC20-81-160 ~~C~~ D; and

b. Inclusion of the unit will enhance implementation of effective, protective, and reliable remedial actions for the facility.

3. Consolidation or placement of remediation wastes into a designated RWMU does not constitute creation of a unit subject to the siting, design, and operation requirements of Part III (9VAC20-81-120, 9VAC20-81-130, and 9VAC20-81-140) and the permitting requirements of Part V (9VAC20-81-400 et seq.) of this chapter.

4. The applicable requirements for groundwater monitoring and closure under 9VAC20-81-250 and 9VAC20-81-160 will continue to apply to the RWMU.

B. Criteria for designating RWMUs. The director will designate an RWMU if he finds that:

1. The RWMU shall facilitate the implementation of reliable, protective and cost-effective remedies;

2. Waste management activities associated with the RWMU shall not create unacceptable risks to humans or to the environment resulting from exposure to solid wastes and solid waste constituents;

3. If an inclusion of uncontaminated areas of the facility into an RWMU is requested, such an inclusion will be more protective than management of such wastes at contaminated areas of the facility;

4. Areas within the RWMU where wastes remain in place after closure of the RWMU shall be managed and contained so as to minimize future releases, to the extent practicable;

5. The RWMU shall expedite the timing of the remedial activity implementation when appropriate and practicable;

6. The RWMU shall enable the use, when appropriate, of treatment technologies (including innovative treatment technologies) to enhance the long-term effectiveness of remedial actions by reducing the toxicity, mobility, or volume of wastes that will remain in place after closure of the RWMU; and

7. The RWMU shall, to the extent practicable, minimize the land area of the facility upon which wastes will remain in place after closure of the RWMU.

C. Requirements. The director will specify the requirements for RWMUs to include~~, but not be limited to,~~ the following:

1. The areal configuration of the RWMU;

2. Requirements for remediation waste management to include the specification of applicable design, operation and closure requirements;

3. Requirements for groundwater monitoring that:

a. Continue to detect and to characterize the nature, extent, concentration, direction, and movement of existing releases of solid waste constituents in groundwater from sources located within the RWMU; and

b. Detect and subsequently characterize releases of solid waste constituents to groundwater that may occur from areas of the RWMU in which wastes will remain in place after closure of the RWMU.

4. Closure and ~~postclosure~~ post-closure care requirements:

a. Closure of RWMUs shall:

(1) Minimize the need for further maintenance; and

(2) Control, minimize, or eliminate, to the extent necessary to protect human health and the environment, for areas where wastes remain in place, ~~postclosure~~ post-closure escape of solid waste, solid waste constituents, leachate, contaminated ~~run-off~~ runoff, or waste decomposition products to the ground, surface waters, or the atmosphere.

b. Requirements for closure of an RWMU shall include the following, as appropriate and deemed necessary by the director for a given RWMU:

(1) Requirements for excavation, removal, treatment, or containment of wastes;

(2) For areas in which wastes will remain in place after closure of the RWMU, requirements for capping of such areas; and

(3) Requirements for decontamination of equipment, devices, and structures in remediation waste management activities within the RWMU.

c. In establishing specific closure requirements for RWMUs, the director will consider the following factors:

(1) RWMU characteristics;

(2) Volume of waste that remains in place after closure;

(3) Potential for releases from the RWMU;

(4) Physical and chemical characteristics of the waste;

(5) Hydrological and other relevant environmental conditions at the facility that may influence the migration of any potential or actual releases; and

(6) Potential for exposure of humans and environmental receptors if releases were to occur from the RWMU.

d. ~~Postclosure~~ Post-closure requirements as necessary to protect human health and the environment to include, for areas where wastes will remain in place, monitoring and maintenance activities and the frequency with which such activities shall be performed in order to ensure the integrity of any final cap, final cover, or other containment system.

5. The director will document the rationale for designating RWMUs.

6. The designation of an RWMU does not change the department's existing authority to address ~~clean-up~~ cleanup levels, media specific points of compliance to be applied to remediation at a facility, or other remedy selection decisions.

D. Temporary units.

1. Temporary tanks and container storage areas may be used for treatment or storage of remediation wastes during remedial activities, if the director determines that design, operating, or closure standards applicable to RWMUs may be replaced by alternative requirements that are protective of human health and the environment.

2. Any temporary unit to which alternative requirements are applied shall be:

a. Located within the facility boundary; and

b. Used only for the treatment or storage of remediation wastes.

3. In establishing standards to be applied to temporary units, the director will consider the following factors:

a. Length of time such unit will be in operation;

b. Type of unit;

c. Volumes of waste to be managed;

d. Physical and chemical characteristics of the waste to be managed in the unit;

e. Potential for releases from the unit;

f. Hydrogeological and other relevant environmental conditions at the facility that may influence migration of any potential releases; and

g. Potential for exposure of humans and environmental receptors if releases were to occur from the unit.

4. The director will specify the length of time a temporary unit will be allowed to operate, to be no longer than a period of one year. The director will also specify the design, operating, and closure requirements for the unit.

5. The director may extend the operational period of a temporary unit once for a period of one year beyond that originally specified, if the director determines that:

a. Continued operation of the unit will not pose a threat to human health and the environment; and

b. Continued operation of the unit is necessary to ensure timely and efficient implementation of the remedial actions at the facility.

9VAC20-81-385. Landfill mining.

A. Because of the varied and experimental nature of the landfill mining processes currently employed, 9VAC20-81-395 offers management standards. For this reason, portions of that section shall be made applicable to the mining process. As used in this section "landfill mining" does not include excavation of waste to facilitate installation of landfill gas, leachate management, or other utility systems provided waste excavated is managed and cover installed in accordance with 9VAC20-81-140 or 9VAC20-81-160, as applicable.

B. In addition to fulfilling applicable requirements of 9VAC20-81-395, the owner or operator of a landfill mining facility shall prepare ~~an operational~~ a landfill mining plan that will describe in detail the procedures that will be employed in opening the closed landfill areas, the phased description of opened areas, the procedures that will be employed in excavation of opened areas, the management of excavated materials, and disposition of recovered materials and unusable residues. The ~~operational~~ landfill mining plan shall also

contain an estimate of the duration of the mining process and the final use of the recovered air space.

C. In cases where residues will be disposed on site, the disposal units shall be regulated under Part III (9VAC20-81-100 et seq.) of this chapter.

9VAC20-81-395. Miscellaneous facilities.

A. The requirements in this section apply to owners and operators of facilities that treat or store solid waste in facilities or units not otherwise regulated under Part III (9VAC20-81-100 et seq.) of this chapter or 9VAC20-81-310 through 9VAC20-81-385.

B. A miscellaneous unit shall be located, designed, constructed, operated, maintained, and closed in a manner that will ensure protection of human health and the environment. Permits for miscellaneous units are to contain such terms and provisions as necessary to protect human health and the environment, including~~, but not limited to,~~ siting, design and operating requirements, detection and monitoring requirements, and requirements for responses to releases of solid waste or constituents of solid wastes from the unit. Permit terms and provisions shall include those requirements of Part III (9VAC20-81-100 et seq.), 9VAC20-81-310 through 9VAC20-81-385, and Part V (9VAC20-81-400 et seq.), that are appropriate for the miscellaneous unit being permitted.

C. Protection of human health and the environment includes~~, but is not limited to~~:

1. Proper location of the facility and the unit considering:

a. The hydrologic and geologic characteristics of the unit and the surrounding area, including the topography of the land around the facility and the unit;

b. The atmospheric and meteorological characteristics of the unit and the surrounding area;

c. The patterns of precipitation in the region;

d. The patterns of land use in the surrounding area;

e. The potential for health risks caused by human exposure to waste constituents; and

f. The potential for damage to domestic animals, wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents.

2. Prevention of any releases that may have adverse effects on human health or the environment due to migration of waste constituents in the ground water or subsurface environment, considering:

a. The volume and physical and chemical characteristics of the waste in the unit, including its potential for migration through soil, liners, or other containing structures;

b. The existing quality of groundwater, including other sources of contamination and their cumulative impact on the groundwater;

c. The quantity and direction of groundwater flow;

d. The proximity to and withdrawal rates of current and potential groundwater uses; and

e. The potential for deposition or migration of waste constituents into subsurface physical structures, and into the root zone of food-chain crops and other vegetation.

3. Prevention of any releases that may have adverse effects on human health or the environment due to migration of waste constituents in surface water, or wetlands or on the soil surface considering:

a. The volume and physical and chemical characteristics of the waste in the unit;

b. The effectiveness and reliability of containing, confining, and collecting systems and structures in preventing migration;

c. The quantity, quality, and direction of groundwater flow;

d. The proximity of the unit to surface waters;

e. The current and potential uses of nearby surface waters and any water quality standards established for those surface waters; and

f. The existing quality of surface waters and surface soils, including other sources of contamination and their cumulative impact on surface waters and surface soils.

4. Prevention of any release that may have adverse effects on human health or the environment due to migration of waste constituents in the air, considering:

a. The volume and physical and chemical characteristics of the waste in the unit, including its potential for the emission and dispersal of gases, aerosols and particulates;

b. The effectiveness and reliability of systems and structures to reduce or prevent emissions of waste constituents to the air;

c. The operating characteristics of the unit; and

d. The existing quality of the air, including other sources of contamination and their cumulative impact on the air.

D. Monitoring, testing, analytical data, inspections, response, and reporting procedures and frequencies, when called for by the performance standards in subsection C of this section, shall ensure compliance with any applicable requirements of Parts V (9VAC20-81-400 et seq.), VI (9VAC20-81-610), or VIII (9VAC20-81-700) of this chapter, as well as meet any additional requirements needed to protect human health and the environment as specified in the permit.

E. Closure shall be in accordance with 9VAC20-81-160 ~~D~~ E.

F. ~~Postclosure~~ Post-closure care. If a treatment or storage unit has contaminated soils or groundwater that cannot be completely removed or decontaminated during closure, it shall close as a disposal unit in accordance with the requirements of 9VAC20-81-160 and 9VAC20-81-170.

9VAC20-81-397. Exempt yard waste composting facilities.

A. Applicability.

1. The standards in subsection B of this section apply to persons who compost vegetative waste in a manner described in the conditional exemption set forth at 9VAC20-81-95 D.

2. The standards in subsection C of this section apply to persons who operate small vegetative waste disposal units on their property.

B. Composting of yard waste. Additional requirements for managing conditionally exempt yard waste compost facilities, described under 9VAC20-81-95 D 6, are as follows:

1. Owners or operators of agricultural operational activities that accept only yard waste generated offsite are exempt from all other provisions of this chapter as applied to the composting activities provided that:

a. The total time for composting process and storage of material that is being composted shall not exceed 18 months prior to its field application or sale as a horticultural or agricultural product;

b. No waste material other than yard waste is received;

c. The total amount of yard waste received from offsite never exceeds 6,000 cubic yards in any consecutive 12-month period;

d. All applicable standards of local ordinances that govern or concern yard waste handling, composting, storage, or disposal are satisfied;

e. They pose no nuisance or present or potential threat to human health or the environment; and

f. Before receiving any waste, the owner submits a complete DEQ Form YW-3:

2. Owners or operators of agricultural operations that accept only Category I ~~yard waste~~ feedstocks and manures from herbivorous animals generated offsite are exempt from all other provisions of this chapter as applied to the composting activities provided that:

a. The composting area is located not less 300 feet from a property boundary of a parcel owned or controlled by another person, is located not less than 1,000 feet from an occupied dwelling not located on the same property as the composting area, and is not located within an area designated as a flood plain;

b. The agricultural operation has at least one acre of ground suitable to receive yard waste for each 150 cubic yards of finished compost;

c. The total time for the composting process and storage of material that is being composted or has been composted shall not exceed 18 months prior to the field application or sale as horticultural or agricultural product;

d. The owner or operator of any agricultural operation that receives in any 12-month period (consecutive) more than 6,000 cubic yards of waste generated from property not within the control of the owner or the operator shall submit by April 1 each year to the director an annual report in accordance with subdivision 4 of this subsection describing the volume and types of yard waste received for composting by the operation between January 1 and December 31 of the preceding consecutive 12 months and shall certify that the yard waste composting facility complies with local ordinances;

e. No waste material other than yard waste and manures from herbivorous animals are received;

f. The quantities of offsite manures from herbivorous animals brought onsite are limited to achieve a carbon to nitrogen ratio of 25:1 to 40:1. All manures must be incorporated into the compost within 24 hours of delivery. No offsite manures may be stored onsite; and

g. Prior to the receipt of solid waste generated offsite, the owner or operator of the agricultural operation intending to operate under this exemption shall submit a complete DEQ Form YW-4.

3. Owners or other persons authorized by the owner of real property who receive only yard waste generated offsite for the purpose of producing compost on said property shall be exempt from all requirements of this chapter as applied to the composting activity provided that:

a. Not more than 500 cubic yards of yard waste generated offsite is received at the owner's said property in any consecutive 12-month period;

b. No compensation will be received, either directly or indirectly, by the owner or other persons authorized by the owner of said property from parties providing yard waste generated off said property;

c. All applicable standards of local ordinances that govern or concern yard waste handling, composting, storage, or disposal are satisfied; and

d. They pose no nuisance or present or potential threat to human health or the environment.

4. Owners or operators of an agricultural composting operation in accordance with subdivision 2 of this subsection, who are exempt from the permitting requirements in accordance with 9VAC20-81-95 D and who may receive more than 6,000 cubic yards of yard waste generated from property not within the control of the owner or operator in any 12-month period shall submit an annual report on DEQ Form YW-2. The report shall describe the volume and types of yard waste received for composting. Completion and filing of the form by April 1 for activities in the preceding 12 months (January 1 through December 31) constitutes compliance with the requirements. The annual report shall be submitted on DEQ Form YW-2.

C. Small disposal units for vegetative wastes from ~~land clearing~~ land-clearing. Additional requirements for managing small disposal units for vegetative waste from ~~land-clearing~~ land-clearing as exempted under 9VAC20-81-95 D 17 are as follows:

Owners of real property who operate small waste disposal units that qualify under all the conditions of this subsection shall be exempt from other provisions, including permitting, of this chapter as applied to those units provided:

1. No person other than the owner of the real property shall be exempt under this section.

2. All owners of the real property who hold title to property at the time the disposal unit is initially opened or during the time the unit remains open (limited to two calendar years below) shall, in the exercise of this exemption, accept responsibility for maintaining compliance of the unit with all requirements of this chapter as set out in this exemption.

3. The owner agrees that he shall not sell, give, or otherwise transfer the responsibility for the unit's compliance to any other party throughout its active life, the ~~postclosure~~ post-closure care period, and the corrective action period, and that he shall remain the principal party responsible for the compliance of the unit with this chapter.

4. Only units that are in compliance with all requirements of this section shall qualify, and units that are not in compliance with all requirements of this section shall not qualify or shall cease to qualify. Units that qualify for this exemption shall comply with the following requirements:

a. Only vegetative waste or yard waste shall be placed in the disposal unit; however, grass trimmings or bulk leaves shall not be placed in the disposal unit.

b. The waste disposal unit shall not be larger than 0.50 acres in size.

c. The waste disposal unit shall not be located within 1,000 feet of any other waste disposal unit of any type, including other disposal units exempted by this chapter.

d. The waste disposal unit shall not be located within 150 feet of any existing building or planned building. The waste disposal unit shall not be located within 50 feet of any existing or planned subdivision lot that may be used for the erection of a building.

e. The waste disposal unit shall not be located within 100 feet of a flowing stream; body of water; any well, spring, sinkhole, or unstable geologic feature. Also, it shall not be located within 200 feet of any groundwater source of drinking water.

f. The waste disposal unit shall be constructed to separate all waste by at least two feet vertically from the seasonal high water table.

g. The waste disposal unit should not obstruct the scenic view from any public road and should be graded to present a good appearance.

h. Mounding of the waste disposal unit shall not reach an elevation more than 20 feet above the original elevation of the terrain before the disposal began. The elevation of the original terrain should be based on the general area and not the bottom of ravines and small depressions in the disposal area.

i. The waste received by the waste disposal unit shall be limited to the following:

(1) Waste generated onsite;

(2) Waste generated by clearing the path of a roadway or appurtenances to the roadway when buried within the right-of-way of the roadway (waste shall not be buried in the structural roadway prism) or adjacent land under a permanent easement and the terms of the easement incorporate the construction of the disposal unit; and

(3) Waste from property that is owned by the owner of the disposal unit, within the same construction project, and generated not more than two miles from the unit.

j. The waste disposal unit shall be closed two calendar years from the date it first receives waste. The closure shall include cover with two feet of compacted soil, grading for good appearance with slopes that prevent erosion, and seeding or revegetation. During the life of the unit, earthen material should be applied periodically to prevent excessive subsidence of the waste disposal unit when closed. Sides of the finished unit shall be sloped to prevent erosion, and slopes shall not be steeper than one vertical foot to three horizontal feet.

k. The location plat and legal description, as set out in subdivision 4 p of this subsection, of all units that are not located wholly within the bed or right-of-way of a public road shall be recorded in the deed book for the property in the court of record prior to the first receipt of waste. Waste disposal shall not be allowed within the structural roadway prism.

l. The owner shall maintain continuous control of access to all disposal units from the time they are opened until they are closed in accordance with this section. The owner shall prevent fires and provide standby equipment and supplies sufficient to easily suppress a fire. Brush and small limbs that might provide tinder for a fire shall be covered at the end of the work day with one foot of soil.

m. The owner shall not be exempt from the CDD landfill groundwater monitoring and corrective action requirements of 9VAC20-81-250 and 9VAC20-81-260, respectively, to include required monitoring during the ~~postclosure~~ post-closure period.

n. The owner shall not be exempt from the decomposition gas monitoring and venting requirements of 9VAC20-81-210. The owner of a small waste disposal unit shall

comply in all respects with the decomposition gas monitoring and venting requirements as established in this chapter.

o. The owner shall not be exempt from any requirement of the Financial Assurance Regulations For Solid Waste Disposal Facilities, (9VAC20-70), and shall comply with all financial assurance requirements.

p. At least six weeks before beginning construction of a vegetative waste disposal unit, the owner of the real property shall notify in writing the director, the governing board of the city, county, or town wherein the property lies, and all property owners whose parcel will abut the area of the proposed disposal unit. The notice shall give the names and legal addresses of the owners, the type of unit to be developed, and the projected date of initial construction of the unit. The owner shall include a plat and legal description of the disposal unit's metes and bounds prepared and stamped by a Virginia licensed land surveyor. The plat and description shall follow all standard practice such as inclusion of the nearest existing intersection of state roads and existing fixed survey markers in the vicinity.

q. Unless otherwise designated, all monitoring and reporting requirements shall begin at the initiation of the disposal operations and all reports shall be sent to the department and the chief executive of the local government.

9VAC20-81-410. Permits-by-rule and other special permits.

A. Permits by rule.

1. As an alternate to obtaining a full permit, an owner or operator of any of the following facilities may elect to operate under this section:

a. Compost facility;

b. Solid waste transfer station;

c. Materials recovery facility;

d. Waste to energy, thermal treatment, or incineration facility;

e. Waste pile; or

f. Centralized waste treatment facility.

2. Submission. The owner or operator of a facility described in subdivision 1 of this section shall be deemed to have a solid waste management facility permit notwithstanding any other provisions of Part V (9VAC20-81-400 et seq.) of this chapter, except 9VAC20-81-450 B 2 and 3, if the owner or operator provides to the department the completed DEQ Form SW PBR (Solid Waste Management Facility Permit-by-Rule Application Form) and all required information and attachments described in this subdivision, and the department acknowledges completeness of the submittal per subdivision 4 of this subsection:

a. A notice of intent to operate such a facility with documentation required under 9VAC20-81-450 B;

b. A certification that the facility meets the siting standards, as applicable, of 9VAC20-81-320;

c. A certification that the facility meets the statutory requirements for consistency with solid waste management plans as recorded in § 10.1-1408.1 of the Code of Virginia;

d. A certification that the standards, as applicable, of 9VAC20-81-340 are met in an operations manual to be maintained in the operating record in accordance with 9VAC20-81-485;

e. A certificate signed by a professional engineer that:

(1) The facility has been designed and constructed in accordance with the standards, as applicable, of 9VAC20-81-330; and

(2) The standards, as applicable, of 9VAC20-81-360 are met in a closure plan to be maintained in the operating record;

f. Demonstration of legal control over the site for the permit life;

g. A certification from the State Corporation Commission that the business entity pursuing the permit-by-rule status is a valid entity, authorized to transact its business in Virginia. This requirement does not apply to those facilities owned solely by governmental units;

h. Closure cost estimates and proof of financial responsibility as required by the Financial Assurance Regulations for Solid Waste Disposal, Transfer, and Treatment Facilities (9VAC20-70); proof of financial responsibility must be for the entity identified in subdivision 2 g of this subsection;

i. The results of the public participation effort conducted in accordance with the requirements contained in subdivision 3 of this subsection;

j. The following additional information for the specific facilities as noted:

(1) For compost facilities only, a description of the type of facility and the classification of materials that will be composted as classified under 9VAC20-81-310 A 3;

(2) For waste piles only, proof that the facility has a valid VPDES permit, if applicable; and

(3) For waste to energy, thermal treatment, or incineration facilities or materials recovery facilities engaged in reclamation of petroleum-contaminated materials only:

(a) Proof that the facility has a permit issued in accordance with the regulations promulgated by the State Air Pollution Control Board; and

(b) In the case of thermal treatment facilities or materials recovery facilities engaged in reclamation of petroleum-

contaminated materials, a description of how the requirements of 9VAC20-81-660 will be met; and

k. The applicable permit fees under the provisions of 9VAC20-90.

3. Public participation.

a. Before the initiation of any construction at the facility under subdivision 1 of this subsection, the owner or operator shall publish a notice once a week for two consecutive weeks in a major local newspaper of general circulation of the intent to construct and operate a facility eligible for a permit-by-rule. The notice shall include:

(1) A brief description of the proposed facility and its location;

(2) A statement that the purpose of the public participation is to acquaint the public with the technical aspects of the facility and how the standards and the requirements of this chapter will be met, to identify issues of concern, to facilitate communication and to establish a dialogue between the permittee and persons who may be affected by the facility;

(3) Announcement of a 30-day comment period, in accordance with subdivision 3 d of this subsection, and the name, telephone number, and address of the owner's or operator's representative who can be contacted by the interested persons to answer questions or where comments shall be sent;

(4) Announcement of the date, time, and place for a public meeting held in accordance with subdivision 3 c of this subsection; and

(5) Location where copies of the documentation to be submitted to the department in support of the permit-by-rule notification can be viewed and copied.

b. The owner or operator shall place a copy of the documentation and support documents in a location accessible to the public in the vicinity of the proposed facility.

c. The owner or operator shall hold a public meeting not earlier than 14 days after the first publication of the notice required in subdivision 3 a of this subsection and no later than seven days before the close of the 30-day comment period. The meeting shall be held to the extent practicable in the vicinity of the proposed facility at a time convenient for the public.

d. The public shall be provided 30 days to comment on the technical and the regulatory aspects of the proposal. The comment period will begin on the date the owner or operator publishes the first notice in the local newspaper.

e. The requirements of this section do not apply to the owners or operators of a material recovery facility, waste to energy facility, incinerator, or a thermal treatment unit that has received a permit from the department based on the regulations promulgated by the State Air Pollution Control Board or State Water Control Board that required facility-specific public participation procedures.

4. Completeness review. Upon receiving the certifications and other required documents, including the results of the public meeting and the applicant's response to the comments received, the department shall conduct a completeness review and respond within 30 calendar days. If the applicant's submission is administratively complete, the applicant shall be deemed to operate under permit-by-rule status. If the applicant's submission is administratively incomplete, the applicant shall be deemed to not have a permit-by-rule. The department may require the operator to submit the full permit application and to obtain a regular solid waste management facility permit if it is determined the requested operation does not qualify for permit-by-rule status.

5. Change of ownership. A permit by rule may not be transferred by the permittee to a new owner or operator. However, when the property transfer takes place without proper closure, the new owner shall notify the department of the sale and fulfill all the requirements contained in subdivision 2 of this subsection. Upon presentation of the financial assurance proof required by 9VAC20-70 by the new owner, the department will release the former owner from his closure and financial responsibilities and acknowledge existence of the new permit by rule in the name of the new owner.

6. Facility modifications. The owner or operator of a facility operating under a permit by rule may modify its design and operation by furnishing the department a new certificate and applicable permit fees under the provisions of 9VAC20-90. For modifications of design, the new certificate shall be prepared by a professional engineer and shall include new documentation required under subdivision 2, as applicable, and subdivision 3 of this subsection. For modifications to the operations, the owner or operator shall submit to the department a new certificate and documentation required under subdivision 2 of this subsection, as applicable. Whenever modifications in the design or operation of the facility affect the provisions of the closure plan, the owner or operator shall revise the closure plan and submit to the department a new certificate and documentation required under subdivision 2 of this subsection, as applicable. Should there be an increase in the closure costs, the owner or operator shall submit a new proof of financial responsibility as required by the Financial Assurance Regulations for Solid Waste Disposal, Transfer, and Treatment Facilities (9VAC20-70).

7. Loss of permit by rule status. In the event that a facility operating under a permit by rule violates any applicable siting, design and construction, or closure provisions of 9VAC20-81-320, 9VAC20-81-330, or 9VAC20-81-360, respectively, the owner or operator of the facility will be

considered to be operating an unpermitted facility as provided for in 9VAC20-81-45 and shall be required to either obtain a new permit as required by Part V (9VAC20-81-400 et seq.) or close under Part III (9VAC20-81-100 et seq.) or IV (9VAC20-81-300 et seq.) of this chapter, as applicable.

8. Termination. The director shall terminate a permit by rule and shall require closure of the facility whenever he finds that:

a. As a result of changes in key personnel, the requirements necessary for a permit by rule are no longer satisfied;

b. The applicant has knowingly or willfully misrepresented or failed to disclose a material fact in his disclosure statement, or any other report or certification required under this chapter, or has knowingly or willfully failed to notify the director of any material change to the information in the disclosure statement;

c. Any key personnel have been convicted of any of the crimes listed in § 10.1-1409 of the Code of Virginia, punishable as felonies under the laws of the Commonwealth, or the equivalent of them under the laws of any other jurisdiction; or has been adjudged by an administrative agency or a court of competent jurisdiction to have violated the environmental protection laws of the United States, the Commonwealth, or any other state and the director determines that such conviction or adjudication is sufficiently probative of the permittee's inability or unwillingness to operate the facility in a lawful manner; or

d. The operation of the facility is inconsistent with the facility's operations manual ~~and/or~~ or the operational requirements of the regulations.

B. Emergency permits. Notwithstanding any other provision of this chapter, in the event the director finds an imminent and substantial endangerment to human health or the environment, the director may issue a temporary emergency permit to a facility to allow treatment, storage, or disposal of solid waste for a nonpermitted facility or solid waste not covered by the permit for a facility with an effective permit. Such permits:

1. May be oral or written. If oral, it shall be followed within five days by a written emergency permit;

2. Shall not exceed 90 days in duration;

3. Shall clearly specify the solid wastes to be received, and the manner and location of their treatment, storage, or disposal;

4. Shall be accompanied by a public notice including:

a. Name and address of the office granting the emergency authorization;

b. Name and location of the facility so permitted;

c. A brief description of the wastes involved;

d. A brief description of the action authorized and reasons for authorizing it; and

e. Duration of the emergency permit; and

5. Shall incorporate, to the extent possible and not inconsistent with the emergency situation, all applicable requirements of this chapter, and shall include the applicable permit fees under the provisions of 9VAC20-90.

Any permit issued under this subsection may be renewed not more than two times, if necessary. Each such renewal shall be for a period of not more than 90 days.

~~In the event that the Governor declares a state of emergency, open burning of debris waste from the clean-up operations is conditionally exempt from this chapter provided that no open dump, hazard, or public nuisance is created.~~

C. Experimental facility permits.

1. The director may issue an experimental facility permit for any solid waste treatment facility that proposes to utilize an innovative and experimental solid waste treatment technology or process for which permit standards for such experimental activity have not been promulgated under Part IV (9VAC20-81-300 et seq.) of this chapter. Any such permit shall include such terms and conditions as will assure protection of human health and the environment. Such permits shall:

a. Provide for the construction of such facilities based on the standards shown in 9VAC20-81-395, as necessary;

b. Provide for operation of the facility for no longer than one calendar year unless renewed as provided in subdivision 3 of this subsection;

c. Provide for the receipt and treatment by the facility of only those types and quantities of solid waste that the director deems necessary for purposes of determining the efficiency and performance capabilities of the technology or process and the effects of such technology or process on human health and the environment; and

d. Shall include such requirements as the director deems necessary to protect human health and the environment (including~~, but not limited to,~~ requirements regarding monitoring, operation, closure, and remedial action), and such requirements as the director deems necessary regarding testing and providing of information to the director with respect to the operation of the facility.

2. For the purpose of expediting review and issuance of permits under this subsection, the director may, consistent with the protection of human health and the environment, modify or waive permit application and permit issuance requirements in Part V (9VAC20-81-400 et seq.) of this chapter, except that there may be no modification or waiver of regulations regarding local certification, disclosure statement requirements, financial responsibility (including insurance), or procedures regarding public participation.

3. The applicant for an experimental permit shall include the applicable permit fees under the provisions of 9VAC20-90. Any experimental permit issued under this subsection may be renewed not more than three times. Each such renewal shall be for a period of not more than one calendar year.

9VAC20-81-450. Permit application procedures.

A. Any person who proposes to establish a new solid waste management facility (SWMF) or modify an existing SWMF shall submit a permit application to the department, using the procedures set forth in this section and other pertinent sections of this part.

B. Notice of intent.

1. To initiate the permit application process, any person who proposes to establish a new solid waste management facility (SWMF) or modify an existing SWMF or to modify an existing permit shall file a notice of intent with the director stating the desired permit or permit modification, the precise location of the proposed facility, and the intended use of the facility. The notice shall be in letter form and be accompanied by an area map and a site location map.

2. No application for a new solid waste management facility permit or application for a modification for a noncaptive industrial landfill to expand or increase capacity shall be deemed complete unless it is accompanied by DEQ Form DISC-01 and 02 (Disclosure Statement) for all key personnel.

3. No application for a new solid waste management facility permit or application for a modification for a noncaptive industrial landfill to expand or increase capacity shall be considered complete unless the notice of intent is accompanied by a certification from the governing body of the county, city, or town in which the facility is to be located stating that the location and operation of the facility are consistent with all applicable local ordinances, as well as with the local or regional solid waste management plan (SWMP) approved by the department or has initiated the process of amending the SWMP to include the new or expanded facility or an increase in capacity. No certification shall be required for the application for a modification of an existing permit (not including increase in capacity or expansion) other than for a noncaptive industrial landfill in this subdivision. DEQ Form SW-11-1 (Request for Local Government Certification) is provided for the use of the regulated community. Permit and permit-by-rule applicants shall comply with the statutory requirements for consistency with solid waste management plans as recorded in § 10.1-1408.1 of the Code of Virginia.

4. If the applicant proposes to operate a new sanitary landfill or transfer station, the notice of intent shall include a statement describing the steps taken by the applicant to seek the comments of the residents of the area where the sanitary landfill or transfer station is proposed to be located regarding the siting and operation of the proposed sanitary landfill or transfer station. The public comment steps shall be taken prior to filing with the department the notice of intent.

a. The public comment steps shall include publication of a public notice once a week for two consecutive weeks in a newspaper of general circulation serving the locality where the sanitary landfill or transfer station is proposed to be located and holding at least one public meeting within the locality at a time convenient to the public to identify issues of concern, to facilitate communication, and to establish a dialogue between the applicant and persons who may be affected by the issuance of a permit for the sanitary landfill or transfer station.

b. At a minimum, the public notice shall include:

(1) A statement of the applicant's intent to apply for a permit to operate the proposed sanitary landfill or transfer station;

(2) The proposed sanitary landfill or transfer station site location;

(3) The date, time, and location of the public meeting the applicant will hold; and

(4) The name, address, and telephone number of a person employed by an applicant who can be contacted by interested persons to answer questions or receive comments on siting and operation of the proposed sanitary landfill or transfer station.

c. The first publication of the public notice shall be at least 14 days prior to the public meeting date.

d. In addition, the applicant shall adhere to the applicable requirements of § 10.1-1408.1 B of the Code of Virginia.

5. Disposal capacity guarantee. If the applicant proposes to construct a new sanitary landfill or expand an existing sanitary landfill, a signed statement must be submitted by the applicant guaranteeing that sufficient disposal capacity will be available in the facility to enable localities within the Commonwealth to comply with their solid waste management plans developed pursuant to 9VAC20-130 and certifying that such localities will be allowed to contract for and reserve disposal capacity in the facility. This provision does not apply to permit applications from one or more political subdivisions for new or expanded landfills that will only accept municipal solid waste generated within those jurisdictions or from other jurisdictions under an interjurisdictional agreement.

6. Host agreement. If a host agreement is required, as noted in § 10.1-1408.1 B 7 of the Code of Virginia, it shall contain all the requirements specified in that section of the law~~.~~ and the notice of intent shall be accompanied by a completed DEQ Form SW-11-2 (Host Agreement Certification Request) certifying that the host agreement contains all required information.

7. If the application is for a locality owned and operated sanitary landfill, or the expansion of such a landfill, the applicant shall provide information on:

a. The daily travel routes and traffic volumes that correlate with the daily disposal limit;

b. The daily disposal limit; and

c. The service area of the facility.

8. If the application is for a new solid waste management facility or a modification allowing a facility expansion or an increase in capacity, the director shall evaluate whether there is a need for the additional capacity in accordance with § 10.1-1408.1 D 1 of the Code of Virginia. The information in either subdivision 8 a or b of this subsection must be provided with the notice of intent to assist the director with the required investigation and analysis. Based on the information submitted, the owner or operator will demonstrate how the additional capacity will be utilized over the life of the facility.

a. For any solid waste management facility including a sanitary landfill, information demonstrating that there is a need for the additional capacity. Such information shall include the following. If a certain item is not applicable for a facility, it may be indicated so with reasonable justifications.

(1) The anticipated area to be served by the facility;

(2) Similar or related solid waste management facilities that are in the same service area and could impact the proposed facility, and the capacity and service life of those facilities;

(3) The present quantity of waste generated within the proposed service area;

(4) The waste disposal needs specified in the local solid waste plan;

(5) The projected future waste generation rates for the anticipated area to be served during the proposed life of the facility;

(6) The recycling, composting, or other waste management activities within the proposed service area;

(7) The additional solid waste disposal capacity and anticipated site life that the facility would provide to the proposed area of service;

(8) Information demonstrating that the capacity is needed to enable localities to comply with solid waste plans developed pursuant to § 10.1-1411 of the Code of Virginia; and

(9) Any additional factors that provide justification for the additional capacity provided by the facility.

b. As an alternative, for sanitary landfills, based on current or projected disposal rates, information demonstrating there is less than 10 years of capacity remaining in the facility and information demonstrating either of the following:

(1) The available permitted disposal capacity for the state is less than 20 years based on the most current reports submitted pursuant to the Waste Information and Assessment Program in 9VAC20-81-80; or

(2) The available permitted disposal capacity is less than 20 years in either:

(a) The planning region, or regions, immediately contiguous to the planning region of the host community; or

(b) The facilities within a 75-mile radius of the proposed facility.

9. If the location and operation of the facility is stated by the local governing body to be consistent with all its ordinances, without qualifications, conditions, or reservations, and the notice intent is complete, the applicant will be notified that he may submit his application for a SWMF permit. This application shall be submitted in two parts, identified as Part A and Part B.

10. The applicant shall submit certification from the State Corporation Commission that the business entity pursuing the solid waste management permit is a valid entity, authorized to transact its business in Virginia. This requirement does not apply to those facilities owned solely by governmental units.

11. If the application is for an existing CCR landfill or existing CCR surface impoundment, a complete permit application must be submitted no later than October 17, 2017, to continue operation.

C. Part A application. Part A application provides the information essential for assessment of the site suitability for the proposed facility. It contains information on the proposed facility to be able to determine site suitability for intended uses. It provides information on all siting criteria applicable to the proposed facility.

1. The applicant shall complete, sign, and submit ~~three copies~~ one paper copy and one electronic copy of the Part A application containing required information and attachments as specified in 9VAC20-81-460 to the department and shall submit to the department the applicable permit fee under the provisions of 9VAC20-90. The application shall include the following certification signed by the applicant "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to ensure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant

penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

2. The Part A application will be reviewed for completeness. The applicant will be notified within 30 days whether the application is administratively complete or incomplete. If complete information is not provided within 60 days after the applicant is notified, or an alternate timeframe approved by the department, the application will be returned to the applicant without further review. Subsequent resubmittals of the application, submitted after 18 months from the date of the department's response letter, shall be considered as a new application, unless an alternate timeline has been approved by the department.

3. Upon receipt of a complete Part A application, the department shall conduct a technical review of the submittal. Additional information may be required or the site may be visited before the review is completed. The director shall notify the applicant in writing of approval or disapproval of the Part A application or provide conditions to be made a part of the approval.

4. For sanitary landfills, the director's notification must indicate that the site on which the landfill will be located is suitable for the construction and operation of a landfill. In making this determination, the director will consider the information presented in the site hydrogeologic and geotechnical report (9VAC20-81-460 ~~F~~ G), the landfill impact statement (9VAC20-81-460 ~~H~~ I 1) and the adequacy of transportation facilities (9VAC20-81-460 ~~G~~ H). The director may also consider other factors at his discretion.

5. In case of the approval or conditional approval, the applicant may submit the Part B application provided the required conditions are addressed in the submission.

D. Part B application. The Part B application involves the submission of the detailed engineering design and operating plans for the proposed facility.

1. The applicant, after receiving Part A approval, may submit to the department a Part B application to include the required documentation for the specific solid waste management facility as provided for in 9VAC20-81-470 or 9VAC20-81-480. The Part B application and supporting documentation shall be submitted ~~in three copies~~ as one paper copy and one electronic copy and must include the applicable permit fee under the provisions of 9VAC20-90 and the financial assurance documentation as required by 9VAC20-70. The application shall include the following certification signed by the applicant "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to ensure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

2. The Part B application shall be reviewed for administrative completeness before technical evaluation is initiated. The applicant shall be advised in writing within 30 days whether the application is complete or what additional documentation is required. Subsequent resubmittals of the application, submitted after 18 months from the date of the department's response letter, shall be considered a new application, unless an alternate timeline has been approved by the department. The Part B application will not be evaluated until an administratively complete application is received.

3. The administratively complete application will be coordinated with other state agencies according to the nature of the facility. The comments received shall be considered in the permit review by the department. The application will be evaluated for technical adequacy and regulatory compliance. In the course of this evaluation, the department may require the applicant to provide additional information. At the end of the evaluation, the department will notify the applicant that the application is technically adequate and in regulatory compliance, or that the department intends to deny the application.

4. The procedures addressing the denial are contained in 9VAC20-81-550.

E. Permit issuance.

1. If the application is found to be technically adequate and in full compliance with this chapter, a draft permit shall be developed by the department.

2. Copies of the draft permit will be available for viewing at the applicant's place of business or at the regional office of the department, or both, upon request. A notice announcing the beginning of the public comment period and the availability of the draft permit shall be made in a newspaper with general circulation in the area of the facility. A copy of the notice of availability will be provided to the chief administrative officer of all cities and counties that are contiguous to the host community.

3. If the application is for a new landfill or an increase in landfill capacity (includes expansion), then the department shall hold a public hearing and the notice in subdivision 2 of this subsection will include such information.

4. For any application (other than subdivision 3 of this subsection), the notice shall notify the public of the 30-day public comment period and include the opportunity to request a public hearing. The department shall hold a public

hearing on the draft permit whenever the department finds, on the basis of requests, that:

a. There is a significant public interest in the issuance, denial, modification, or revocation of the permit in question;

b. There are substantial, disputed issues relevant to the issuance, denial, modification, or revocation of the permit in question; and

c. The action requested is not, on its face, inconsistent with, or in violation of, these regulations, the Waste Management Act (§ 10.1-1400 et seq. of the Code of Virginia), or federal law or regulations.

5. The department also may hold a public hearing when it is believed that such a hearing might clarify one or more issues involved in a permit decision.

6. If a public hearing is to be held, the department shall convene it 30 days or more after the notice is published in the local newspaper. The public hearing shall be conducted within the local government jurisdiction of the facility. A comment period shall extend for a 15-day period after the conclusion of the public hearing.

7. A decision to permit, to deny a permit, or to modify the draft permit shall be rendered by the director within 90 days of the close of the hearing comment period.

8. The permit applicant and the persons who commented during the public participation period shall be notified in writing of the decision on the draft permit. That decision may include denial of the permit (see also 9VAC20-81-550), issuance of the permit as drafted, or modification of the draft permit and issuance.

9. No permit for a new solid waste management facility nor any modification to a permit allowing a facility expansion or an increase in capacity shall be issued until the director has made a written determination, after an investigation and analysis of the potential human health, environmental, transportation infrastructure, and transportation safety impacts and needs and an evaluation of comments by the host local government, other local governments and interested persons, that (i) the proposed facility, expansion, or increase protects present and future human health and safety and the environment; (ii) there is a need for the additional capacity; (iii) sufficient infrastructure will exist to safely handle the waste flow; (iv) the increase is consistent with locality imposed or state-imposed daily disposal limits; (v) the public interest will be served by the proposed facility's operation or the expansion or increase in capacity of a facility; and (vi) the proposed solid waste management facility, facility expansion, or additional capacity is consistent with regional and local solid waste management plans developed pursuant to § 10.1-1411 of the Code of Virginia.

10. For nonhazardous industrial solid waste management facilities owned or operated by the generator of the waste managed at the facility, and that accept only waste generated by the facility owner or operator the following determination shall apply in lieu of subdivision 9 of this subsection. No new permit for a nonhazardous industrial solid waste management facility that is owned or operated by the generator of the waste managed at the facility, and that accepts only waste generated by the facility owner or operator, shall be issued until the director has determined, after investigation and evaluation of comments by the local government, that the proposed facility poses no substantial present or potential danger to human health or the environment. The department shall hold a public hearing within the county, city, or town where the facility is to be located prior to the issuance of any such permit for the management of nonhazardous industrial solid waste.

11. Where either subdivision 9 or 10 of this subsection applies, the director may request updated information during the review of the permit application if the information on which the director's determination is based is no longer current. If, based on the analysis of the materials presented in the permit application, the determination required in § 10.1-1408.1 of the Code of Virginia cannot be made, the application will be denied in accordance with 9VAC20-81-550 A 6.

12. Any permit for a new sanitary landfill and any permit modification authorizing expansion of an existing sanitary landfill shall incorporate the conditions required for a disposal capacity guarantee in § 10.1-1408.1 of the Code of Virginia. This provision does not apply to permit applications from one or more political subdivisions that will only accept waste from within those political subdivisions' jurisdiction or municipal solid waste generated within other political subdivisions pursuant to an interjurisdictional agreement.

9VAC20-81-460. Part A permit application.

A. The following information shall be included in the Part A permit application for all solid waste management facilities unless otherwise specified in this section. All plans and drawings of the Part A application shall be certified by a professional engineer or professional geologist.

~~A.~~ B. The Part A permit application consists of a letter stating the type of the facility for which the permit application is made and the certification required in subsection I of this section. The applicant shall submit the completed DEQ Form SW PTA (Part A Permit Application Form) and all required information and attachments as detailed in this section.

~~B.~~ C. A key map of the Part A permit application, delineating the general location of the proposed facility, shall be prepared and attached as part of the application. The key map shall be plotted on a seven and one-half minute U.S. Geological Survey

topographical quadrangle. The quadrangle shall be the most recent revision available, shall include the name of the quadrangle and shall delineate a minimum of one mile from the perimeter of the proposed facility boundaries. One or more maps may be utilized where necessary to insure clarity of the information submitted.

~~C.~~ D. A vicinity map shall be prepared and attached as part of the application. This vicinity map shall have a minimum scale of one inch equals 200 feet (1" = 200') and shall delineate an area of 500 feet from the perimeter of the property line of the proposed facility. A vicinity map may be prepared with a reduced scale if it does not fit in a sheet with the required minimum scale and multiple sheets may be used to meet the requirement of minimum scale. The vicinity maps may be an enlargement of a U.S. Geological Survey topographical quadrangle or a recent aerial photograph. Notes may be provided in the map if one or more of the following are not present within the delineated area. The vicinity map shall depict the following:

1. All homes, buildings, or structures including the layout of the buildings that will compose the proposed facility;

2. The surveyed boundaries for the property boundary, facility boundary, and waste management boundary, and the acreages within these boundaries;

3. The limits of the actual disposal operations within the boundaries of the proposed facility;

4. Lots and blocks taken from the tax map for the site of the proposed facility and all contiguous properties;

5. The base floodplain, where it passes through the map area; or, otherwise, a note indicating the expected flood occurrence period for the area;

6. Existing land uses and zoning classification;

7. All water supply wells, springs or intakes, both public and private;

8. All utility lines, pipelines or land-based facilities (including mines and wells); and

9. All parks, recreation areas, surface water bodies, dams, historic areas, wetlands and resource protection areas, monument areas, cemeteries, wildlife refuges, unique natural areas, or similar features.

~~D.~~ E. Any applicant must demonstrate legal control over the site for the permit life.

~~E.~~ F. For solid waste disposal facilities regulated under Part III (9VAC20-81-100 et seq.), site hydrogeologic and geotechnical reports by professional geologist or professional engineer.

1. The site investigation for a proposed landfill facility shall provide information regarding the geotechnical and hydrogeologic conditions at the site to allow a reasonable determination of the usefulness of the site for development as a landfill. The geotechnical exploration efforts shall be designed to provide information regarding the availability and suitability of onsite soils for use in the various construction phases of the landfill including liner, cover, drainage material, and cap. The hydrogeologic information shall be sufficient to determine the characteristics of the uppermost aquifer underlying the facility. Subsurface investigation programs conducted shall meet the minimum specifications here.

a. Borings shall be located to identify the uppermost aquifer within the proposed facility boundary, determine the ability to perform groundwater monitoring at the site, and provide data for the evaluation of the physical properties of soils and soil availability. Borings completed for the proposed facility shall be sufficient in number and depth to identify the thickness of the uppermost aquifer and the presence of any significant underlying impermeable zone in the waste management boundary. Impermeable zone shall not be fully penetrated within the anticipated fill areas, whenever possible. The number of borings shall be at a minimum in accordance with Table 5.1 as follows:

Table 5.1

Waste Management Boundary Acreage	Total Number of Borings
Less than 10	4
10 - 49	8
50 - 99	14
100 - 200	20
More than 200	24 ~~+~~ + 1 boring for each additional 10 acres

b. The department reserves the right to require additional borings in areas in which the number of borings required by Table 5.1 is not sufficient to describe the geologic formations and groundwater flow patterns below the proposed solid waste disposal facility.

c. In highly uniform geological formations, the number of borings may be reduced, as approved by the department.

d. The borings shall employ a grid pattern, wherever possible, such that there is, at a minimum, one boring in each major geomorphic feature. The borings pattern shall enable the development of detailed cross sections through the proposed landfill site.

e. Subsurface data obtained by borings shall be collected by standard soil sampling techniques. Diamond bit coring, air rotary drilling, or other appropriate methods, or a combination of methods shall be used as appropriate to characterize competent bedrock. The borings shall be logged from the surface to the lowest elevation (base grade) or to bedrock, whichever is shallower, according to standard practices and procedures. In addition, the borings

required by Table 5.1 shall be performed on a continuous basis for the first 20 feet below the lowest elevation of the solid waste disposal facility or to the bed rock. Additional samples as determined by the professional geologist or professional engineer shall be collected at five-foot intervals thereafter.

f. Excavations, test pits, and geophysical methods may be employed to supplement the soil boring investigation.

g. At a minimum, four of the borings shall be converted to water level observations wells, well nests, piezometers, or piezometer nests to allow determination of the rate and direction of groundwater flow across the site. All groundwater monitoring points or water level measurement points shall be designed to allow proper abandonment by backfilling with an impermeable material. The total number of wells or well nests shall be based on the complexity of the geology of the site.

h. Field analyses shall be performed in representative borings to determine the in situ hydraulic conductivity of the uppermost aquifer.

i. All borings not to be utilized as permanent monitoring wells, and wells within the active solid waste disposal area, shall be sealed and excavations and test pits shall be backfilled and properly compacted to prevent possible paths of leachate migration. Boring sealing procedures shall be documented in the hydrogeologic report.

2. The geotechnical and hydrogeologic reports shall at least include the following principal sections:

a. Field procedures. Boring records and analyses from properly spaced borings in the facility portion of the site. Final boring logs shall be submitted for each boring, recording soils or rock conditions encountered. Each log shall include the type of drilling and sampling equipment, date the boring was started, date the boring was finished, a soil or rock description in accordance with the United Soil Classification System or the Rock Quality Designation, the method of sampling, the depth of sample collection, the water levels encountered, and the Standard Penetration Test blow counts, if applicable. Boring locations and elevations shall be surveyed with a precision of 0.01 foot. At least one surveyed point shall be indelibly marked by the surveyor on each well. All depths of soil and rock as described within the boring log shall be corrected to National Geodetic Vertical Datum, if available.

b. Geotechnical interpretations and report including complete engineering description of the soil units underlying the site.

(1) Soil unit descriptions shall include estimates of soil unit thickness, continuity across the site, and genesis. Laboratory determination of the soil unit's physical properties shall be discussed.

(2) Soil units that are proposed for use as a drainage layer, impermeable cap, or impermeable liner material shall be supported by laboratory determinations of the remolded permeability. Remolded hydraulic conductivity tests require a Proctor compaction test (ASTM D698) soil classification liquid limit, plastic limit, particle size distribution, specific gravity, percent compaction of the test sample, remolded density and remolded moisture content, and the percent saturation of the test sample. Proctor compaction test data and hydraulic conductivity test sample data shall be plotted on standard moisture-density test graphs.

(3) The geotechnical report shall provide an estimate of the available volume of materials suitable for use as liner, cap, and drainage layer. It shall also discuss the anticipated uses of the onsite materials, if known.

c. Hydrogeologic report.

(1) The report shall include water table elevations, direction, and calculated rate of groundwater flow and similar information on the hydrogeology of the site. All raw data shall be submitted with calculations.

(2) The report shall contain a discussion of field test procedures and results, laboratory determinations made on undisturbed samples, recharge areas, discharge areas, adjacent or areal usage, and typical radii of influence of pumping wells.

(3) The report shall also contain a discussion of the regional geologic setting, the site geology, and a cataloging and description of the uppermost aquifer from the site investigation and from referenced literature. The geologic description shall include a discussion of the prevalence and orientation of fractures, faults, and other structural discontinuities, and presence of any other significant geologic features. The aquifer description shall address homogeneity, horizontal and vertical extent, isotropy, the potential for groundwater remediation, if required, and the factors influencing the proper placement of a groundwater monitoring network.

(4) The report shall include a geologic map of the site prepared from one of the following sources as available, in order of preference:

(a) Site specific mapping prepared from data collected during the site investigation;

(b) Published geologic mapping at a scale of 1:24,000 or larger;

(c) Published regional geologic mapping at a scale of 1:250,000 or larger; or

(d) Other published mapping.

(5) At least two generally orthogonal, detailed site specific cross sections, which shall describe the geologic formations identified by the geologic maps prepared in accordance with subdivision 2 c (4) of this subsection at a scale that clearly illustrates the geologic formations, shall

be included in the hydrogeologic report. Cross sections shall show the geologic units, approximate construction of existing landfill cells base grades, water table, surficial features, and bedrock along the line of the cross section. Cross section locations shall be shown on an overall facility map.

(6) Potentiometric surface maps for the uppermost aquifer that define the groundwater conditions encountered below the proposed solid waste disposal facility area based upon stabilized groundwater elevations. Potentiometric surface maps shall be prepared for each set of groundwater elevation data available. The applicant shall include a discussion of the effects of site modifications, seasonal variations in precipitation, and existing and future land uses of the site on the potentiometric surface.

(7) If a geological map or report from either the Department of ~~Mines, Minerals, and~~ Energy or the U.S. Geological Survey is published, it shall be included.

~~F.~~ G. For solid waste management facilities regulated under Part IV (9VAC20-81-300 et seq.) of this chapter:

1. A cataloging and description of aquifers, geological features or any similar characteristic of the site that might affect the operation of the facility or be affected by that operation.

2. If a geological map or report from either the Department of ~~Mines, Minerals, and~~ Energy or the U.S. Geological Survey is published, it shall be included.

~~G.~~ H. For a new sanitary landfill or for an increase in daily disposal limit, an adequacy report prepared by the Virginia Department of Transportation or other responsible agency. As required under § 10.1-1408.4 A 1 of the Code of Virginia, the report will address the adequacy of transportation facilities that will be available to serve the landfill, including daily travel routes and traffic volumes that correlate with the daily disposal limit, road congestion, and highway safety. The department may determine an adequacy report is not required for small increases in the daily disposal limit.

~~H.~~ I. For a new sanitary landfill or an expansion of an existing sanitary landfill or an increase in capacity by expanding an existing facility vertically upward, a Landfill Impact Statement (LIS).

1. A report must be provided to the department that addresses the potential impact of the landfill on parks, recreational areas, wildlife management areas, critical habitat areas of endangered species as designated by applicable local, state, or federal agencies, public water supplies, marine resources, wetlands, historic sites, fish and wildlife, water quality, and tourism. This report shall comply with the statutory requirements for siting landfills in the vicinity of public water supplies or wetlands as set forth in §§ 10.1-1408.4 and 10.1-1408.5 of the Code of Virginia.

2. The report will include a discussion of the landfill configuration and how the facility design addresses any impacts identified in the report required under subdivision 1 of this subsection.

3. The report will identify all of the areas identified under subdivision 1 of this subsection that are within five miles of the facility.

~~I.~~ J. For a new facility or an expansion of an existing facility, or an increase in capacity by expanding an existing facility vertically upward, a signed statement by the applicant that he has sent written notice to all adjacent property owners or occupants that he intends to develop a SWMF or expand laterally or vertically upward of an existing facility on the site, a copy of the notice and the names and addresses of those to whom the notices were sent.

~~J.~~ K. The total capacity of the solid waste management facility.

~~K.~~ L. One or more of the following indicating that the public interest would be served by a new facility or a facility expansion, which includes:

1. Cost effective waste management for the public within the service area comparing the costs of a new facility or facility expansion to waste transfer, or other disposal options;

2. The facility provides protection of human health and safety and the environment;

3. The facility provides alternatives to disposal including reuse or reclamation;

4. The facility allows for the increased recycling opportunities for solid waste;

5. The facility provides for energy recovery or the subsequent use of solid waste, or both, thereby reducing the quantity of solid waste disposed;

6. The facility will support the waste management needs expressed by the host community; or

7. Any additional factors that indicate that the public interest would be served by the facility.

~~L.~~ M. For CCR surface impoundments regulated under Part VIII (9VAC20-81-800 et seq.) of this chapter, site hydrogeologic and geotechnical reports by a professional geologist or professional engineer that meet the requirements of 9VAC20-81-800.

9VAC20-81-470. Part B permit application for solid waste disposal facilities.

A. Part B permit application requirements for all solid waste disposal facilities regulated under Part III (9VAC20-81-100 et seq.) are contained in this section. The Part B applications shall include the ~~following~~ requirements and documentation described in this section:

~~A.~~ B. Plans submitted as part of the Part B application shall include the following:

1. Design plans. Design plans shall be certified by a professional engineer and shall consist of, at least, the following:

a. A title sheet indicating the project title, who prepared the plans, the person for whom the plans were prepared, a table of contents, and a location map showing the location of the site and the area to be served.

b. An existing site conditions plans sheet indicating site conditions prior to development.

c. A base grade plan sheet indicating site base grades or the appearance of the site if it were excavated in its entirety to the base elevation, before installation of any engineering modifications or the beginning of any filing.

d. An engineering modification plan sheet indicating the appearance of the site after installation of engineering modifications. More than one plan sheet may be required for complicated sites. This plan is required only for those sites with engineering modifications.

e. A final site topography plan sheet indicating the appearance of the site, and final contours of the site at closing including the details necessary to prepare the site for long-term care.

f. A series of phasing plan sheets showing the progression of site development through time. At a minimum, a separate plan shall be provided for initial site preparations and for each subsequent major phase or new area where substantial site preparation must be performed. Each such plan shall include a list of construction items and quantities necessary to prepare the phase indicated.

g. A site monitoring plan showing the location of all devices for the monitoring of leachate production, groundwater quality, and gas production and venting. This plan shall include a table indicating the parameters to be monitored for the frequency of monitoring before and during site development. The groundwater monitoring plan shall include information as applicable under 9VAC20-81-250 or 9VAC20-81-260.

h. A series of site cross-sections shall be drawn perpendicular and parallel to the site base line at a maximum distance of 500 feet between cross-sections and at points of grade break and important construction features. The location of the cross-sections shall be shown on the plan sheets and the section labeled using the site grid system. Where applicable, each cross-section shall show existing, proposed base and final grades; soil borings and monitoring wells that the section passes through or is adjacent to; soil types, bedrock and water table; leachate control, collection, and monitoring systems; limits of filling for each major waste type; drainage control structures; access roads and ramps on the site perimeter and within the active fill area; the filling sequence or phases; and other site features.

i. Detailed drawings and typical sections for drainage control structures, access roads, fencing, leachate and gas control systems, and monitoring devices, buildings, signs, and other construction details.

j. Plan sheets shall include:

(1) A survey grid with base lines and ~~bench marks~~ benchmarks to be used for field control. The datum, units of measure, and coordinate system shall be identified, as applicable.

(2) Limits of filling for each major waste type or fill area.

(3) All drainage patterns and surface water drainage control structures both within the actual fill area and at the site perimeter. Such structures may include berms, ditches, sedimentation basins, pumps, sumps, culverts, pipes, inlets, velocity breaks, sodding, erosion matting, or other methods of erosion control.

(4) Ground surface contours at the time represented by the drawing. Spot elevations shall be indicated for key features.

(5) Areas to be cleared and grubbed and stripped of topsoil.

(6) Borrow areas for liner materials, gas venting materials, berms, roadway construction, daily cover, and final cover.

(7) All soil stockpiles including daily and final cover, topsoil, liner materials, gas venting materials, and other excavation.

(8) Access roads and traffic flow patterns to and within the active fill area.

(9) All temporary and permanent fencing.

(10) The methods of screening such as berms, vegetation, or special fencing.

(11) Leachate collection, control, storage, and treatment systems that may include pipes, manholes, trenches, berms, collection sumps, storage units, pumps, risers, liners, and liner splices.

(12) Gas, leachate, and groundwater monitoring devices and systems.

(13) Severe weather solid waste disposal areas.

(14) Support buildings, scale, utilities, gates, and signs.

(15) Special waste handling areas.

(16) Construction notes and references to details.

(17) Other site features.

2. Closure plan. A detailed closure plan shall be prepared and submitted. Such a plan shall be prepared in two parts, one reflecting those measures to be accomplished at the midpoint of the permit period, and the other when the useful life of the landfill is reached. The plan shall show how the facility will be closed to meet the requirements of 9VAC20-

81-160 and 9VAC20-81-170, or 9VAC20-81-800. The plan shall include the procedures to be followed in closing the site, sequence of closure, time schedules, final plans of completion of closure to include final contours, and long-term care plan sheets showing the site at the completion of closing and indicating those items anticipated to be performed during the period of long-term care for the site. The plans shall include a table listing the items and the anticipated schedule for monitoring and maintenance. In many instances this information can be presented on the final site topography sheet.

3. ~~Postclosure~~ Post-closure plan. A ~~postclosure~~ post-closure care plan shall contain long-term care information including a discussion of the procedures to be utilized for the inspection and maintenance of: ~~run-off~~ runoff control structures; settlement; erosion damage; gas and leachate control facilities; monitoring for gas, leachate, and groundwater; and other long-term care needs.

~~B.~~ C. A design report shall be submitted, which shall include supplemental discussions and design calculations, to facilitate department review and provide supplemental information including the following information:

1. The design report shall identify the project title; engineering consultants; site owner, permittee and operator; proposed permitted acreage; hours of operation; wastes to be accepted; site life; design capacity; and the daily disposal limit. It shall also identify any variances desired by the applicant.

2. A discussion of the basis for the design of the major features of the site, such as traffic routing, base grade and relationships to subsurface conditions, anticipated waste types and characteristics, phases development, liner design, leachate management system design, facility monitoring, and similar design features shall be provided. A list of the conditions of site development as stated in the department determination of site feasibility and the measures taken to meet the conditions shall be included. A discussion of all calculations, such as refuse-cover balance computations, stockpile sizing estimates, estimate of site life, and ~~run-off~~ runoff and leachate volume estimates shall be included. The calculations shall be summarized with the detailed equations presented in an appendix.

3. Specifications, including detailed instructions to the site operator for all aspects of site construction.

a. Initial site preparations including specifications for clearing and grubbing, topsoil stripping, other excavations, berm construction, drainage control structures, leachate collection system, access roads and entrance, screening, fencing, groundwater monitoring, and other special design features.

b. A plan for initial site preparation including a discussion of the field measurements, photographs to be taken, sampling and testing procedures to be utilized to verify that the in-field conditions encountered were the same as those defined in the feasibility report, and to document that the site was constructed according to the engineering plans and specifications submitted for department approval.

~~C.~~ D. Financial assurance documentation. When required by the Financial Assurance Regulations of Solid Waste Disposal, Transfer, and Treatment Facilities (9VAC20-70), the applicant shall provide the completed documentation to demonstrate compliance with those regulations; proof of financial responsibility must be for the entity identified in accordance with 9VAC20-81-450 B 10.

~~D.~~ E. DEQ Form SW PTB (Part B Permit Application Form). The applicant shall submit a completed DEQ Form SW PTB.

9VAC20-81-485. Operations manual requirements for solid waste management facilities.

A. Solid waste disposal facilities. An operations manual shall be prepared and maintained in the operating record. The operations manual shall include a certification page signed by a responsible official. This signature shall certify the manual meets the requirements of this chapter. This manual shall be reviewed and recertified ~~annually (by December 31 of each calendar year)~~ on an annual basis (at least once every 12 months) to ensure consistency with current operations and regulatory requirements, and shall be made available for review by the department upon request. The operations manual for disposal facility operation shall contain at least the following plans:

1. An operations plan that at a minimum includes:

a. Explanation of how the design and construction plans will be implemented from the initial phase of operation until closure;

b. Municipalities, industries, and collection and transportation agencies served;

c. Waste types and quantities to be disposed~~;~~ and the daily disposal limit;

d. Detailed instructions to the site operator regarding all aspects of site operation in order to ensure that the operational requirements of Part III (9VAC20-81-100 et seq.) of this chapter are achieved. References to specifications on the plan sheet shall be pointed out as well as additional instructions included, where appropriate. At a minimum, the plan specifications shall include:

(1) Daily operations including a discussion of the timetable for development, waste types accepted or excluded, inspection of incoming waste, typical waste handling techniques, hours of operation, onsite traffic ~~routing~~ control, schedules for waste delivery vehicle flow, methods of enforcement of traffic flow plans for the waste delivery vehicles, drainage and erosion control, windy, wet and cold weather operations, preparations for severe weather and storm events, fire protection equipment,

manpower, methods for handling of any unusual waste types, methods for vector, dust ~~and~~, odor, and noise control, daily cleanup, direction of filling, salvaging, recordkeeping, parking for visitors and employees, monitoring, maintenance, closure of filled areas, gas and leachate control methods, backup equipment with names and telephone numbers where equipment may be obtained, and other special design features;

(2) Development of subsequent phases; and

(3) Site closing information consisting of a discussion of those actions necessary to prepare the site for long-term care and final use in the implementation of the closure plan.

e. Description of monitoring, maintenance, backup equipment, types of records maintained, and other site-specific instructions for maintaining the leachate collection system, including the:

(1) Schedule and frequency for inspecting and servicing pumps and associated equipment (motors, gaskets, bearings, impellers, alarms, flow meters, control panel, etc.);

(2) Schedule and frequency for cleaning out leachate lines as needed to maintain proper functionality of the system;

(3) Methods for documenting equipment maintenance (such as leachate line clean-outs);

(4) Methods for monitoring (i.e., estimating or measuring) and recording leachate head over the liner and leachate head exceedances;

(5) Instructions for leachate operations in advance of a storm event; and

(6) Frequency and method for recording leachate volumes generated and disposed (pump or flow meter readings, etc.);

2. An inspection plan that at a minimum includes:

a. A schedule for inspecting all applicable major aspects of facility operations necessary to ensure compliance with the requirements of Part III (9VAC20-81-100 et seq.) of this chapter.

b. The frequency of inspection based on the rate of potential equipment deterioration or malfunction and the probability of an adverse incident occurring if the deterioration or malfunction goes undetected between inspections. The plan shall establish ~~the~~ at least a minimum ~~frequencies~~ monthly frequency for inspections as required in 9VAC20-81-140. This plan shall identify areas of the facility subject to spills such as loading and unloading areas and areas in which significant adverse environmental or health consequences may result if breakdown occurs.

c. A schedule for inspecting monitoring, safety, and emergency equipment; security devices; and process operating and structural equipment.

d. The types of potential problems that may be observed during the inspection and any maintenance activities required as a result of the inspection.

3. A health and safety plan that includes description of measures to protect the facility and other personnel from injury and is consistent with the requirements of 29 CFR Part 1910.

4. An unauthorized waste control plan that includes, at a minimum, the methods to be used by the operator to prevent unauthorized disposal of hazardous wastes, bulk liquids, or other wastes not authorized for management or disposal in the facility in order to meet the requirements of 9VAC20-81-140.

5. An emergency contingency plan that includes:

a. Delineation of procedures for responding to fire, explosions, or any unplanned sudden or nonsudden releases of harmful constituents to the air, soil, or surface water;

b. Description of the actions facility personnel shall take in the event of various emergency situations;

c. Description of arrangements made with the local police and fire department that allow for immediate entry into the facility by their authorized representatives should the need arise, such as in the case of personnel responding to an emergency situation; ~~and~~

d. A list of names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator for the facility. This list shall be kept up to date. Where more than one person is listed, one shall be named as primary emergency coordinator and the others shall be listed in the order in which they will assume responsibility as alternates~~.~~;

e. Procedures to be employed during periods of nonoperation or nonprocessing, including procedures to be employed in the event of equipment breakdown that will require standby equipment, extension of operating hours, or diversion of solid waste to other facilities; and

f. An attached fire control plan for active landfills that includes:

(1) Fire suppression methods and equipment, including procedures for applying soil and other fire suppression materials (e.g., water, foam) as appropriate;

(2) Sources and supplies for soil and water;

(3) Containment of runoff and leachate;

(4) Diversion and staging of incoming waste;

(5) Isolation or shutdown of gas remediation systems, as applicable;

(6) Entry routes for emergency responders;

(7) Evacuation and notification procedures; and

(8) Backup contractors.

6. A landscaping plan that shall:

a. Delineate existing site vegetation to be retained;

b. Discuss methods to be employed in order to ensure protection of vegetation to be retained during the clearing, grading and construction phases of the project and the supplemental vegetation to be planted; and

c. Provide information relating to vegetation type, location and purpose, such as for buffer, screening or aesthetics, and schedules for planting, shall accompany the plan.

B. Other solid waste management facilities. An operations manual shall be prepared and maintained in the operating record. The Operations Manual shall include a certification page signed by a responsible official. This signature shall certify the manual meets the requirements of this chapter. This manual shall be reviewed and re-certified ~~annually (by December 31 of each calendar year)~~ on an annual basis (at least once every 12 months) to ensure consistency with current operations and regulatory requirements and shall be made available to the department upon request. The manual for facility operation shall contain at least the following plans:

1. An operations plan that at a minimum includes:

a. An explanation of how the design and construction plans will be implemented from the initial phase of operation until closure.

b. Detailed instructions to the site operator regarding all aspects of site operation in order to ensure that the applicable operational requirements of Part IV (9VAC20-81-300 et seq.) are achieved. Daily operations including a discussion of the timetable for development, waste types accepted or excluded, typical waste handling techniques, daily process rate, capacities of any waste storage areas, ultimate disposal location for all facility-generated waste residue, hours of operation, onsite traffic ~~routing~~ control, schedules for waste delivery vehicle flow, methods of enforcement of traffic flow plans for the waste delivery vehicles, wastewater collection, stormwater collection, drainage and erosion control, windy, wet and cold weather operations, preparations for severe weather and storm events, fire protection equipment, manpower, methods for handling of any unusual waste types, methods for vector, dust ~~and~~, odor, and noise control, daily cleanup, salvaging, ~~record keeping~~ recordkeeping, parking for visitors and employees, monitoring, backup equipment with names and telephone numbers where equipment may be obtained, and other special design features. The daily operations section of the operations manual may be developed as a removable section to improve accessibility for the site operator.

c. Development of subsequent phases of the facility, if applicable.

d. Site closing information consisting of a discussion of those actions necessary to prepare the site for long-term care and final use in the implementation of the closure plan.

e. For composting facilities:

(1) The description of types of wastes that will be managed at the facility. This description must properly categorize the compost feedstocks in accordance with 9VAC20-81-310 A. If the specific materials are not listed in that section, a discussion will be prepared that compares the materials that the facility will receive with the materials listed in the applicable feedstock category and justifies the categorization of the proposed feedstock. For each type of material an approximate C:N ratio will be provided. The expected quantity of any bulking agent or amendment will be provided (if applicable); and any expected recycle of bulking agent or compost. The plan shall include the annual solid waste input, the service area population (both present and projected if applicable), and any seasonal variations in the solid waste type and quantity;

(2) A discussion of the composting process, including:

(a) For Type A compost facilities the following will be provided:

(i) A copy of the manufacturer's operating manual and drawings and specifications of the composting unit.

(ii) A discussion of the unit's requirements for power, water supply, and wastewater removal, and the steps taken to accommodate these requirements.

(b) For Type B compost facilities the following will be provided:

(i) A description of the configuration of the composting process, including compost pile sizing, and orientation, provisions for water supply, provisions for wastewater disposal, and an equipment list.

(ii) A discussion of procedures and frequency for moisture, and temperature monitoring, and aeration.

(iii) A discussion of pile formation and feedstock proportioning and feedstock preparation;

(3) A discussion of the method and frequency of final product testing in accordance with 9VAC20-81-340;

(4) A schedule of operation, including the days and hours that the facility will be open, preparations before opening, and procedures followed after closing for the day;

(5) Anticipated daily traffic flow to and from the facility, including the number of trips by private or public collection vehicles;

(6) The procedure for unloading trucks, including frequency, rate, and method;

(7) A description of the ultimate use for the finished compost, method for removal from the site and a plan for use or disposal of finished compost that cannot be used in the expected manner due to poor quality or change in market conditions; and

(8) A discussion of maintenance and inspections in accordance with 9VAC20-81-340 C 1 i.

f. For centralized waste treatment facilities:

(1) A description of methods to determine the characteristics of the treated waste, frequency of testing and the action the facility owner or operator will take whenever the material fails to meet applicable standards.

(2) For facilities engaged in the reclamation of soil, a description of the methods and frequencies of analysis of the reclaimed product shall be provided as required by 9VAC20-81-660.

g. For materials recovery facilities:

(1) A description of methods to determine the usefulness of the recovered material, frequency of testing, and the action the facility owner or operator will take whenever the material fails the standards applicable to the recovered product and must be disposed of as waste.

(2) For facilities engaged in the reclamation of soil, a description of the methods and frequencies of analysis of the reclaimed product shall be provided as required by 9VAC20-81-660.

(3) For facilities that store waste tires, the provisions of 9VAC20-81-640 B, C, and D, as applicable.

h. For waste piles:

(1) A description of types of wastes that will be managed at the facility, of the storage or treatment activity, of any required testing including test methods and frequencies, and sampling techniques.

(2) A description of the management and disposition of waste materials will be provided that addresses waste materials that are undesirable and will not be received at the facility.

(3) Descriptions of first-in, first-out waste management procedures to ensure that the oldest waste materials being stored are sent offsite for re-use or disposal prior to newer materials.

(4) A fire prevention and suppression program designed to minimize hazards when storing organic waste streams.

2. An inspection plan that at a minimum includes:

a. A schedule for inspecting all applicable major aspects of facility operations necessary to ensure compliance with the requirements of Part IV (9VAC20-81-300 et seq.) of this chapter.

b. The frequency of inspection shall be based on the rate of potential equipment deterioration or malfunction and the probability of an adverse incident occurring if the deterioration or malfunction goes undetected between inspections. The plan shall establish ~~the~~ at least a minimum ~~frequencies~~ monthly frequency for inspections as required in ~~9VAC20-81-340~~ 9VAC20-81-350. This plan shall identify areas of the facility subject to spills such as loading and unloading areas and areas in which significant adverse environmental or health consequences may result if breakdown occurs.

c. A schedule for inspecting monitoring, safety, and emergency equipment; security devices; and process operating and structural equipment.

d. The types of potential problems that may be observed during the inspection and any maintenance activities required as a result of the inspection.

3. A health and safety plan that includes description of measures to protect the facility and other personnel from injury and is consistent with the requirements of 29 CFR Part 1910.

4. An unauthorized waste control plan that includes, at a minimum, the methods to be used by the operator to prevent unauthorized disposal of hazardous wastes, regulated medical wastes, bulk liquids, or other wastes not authorized for management or disposal in the facility in order to meet the applicable requirements of ~~9VAC20-81-340~~ 9VAC20-81-300.

5. An emergency contingency plan that includes:

a. Delineation of procedures for responding to fire, explosions, or any unplanned sudden or nonsudden releases of harmful constituents to the air, soil, or surface water;

b. Description of the actions facility personnel shall take in the event of various emergency situations;

c. Description of arrangements made with the local police and fire department that allow for immediate entry into the facility by their authorized representatives should the need arise, such as in the case of personnel responding to an emergency situation; ~~and~~

d. A list of names, addresses and phone numbers (office and home) of all persons qualified to act as emergency coordinator for the facility. This list shall be kept up to date. Where more than one person is listed, one shall be named as primary emergency coordinator and the others shall be listed in the order in which they will assume responsibility as alternates;

e. Procedures to be employed during periods of nonoperation or nonprocessing, including procedures to be employed in the event of equipment breakdown that will require standby equipment, extension of operating hours, or diversion of solid waste to other facilities; and

f. For materials recovery facilities, centralized waste treatment facilities, and waste to energy and incineration facilities, the emergency loading, unloading, storage, transfer, or other disposal capabilities to be used when the facility downtime exceeds 24 hours.

C. CCR surface impoundments. Operating plans meeting the requirements of 9VAC20-81-800 shall be prepared, implemented, and placed in the facility's operating record.

9VAC20-81-490. Effect of the permit.

A. A completed permit for a solid waste management facility shall be prepared at the conclusion of the procedures outlined in 9VAC20-81-450. The permit shall be prepared in detail to establish the construction requirements, monitoring requirements, operating limitations or guides, waste limitations if any, and any other details essential to the operation and maintenance of the facility and its closure. Before receipt of waste by the facility, the applicant must:

1. Notify the department, in writing, that construction has been completed; and submit to the department a letter from a professional engineer certifying that the facilities have been completed in accordance with the approved plans and specifications and is ready to begin operation. This certification letter is in addition to the CQA certification required in 9VAC20-81-130 ~~Q~~ R 3 and must be provided by a different individual than the CQA certification. This certification letter is typically provided by the design engineer.

2. Arrange for a department representative to inspect the site and confirm that the site is ready for operation.

B. Certificate-to-Operate (CTO). Following review of a complete CQA certification and site inspection the department shall issue a CTO authorizing the facility to begin receiving waste. The facility shall not receive waste until a CTO has been issued by the department.

C. Inspections. Each facility permitted to accept solid waste requires periodic inspection and review of records and reports. Such requirements shall be set forth in the final permit issued by the department. The permit applicant by accepting the permit, agrees to the specified periodic inspections.

D. Compliance with a valid permit during its term constitutes compliance, for purposes of enforcement, with the Virginia Waste Management Act. However, a permit may be modified, revoked and reissued, or revoked for cause as set forth in 9VAC20-81-570 and 9VAC20-81-600.

E. The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege.

F. The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of federal, Commonwealth, or local law or regulations.

G. A permit may be transferred by the permittee to a new owner or operator only if the permit has been revoked and reissued, or a minor modification made to identify the new permittee and incorporate such other requirements as may be necessary. Upon presentation of the financial assurance proof required by 9VAC20-70 by the new owner, the department will release the old owner from his closure and financial responsibilities and acknowledge existence of the new or modified permit in the name of the new owner.

H. This section provides for the approval of permits or permit modifications that include a time allowance for the permittee to achieve the new standards contained in the approved permit or permit modification.

1. The permit may specify a compliance schedule ~~of compliance~~ leading to compliance with this chapter.

a. Any schedules of compliance under this subsection shall require compliance as soon as possible.

b. Except as otherwise provided, if a permit establishes a compliance schedule ~~of compliance~~ that exceeds one year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement.

(1) The time between interim dates shall not exceed one year; and

(2) If the time necessary for completion of any interim requirement is more than one year and is not readily divisible into stages of completion, the permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

c. The permit shall be written to require that no later than 14 days following each interim date and the final date of compliance, a permittee shall notify the department, in writing, of his compliance or noncompliance with the interim or final requirements.

2. A permit applicant or permittee may cease conducting regulated activities (by receiving a terminal volume of solid waste, and, in case of treatment or storage facilities, closing pursuant to applicable requirements, or, in case of disposal facilities, closing and conducting ~~postclosure~~ post-closure care pursuant to applicable requirements) rather than continue to operate and meet permit requirements as follows:

a. If the permittee decides to cease conducting regulated activities at a specified time for a permit that has already been issued:

(1) The permit may be modified to contain a new or additional schedule leading to timely cessation of activities; or

(2) The permittee shall cease conducting permitted activities before noncompliance with any interim or final compliance schedule requirement already specified in the permit.

b. If the decision to cease conducting regulated activities is made before the issuance of a permit whose terms will include the termination date, the permit shall contain a

schedule leading to termination that will ensure timely compliance with applicable requirements.

c. If the permittee is undecided whether to cease conducting regulated activities, the director may issue or modify a permit to continue two schedules as follows:

(1) Both schedules shall contain an identical interim deadline requiring a final decision on whether to cease conducting regulated activities no later than a date that ensures sufficient time to comply with applicable requirements in a timely manner if the decision is to continue conducting regulated activities;

(2) One schedule shall lead to timely compliance with applicable requirements;

(3) The second schedule shall lead to cessation of regulated activities by a date that will ensure timely compliance with applicable requirements; and

(4) Each permit containing two schedules shall include a requirement that, after the permittee has made a final decision, he shall follow the schedule leading to compliance if the decision is to continue conducting regulated activities, and follow the schedule leading to termination if the decision is to cease conducting regulated activities.

d. The applicant's decisions to cease conducting regulated activities shall be evidenced by a firm public commitment satisfactory to the department, such as a resolution of the board of directors of a corporation.

9VAC20-81-530. Recording and reporting required of a permittee.

A. A permit shall specify:

1. Required monitoring, including type, intervals and frequency, sufficient to yield data that are representative of the monitored activity;

2. Requirements concerning the proper use, maintenance, and installation of monitoring equipment or methods, including biological monitoring methods when appropriate; and

3. Applicable reporting requirements based upon the impact of the regulated activity and as specified in this chapter.

B. A permittee shall be subject to the following whenever monitoring is required by the permit:

1. The permittee shall retain records at the permitted facility or another location approved by the department. Records shall include all records required by the facility permit, these regulations, or other applicable regulations. Records of all required monitoring information, including all calibration and maintenance records will be maintained for at least three years from the sample or measurement date. The director may request that this period be extended. For operating landfills, records of the most recent gas and groundwater monitoring event will be maintained at the facility.

2. Records of monitoring information shall include:

a. The date, exact place, and time of sampling or measurements;

b. The individuals who performed the sampling or measurements;

c. The dates analyses were performed;

d. The individuals who performed the analyses;

e. The analytical techniques or methods used; and

f. The results of such analyses.

3. Required monitoring results shall be maintained on file for inspection by the department.

C. A permittee shall be subject to the following reporting requirements:

1. Written notice of any planned physical alterations to the permitted facility shall be submitted to the department and approved before such alterations are to occur, unless such items were included in the plans and specifications approved by the department.

2. 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.

3. The permittee shall report to the department any noncompliance or unusual condition that may endanger health or environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within five <u>working</u> days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the circumstances and its cause; the period of occurrence, including exact dates and times, and, if the circumstance has not been corrected, the anticipated time it is expected to continue. It shall also contain steps taken or planned to reduce, eliminate, and prevent reoccurrence of the circumstances resulting in an unusual condition or noncompliance. <u>Written submissions may be submitted by mail or electronically. Incidents or circumstances that require reporting include:</u>

<u>a. All fires and explosions, and any emergency that results in facility shutdown for over 24 hours or that damages key facility infrastructure, such as a landfill liner or final cover system, leachate management system, or gas control system;</u>

<u>b. Receipt of regulated hazardous waste, PCB waste, regulated medical waste, or other unauthorized waste at the facility;</u>

c. Unauthorized discharge of leachate or other pollutant to surface waters, and any release of leachate outside a landfill disposal unit boundary or leachate storage unit;

d. Depth of 30 cm or more of leachate over the landfill liner, excluding manifold trenches and sumps;

e. Methane at or above the compliance level (i.e., the LEL for methane at any probe within the facility boundary gas monitoring network, and 25% of the LEL for methane in landfill structures, excluding gas control or recovery system components);

f. When the active gas control or remediation system is no longer operating in such a manner as to maintain compliance with this chapter, including any shutdowns of the system lasting longer than 48 hours; and

g. When landfill conditions indicate the presence or strong likelihood of subsurface fire, combustion, subsurface reaction, or oxidation.

D. Copies of all reports required by the permit, and records of all data used to complete the permit application must be retained by the permittee for at least three years from the date of the report or application. The director may request that this period be extended. Documentation of training received by staff to comply with training requirements found in this chapter shall be maintained for at least three years from the date of the training.

E. When the permittee becomes aware that he failed to submit any relevant facts or submitted incorrect information in a permit application or in any report to the director, he shall promptly submit such omitted facts or the correct information with an explanation.

9VAC20-81-570. Revocation or suspension of permits.

A. Any permit issued by the director may be revoked when any of the following conditions exist:

1. The permit holder violates any regulation of the board or any condition of a permit where such violation poses a threat of release of harmful substances into the environment or presents a hazard to human health;

2. The solid waste management facility is maintained or operated in such a manner as to constitute an open dump or pose a substantial present or potential hazard to human health or the environment;

3. The solid waste management facility because of its location, construction, or lack of protective construction or measures to prevent pollution, constitute an open dump or poses a substantial present or potential hazard to human health or the environment;

4. Leachate or residues from the solid waste management facility used for disposal, storage, or treatment of solid waste pose a threat of contamination or pollution of the air, surface waters, or groundwater in a manner constituting an open dump or resulting in a substantial present or potential hazard to human health or the environment;

5. The person to whom the permit was issued abandons, sells, leases, or ceases to operate the facility permitted;

6. The owner or operator fails to maintain a financial assurance mechanism if required to do so by 9VAC20-70;

7. As a result of changes in key personnel, the director finds that the requirements necessary for issuance of a permit are no longer satisfied;

8. The applicant has knowingly or willfully misrepresented or failed to disclose a material fact in applying for a permit or in his disclosure statement, or any other report or certification required under this law or under the regulations of the board, or has knowingly or willfully failed to notify the director of any material change to the information in the disclosure statement;

9. Any key personnel has been convicted of any following crimes punishable as felonies under the laws of the Commonwealth or the equivalent of them under the laws of any other jurisdiction: murder; kidnapping; gambling; robbery; bribery; extortion; criminal usury; arson; burglary; theft and related crimes; forgery and fraudulent practices; fraud in the offering, sale, or purchase of securities; alteration of motor vehicle identification numbers; unlawful manufacture, purchase, use, or transfer of firearms; unlawful possession or use of destructive devices or explosives; violation of the Drug Control Act, Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1 of the Code of Virginia; racketeering; or violation of antitrust laws; or has been adjudged by an administrative agency or a court of competent jurisdiction to have violated the environmental protection laws of the United States, the Commonwealth, or any other state and the director determines that such conviction or adjudication is sufficiently probative of the applicant's inability or unwillingness to operate the facility in a lawful manner, as to warrant denial, revocation, modification, or suspension of the permit. In making such determination, the director shall consider:

a. The nature and details of the acts attributed to key personnel;

b. The degree of culpability of the applicant, if any;

c. The applicant's policy or history of discipline of key personnel for such activities;

d. Whether the applicant has substantially complied with all rules, regulations, permits, orders, and statutes applicable to the applicant's activities in Virginia;

e. Whether the applicant has implemented formal management controls to minimize and prevent the occurrence of such violations; and

f. Mitigation based upon demonstration of good behavior by the applicant including, without limitation, prompt

payment of damages, cooperation with investigations, termination of employment or other relationship with key personnel or other persons responsible for violations or other demonstrations of good behavior by the applicant that the director finds relevant to its decision; or

10. All ~~postclosure~~ post-closure care activities have been terminated by the department in accordance with 9VAC20-81-170 ~~C~~ D.

B. Revocation and reissuance.

1. If the director finds that solid wastes are no longer being stored, treated, or disposed at a facility in accordance with department regulations, the director may revoke the permit issued for such facility and reissue it with a condition requiring the person to whom the permit was issued to provide closure and ~~postclosure~~ post-closure care of the facility.

2. If the director is notified by the permittee that the ownership of the facility will be transferred to a new owner or that the operation will be conducted by a new operator, the director will upon receipt of financial assurance documents required by Financial Assurance Regulations of Solid Waste Disposal, Transfer, and Treatment Facilities (9VAC20-70), revoke the original permit and reissue it to the new owner or operator.

C. Except in an emergency, a facility posing a substantial threat to public health or the environment, the director may revoke a permit only after a hearing, or a waiver of a hearing, in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

D. If the director summarily suspends a permit pursuant to an emergency based on subdivision 18 of § 10.1-1402 of the Virginia Waste Management Act, the director shall hold a conference pursuant to § 2.2-4019 of the Virginia Administrative Process Act, within 48 hours to consider whether to continue the suspension pending a hearing to modify or revoke the permit, or to issue any other appropriate order. Notice of the hearing shall be delivered at the conference or sent at the time the permit is suspended. Any person whose permit is suspended by the director shall cease activity for which permit was issued until the permit is reinstated by the director or by a court.

9VAC20-81-600. Modification of permits.

A. Permits may be modified at the request of any interested person or upon the director's initiative. However, permits may only be modified for the reasons specified in subsections E and F of this section. All requests shall be in writing and shall contain facts or reasons supporting the request. Any permit modification authorizing expansion of an existing sanitary landfill shall incorporate the conditions required for a disposal capacity guarantee in § 10.1-1408.1 P of the Code of Virginia. This provision does not apply to permit applications from one or more political subdivisions that will only accept waste from within those political subdivisions' jurisdiction or municipal solid waste generated within other political subdivisions pursuant to an interjurisdictional agreement.

B. If the director decides the request is not justified, he shall send the requester a response providing justification for the decision.

C. If the director tentatively decides to modify, he shall prepare a draft permit incorporating the proposed changes. The director may request additional information and may require the submission of an updated permit application. In a permit modification under subsection E of this section, only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect. During any modification proceeding the permittee shall comply with all conditions of the existing permit until the modified permit is issued.

D. When the director receives any information, he may determine whether or not one or more of the causes listed for modification exist. If cause exists, the director may modify the permit on his own initiative subject to the limitations of subsection E of this section and may request an updated application if necessary. If a permit modification satisfies the criteria in subsection F of this section for minor modifications, the permit may be modified without a draft permit or public review. Otherwise, a draft permit shall be prepared and other appropriate procedures followed.

E. Causes for modification. The director may modify a permit upon his own initiative or at the request of a third party:

1. When there are material and substantial alterations or additions to the permitted facility or activity that occurred after permit issuance that justify the application of permit conditions that are different or absent in the existing permit;

2. When there is found to be a possibility of pollution causing significant adverse effects on the air, land, surface water, or groundwater;

3. When an investigation has shown the need for additional equipment, construction, procedures and testing to ensure the protection of the public health and the environment from adverse effects;

4. If the director has received information pertaining to circumstances or conditions existing at the time the permit was issued that was not included in the administrative record and would have justified the application of different permit conditions, the permit may be modified accordingly if in the judgment of the director such modification is necessary to prevent significant adverse effects on public health or the environment;

5. When the standards or regulations on which the permit was based have been changed by promulgation of amended

standards or regulations or by judicial decision after the permit was issued;

6. When the director determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, or material shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy;

7. When a modification of a closure plan is required under 9VAC20-81-160, 9VAC20-81-360, or 9VAC20-81-800 and the permittee has failed to submit a permit modification request within the specified period;

8. When the corrective action program specified in the permit under 9VAC20-81-260 or 9VAC20-81-800 has not brought the facility into compliance with the groundwater protection standard within a reasonable period of time; or

9. When cause exists for revocation under 9VAC20-81-570 and the director determines that a modification is more appropriate.

F. Permit modification at the request of the permittee.

TABLE 5.2
PERMIT MODIFICATIONS

MAJOR	1. Implementation of a groundwater corrective action program as required by 9VAC20-81-260 or 9VAC20-81-800
	2. Change in the remedy applied as part of the groundwater corrective action program
	3. Groundwater monitoring plan for an existing facility where no written plan has previously been provided
	4. Changes to the design of final closure cover
	5. Landfill mining
	6. Reduction in the ~~postclosure~~ post-closure care period
	7. Changes in ~~postclosure~~ post-closure use of the property with disturbance of cover
	8. All new or modifications of a leachate collection tank or a leachate collection surface impoundment
	9. Addition of new landfill units
	10. Expansion or increase in capacity
	11. Increase in daily disposal limit
	12. Addition or modification of a liner, leachate collection system, leachate detection system
	13. Incorporation or modification of a Research, Development, and Demonstration Plan
MINOR	Any change not specified as major modification (above) or a permittee change (below)
PERMITTEE CHANGE	1. Correction of typographical errors
	2. Equipment replacement or upgrade with functionally equivalent components
	3. Replacement of an existing leachate tank with a tank that meets the same design standards and has a capacity within +/-10% of the replaced tank
	4. Replacement with functionally equivalent, upgrade, or relocation of emergency equipment
	5. Changes in name, address, or phone number of contact personnel
	6. Replacement of an existing well that has been damaged or rendered nonoperable, without change to location, design, or depth of the well
	7. Changes to the expected year of final closure, where other permit conditions are not changed
	8. Changes in ~~postclosure~~ post-closure use of the property, without disturbance of the cover
	9. Modification of a leachate tank management practice

1. Permittee change. Items listed under Permittee Change in Table 5.2 may be implemented without approval of the department. If a permittee changes such an item, the permittee shall:

a. Notify the department of the change at least 14 calendar days before the change is put into effect, indicating the affected permit conditions; and

b. Notify the governing body of the county, city, or town in which the facility is located, within 90 calendar days after the change is put into effect.

2. Minor modifications.

a. Minor modifications apply to minor changes that keep the permit current with routine changes to the facility or its operation. These changes do not substantially alter the permit conditions or reduce the capacity of the facility to protect human health or the environment.

b. Minor modifications may be requested for changes that will result in a facility being more protective of human health and the environment or equivalent to the standards contained in this chapter, unless otherwise noted in Table 5.2. The request for such a minor permit modification will be accompanied by a description of the desired change and an explanation of the manner in which the health and environment will be protected in a greater degree than required by the chapter.

c. Minor permit modifications may be made only with the prior written approval of the department. The permittee shall notify the department that a minor modification is being requested. Notification of the department shall be provided by certified mail or other means that establish proof of delivery. This notice shall specify the changes being made to permit conditions or supporting documents referenced by the permit and shall include an explanation of why they are necessary. Along with the notice, the permittee shall provide the applicable information required by 9VAC20-81-460 and 9VAC20-81-470 or as required by 9VAC20-81-480.

d. The permittee shall send a notice of the modification to the governing body of the county, city or town in which the facility is located. This notification shall be made within 90 days after the department approves the request.

3. Major modifications.

a. Major modifications substantially alter the facility or its operation. Major modifications are listed in Table 5.2.

b. The permittee shall submit a modification request to the department that:

(1) Describes the exact change to be made to the permit conditions and supporting documents referenced by the permit;

(2) Identifies that the alteration is a major modification;

(3) Contains an explanation of why the modification is needed; and

(4) Provides the applicable information required by 9VAC20-81-460 and 9VAC20-81-470, by 9VAC20-81-460 and 9VAC20-81-475, or as required by 9VAC20-81-480.

c. No later than 90 days after receipt of the notification request, the director will determine whether the information submitted under subdivision 3 b (4) of this subsection is adequate to formulate a decision. If found to be inadequate, the permittee will be requested to furnish additional information within 30 days of the request by the director to complete the modification request record. The 30-day period may be extended at the request of the applicant. After the completion of the record, the director will either:

(1) Approve the modification request, with or without changes, and draft a permit modification accordingly;

(2) Deny the request; or

(3) Approve the request, with or without changes, as a temporary authorization having a term of up to 180 days in accordance with subdivision 3 of this subsection.

d. If the director proposes to approve the permit modification, he will proceed with the permit issuance in accordance with 9VAC20-81-450 E.

e. The director may deny or change the terms of a major permit modification request under subdivision F 3 b of this section for the following reasons:

(1) The modification request is incomplete;

(2) The requested modification does not comply with the appropriate requirements of Part III (9VAC20-81-100 et seq.), Part IV (9VAC20-81-300 et seq.), or Part VIII (9VAC20-81-800 et seq.) of this chapter or other applicable requirements; or

(3) The conditions of the modification fail to protect human health and the environment.

4. Temporary authorizations.

a. Upon request of the permittee, the director may, without prior public notice and comment, grant the permittee a temporary authorization in accordance with the requirements of subdivision 4 of this subsection. Temporary authorizations shall have a term of not more than 180 days.

b. (1) The permittee may request a temporary authorization for any major modification that meets the criteria in subdivision 4 c (2) (a) or (b) of this subsection; or that meets the criteria in subdivision 4 c (2) (c) and (d) of this subsection and provides improved management or treatment of a solid waste already listed in the facility permit.

(2) The temporary authorization request shall include:

(a) A description of the activities to be conducted under the temporary authorization;

(b) An explanation of why the temporary authorization is necessary; and

(c) Sufficient information to ensure compliance with the standards of Part III (9VAC20-81-100 et seq.), Part IV (9VAC20-81-300 et seq.), or Part VIII (9VAC20-81-800 et seq.) of this chapter.

(3) The permittee shall send a notice about the temporary authorization request to all persons on the facility mailing list. This notification shall be made within seven days of submission of the authorization request.

c. The director shall approve or deny the temporary authorization as quickly as practical. To issue a temporary authorization, the director shall find:

(1) The authorized activities are in compliance with the standards of Part III (9VAC20-81-100 et seq.), Part IV (9VAC20-81-300 et seq.), or Part VIII (9VAC20-81-800 et seq.) of this chapter.

(2) The temporary authorization is necessary to achieve one of the following objectives before action is likely to be taken on an modification request:

(a) To facilitate timely implementation of closure or corrective action activities;

(b) To prevent disruption of ongoing waste management activities;

(c) To enable the permittee to respond to sudden changes in the types or quantities of the wastes managed under the facility permit; or

(d) To facilitate other changes to protect human health and the environment.

d. A temporary authorization may be reissued for one additional term of up to 180 days provided that the permittee has requested a major permit modification for the activity covered in the temporary authorization, and the director determines that the reissued temporary authorization involving a major permit modification request is warranted to allow the authorized activities to continue while the modification procedures of subdivision 3 of this subsection are conducted.

5. The director's decision to grant or deny a permit modification request under subdivision of this subsection may be appealed under the case decision provisions of the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

6. Newly defined or identified wastes. The permitted facility is authorized to continue to manage wastes defined or identified as solid waste under 9VAC20-81-95 if:

a. It was in existence as a solid waste management facility with respect to the newly defined or identified solid waste on the effective date of the final rule defining or identifying the waste; and

b. It is in compliance with the standards of Part III (9VAC20-81-100 et seq.), Part IV (9VAC 20-81-300 et seq.), or Part VIII (9VAC20-81-800 et seq.) of this chapter, as applicable, with respect to the new waste, submits a minor modification request on or before the date on which the waste becomes subject to the new requirements; or

c. It is not in compliance with the standards of Part III (9VAC 20-81-100 et seq.), Part IV (9VAC 20-81-300 et seq.), or Part VIII (9VAC20-81-800 et seq.) of this chapter, as applicable, with respect to the new waste, also submits a complete permit modification request within 180 days after the effective date of the definition or identifying the waste.

7. Research, development and demonstration plans. Research, development and demonstration (RDD) plans may be submitted for sanitary landfills that meet the applicability requirements. These plans shall be submitted as a major permit modification application for existing sanitary landfills or as a part of the Part B application for new sanitary landfills.

a. Applicability.

(1) RDD shall be restricted to permitted sanitary landfills designed with a composite liner system, as required by 9VAC20-81-130 ~~J~~ K 1. The effectiveness of the liner system and leachate collection system shall be demonstrated in the plan and shall be assessed at the end of the testing period in order to compare the effectiveness of the systems to the start of the RDD testing period.

(2) Operating permitted sanitary landfills that have exceeded groundwater protection standards at statistically significant levels in accordance with 9VAC20-81-250 B, from any waste unit on site shall have implemented a remedy in accordance with 9VAC20-81-260 C prior to the RDD plan submittal. Operating permitted sanitary landfills that have an exceedance in the concentration of methane gas migrating from the landfill in accordance with 9VAC20-81-200 shall have a gas control system in place per 9VAC20-81-200 ~~B~~ C prior to the RDD plan submittal.

(3) An owner or operator of a sanitary landfill that disposes of 20 tons of municipal solid waste per day or less, based on annual average, may not apply for a modification to include ~~a~~ an RDD plan.

(4) The sanitary landfill shall have a leachate collection system designed and constructed to maintain less than a 30 cm depth of leachate on the liner.

b. Requirements.

(1) RDD ~~Plans~~ plans may be submitted for activities such as:

(a) The addition of liquids in addition to leachate and gas condensate from the same landfill for accelerated decomposition of the waste mass;

(b) Allowing run-on water to flow into the landfill waste mass;

(c) Allowing testing of the construction and infiltration performance of alternative final cover systems; and

(d) For other measures to be taken to enhance stabilization of the waste mass.

(2) No landfill owner or operator may continue to implement an RDD plan beyond any time limit placed in the initial plan approval or any renewal without issuance of written prior approval by the department. Justification for renewals shall be based upon information in annual and final reports as well as research and findings in technical literature.

(3) RDD plans may not include changes to the approved design and construction of subgrade preparation, liner system, leachate collection and removal systems, final cover system, gas and leachate systems outside the limits of waste, ~~run-off~~ runoff controls, run-on controls, or environmental monitoring systems exterior to the waste mass.

(4) Implementation of an approved RDD plan shall comply with the specific conditions of the RDD Plan as approved in the permit for the initial testing period and any renewal.

(5) Structures and features exterior to the waste mass or waste final grades shall be removed at the end of the testing period, unless otherwise approved by the department in writing.

(6) The RDD plan may propose an alternate final cover installation schedule.

c. An RDD plan shall include the following details and specifications. Processes other than adding liquids to the waste mass and leachate recirculation may be practiced in conjunction with the RDD plan.

(1) Initial applications for RDD plans shall be submitted for review and approval prior to the initiation of the process to be tested. These plans shall specify the process that will be tested, describe preparation and operation of the process, describe waste types and characteristics that the process will affect, describe desired changes and end points that the process is intended to achieve, define testing methods and observations of the process or waste mass that are necessary to assess effectiveness of the process, and include technical literature references and research that support use of the process. The plans shall specify the time period for which the process will be tested. The plans shall specify the additional information, operating experience, data generation, or technical developments that the process to be tested is expected to generate.

(2) The test period for the initial application shall be limited to a maximum of three years.

(3) Renewals of testing periods shall be limited to a maximum of three years each. The maximum number of renewals shall be limited to three.

(4) Renewals shall require department review and approval of reports of performance and progress on achievement of goals specified in the RDD plan.

(5) RDD ~~Plans~~ plans for addition of liquids, in addition to leachate and gas condensate from the same landfill, for accelerated decomposition of the waste mass or for allowing run-on water to flow into the landfill waste mass shall demonstrate that there is no increased risk to human health and the environment. The following minimum performance criteria shall be demonstrated.

(a) Risk of contamination to groundwater or surface water will not be greater than the risk without an approved RDD plan.

(b) Stability analysis demonstrating the physical stability of the landfill.

(c) Landfill gas collection and control in accordance with applicable Clean Air Act requirements (i.e., Title V, NSPS or EG rule, etc.).

(d) For RDD plans that include the addition of offsite nonhazardous waste liquids to the landfill, the following information shall be submitted with the RDD plan:

(i) Demonstration of adequate facility liquid storage volume to receive the offsite liquid;

(ii) A list of proposed characteristics for screening the accepted liquids is developed; and

(iii) The quantity and quality of the liquids are compatible with the RDD plan.

If offsite nonhazardous liquids are certified by the offsite generator as stormwater uncontaminated by solid waste, screening is not required for this liquid.

(6) RDD plans for testing of the construction and infiltration performance of alternative final cover systems shall demonstrate that there is no increased risk to human health and the environment. The proposed final cover system shall be as protective as the final cover system required by 9VAC20-81-160 ~~D~~ E. The following minimum performance criteria shall be demonstrated:

(a) No build up of excess liquid in the waste and on the landfill liner;

(b) Stability analysis demonstrating the physical stability of the landfill;

(c) No moisture will escape from the landfill to the surface water or groundwater; and

(d) Sufficient reduction in infiltration so that there will be no leakage of leachate from the landfill.

(7) RDD plans that evaluate introduction of liquids in addition to leachate or gas condensate from the same landfill shall propose measures to be integrated with any

approved leachate recirculation plan and compliance with requirements for leachate recirculation.

(8) RDD plans shall include a description of warning symptoms and failure thresholds that will be used to initiate investigation, stand-by, termination, and changes to the process and any other landfill systems that might be affected by the process, such as gas extraction and leachate recirculation. Warning symptoms shall result in a reduction or suspension of liquids addition, leachate recirculation, investigation, and changes to be implemented before resuming the process being tested. Failure thresholds shall result in termination of the process being tested, investigation, and changes that will be submitted to the department for review and approval in writing prior to resumption of the process being tested.

(9) RDD plans shall include an assessment of the manner in which the process to be tested might alter the impact that the landfill may have on human health or environmental quality. The assessment shall include both beneficial and deleterious effects that could result from the process.

(10) RDD plans shall include a geotechnical stability analysis of the waste mass and an assessment of the changes that the implementation of the plan is expected to achieve. The geotechnical stability analysis and assessment shall be repeated at the end of testing period, with alteration as needed to include parameters and parameter values derived from field measurements. The plan shall define relevant parameters and techniques for field measurement.

(11) RDD plans shall propose monitoring parameters, frequencies, test methods, instrumentation, recordkeeping and reporting to the department for purposes of tracking and verifying goals of the process selected for testing.

(12) RDD plans shall propose monitoring techniques and instrumentation for potential movements of waste mass and settlement of waste mass, including proposed time intervals and instrumentation, pertinent to the process selected for testing.

(13) RDD plans shall propose construction documentation, construction quality control and construction quality assurance measures, and recordkeeping for construction and equipment installation that is part of the process selected for testing.

(14) RDD plans shall propose operating practices and controls, staffing, monitoring parameters, and equipment needed to support operations of the process selected for testing.

(15) RDD plans that include aeration of the waste mass shall include a temperature monitoring plan, a fire drill and safety program, instructions for use of liquids for control of temperature and fires in the waste mass, and instructions for investigation and repair of damage to the liner and leachate collection system.

(16) RDD plans may include an alternate interim cover system and final cover installation schedule. The interim cover system shall be designed to account for weather conditions, slope stability, and leachate and gas generation. The interim cover shall also control, at a minimum, disease vectors, fires, odors, blowing litter, and scavenging.

d. Reporting. An annual report shall be prepared for each year of the RDD testing period, including any renewal periods, and a final report shall be prepared for the end of the testing period. These reports shall assess the attainment of goals proposed for the process selected for testing, recommend changes, recommend further work, and summarize problems and their resolution. Reports shall include a summary of all monitoring data, testing data and observations of process or effects and shall include recommendations for continuance or termination of the process selected for testing. Annual reports shall be submitted to the department within three months after the anniversary date of the approved permit or permit modification. Final reports shall be submitted at least 90 days prior to the end of the testing period for evaluation by the department. The department shall review this report within 90 days. If the department's evaluation indicates that the goals of the project have been met, are reliable and predictable, the department will provide a minor permit modification to incorporate the continued operation of the project with the appropriate monitoring.

e. Termination. The department may require modifications to or immediate termination of the RDD process being tested if any of the following conditions occur:

(1) Significant and persistent odors;

(2) Significant leachate seeps or surface exposure of leachate;

(3) Significant leachate head on the liner;

(4) Excessively acidic leachate chemistry or gas production rates or other monitoring data indicate poor waste decomposition conditions;

(5) Instability in the waste mass; or

(6) Other persistent and deleterious effects.

The RDD program is an optional participation program, by accepting the modification or new permit, the applicant acknowledges that the program is optional; and that they are aware the department may provide suspension or termination of the RDD program for any reasonable cause, without a public hearing. Notice of suspension or termination will be by letter for a cause related to a technical problem, nuisance problem, or for protection of human health or the environment as determined by the department.

G. Facility siting. The suitability of the facility location will not be considered at the time of permit modification unless new information or standards indicate that an endangerment to human health or the environment exists which was unknown at the time of permit issuance or the modification is for an expansion or increase in capacity.

9VAC20-81-620. Asbestos-containing waste materials.

A. Applicability. The additional standards contained in this section apply to the management of all asbestos-containing waste materials (ACM) generated by asbestos mills, by manufacturing, fabricating, and spraying operations, and Regulated Asbestos Containing Material (RACM) as defined by 40 CFR Part 61, Subpart M, as amended, generated in the course of demolition and renovation of installations, structures or buildings, or other waste-generating activities. These requirements do not apply to naturally occurring asbestos. All definitions included in 40 CFR Part 61, Subpart M, as amended, are hereby by included by reference.

B. Waste preparation for disposal. In order for asbestos-containing waste materials to be accepted at the disposal site, these materials shall meet the transporting and packaging requirements, including adequate wetting, sealing in leak-tight containers or leak-tight packaging, and labeling, for asbestos-containing waste materials according to 40 CFR Part 61, Subpart M, as amended, which is hereby incorporated.

C. Disposal of asbestos-containing waste materials. Each owner or operator of a solid waste disposal facility that receives asbestos-containing waste materials shall dispose of these materials according to the requirements of 40 CFR Part 61, Subpart M, as amended, which is hereby incorporated. In addition to the requirements of 40 CFR Part 61, Subpart M, as amended, each owner or operator of a solid waste disposal facility that receives asbestos-containing waste materials shall meet the following requirements:

1. All asbestos-containing waste materials generated in a manufacturing, fabrication, or spraying operation and all RACM generated in a demolition or renovation operation shall be disposed in a special purpose landfill or in a designated area of a sanitary landfill. Category I and Category II nonfriable ACM may be disposed in a landfill providing daily soil cover, providing that the operator is notified and ~~other pertinent requirements of this part are met~~ the facility is authorized to receive the waste through specific provisions within the facility's permit or by specific special waste disposal approval under the provisions of 9VAC20-81-610 A.

2. ACM may be disposed in asbestos disposal cells or units located at existing disposal facilities above the natural ground level, provided they comply with all other appropriate regulatory requirements contained in Part III (9 VAC 20-81-100 et seq.) of this chapter.

3. All asbestos-containing waste materials generated in a manufacturing, fabrication, or spraying operation, all RACM generated in a demolition or renovation operation, and all Category I and Category II nonfriable ACM shall be covered immediately upon receipt, with at least six inches of compacted soil or other approved material, in a manner that prevents releases of asbestos into the air.

4. The facility shall maintain, until closure, records of the location, depth and area (including elevation and coordinates), and quantity in cubic meters (cubic yards) of asbestos-containing waste material within the disposal site on a map or diagram of the disposal area in accordance with the requirements of 40 CFR Part 61, Subpart M. Procedures shall be used to control emissions and prevent exposure if any asbestos-containing waste material that has been deposited and covered is excavated or otherwise disturbed.

5. The facility shall maintain asbestos waste shipment records in accordance with the requirements of 40 CFR Part 61, Subpart M.

D. Closure and ~~postclosure~~ post-closure care. In addition to the requirements contained in Part III (9VAC20-81-100 et seq.) of this chapter, the owner or operator of a solid waste disposal facility receiving the asbestos-containing waste material shall, within 60 days of the closure of the site, record with the county clerk's office a notation on the deed to the facility property or any other document that would normally be examined during a title search that will in perpetuity notify any purchaser of the property that:

1. The property has been used for the disposal of asbestos-containing waste materials;

2. The copy of the survey plot and the record of location and quantity of asbestos-containing waste materials disposed are attached to the notation; and

3. The site is subject to regulation under 9VAC5-60-70.

9VAC20-81-660. Soil contaminated with petroleum products.

A. Applicability.

1. The specific requirements contained in this section apply to requests by the owner or operator to manage or dispose of petroleum- contaminated soil or absorbents, unless the facility's permit specifically allows disposal of the contaminated soil. Upon removal from the ground, the soil must be characterized and managed according to the appropriate regulations including 9VAC20-60 and 9VAC20-81.

2. Any contaminated soil from a state other than Virginia that is classified as a hazardous waste in the state of origin shall be managed as a hazardous waste. Such wastes are not acceptable for treatment, storage, or disposal at a solid waste management facility in the Commonwealth.

3. For purposes of this section "soil" shall include soil, sediment, dredge spoils, and other earthen material contaminated only by petroleum products.

B. Testing requirements.

1. Analytical methods. The facility shall use the appropriate EPA SW-846 method to determine the characteristics of the soil. The parameters that shall be investigated, include~~, but are not limited to,~~ the following, as appropriate: RCRA hazardous waste characteristics (i.e., corrosivity, ignitability, reactivity, and toxicity); total metals; volatile organic compounds; semi-volatile compounds; total petroleum hydrocarbons (TPH), pesticides/herbicides; polychlorinated bi-phenyls (PCBs); presence of liquids; and ~~total organic halides (TOX)~~ extractable organic halides (EOX).

2. The department will determine, on a case-by-case basis, which tests are appropriate. Specific testing requirements may be waived if the department staff determines that the material was contaminated from a specific source such as chlorinated solvents from a drycleaner or petroleum products from an underground storage tank.

3. Sampling frequency. A minimum of one composite sample shall be analyzed for each required test for every 250 cubic yards of soil to be disposed. In the case of soil reclaimed by thermal treatment, a minimum of one sample shall be analyzed for every production day composited hourly. For quantities of soil greater than 2,500 cubic yards the sampling rates may be adjusted with the approval of the department.

C. Required information. Each generator must submit the following information to the department for review:

1. A statement from the generator certifying that the soil is nonhazardous waste as defined by the Virginia Hazardous Waste Management Regulations (9VAC20-60).

2. The amount of contaminated soil to be disposed.

3. A description of the sampling protocol and a copy of all applicable laboratory analyses.

4. If generated in a state other than Virginia, certification from the generator that the waste is not considered a hazardous waste in its state of generation.

5. The potential options for disposal of the material based upon the testing results, including~~, but not limited to~~ disposal of a hazardous waste, disposal as a special waste, beneficial reuse as a fill material, or use as an alternate daily cover.

D. Disposal criteria.

1. Soils failing the TCLP test shall be managed in accordance with the Virginia Hazardous Waste Management Regulations (9VAC20-60).

2. Soils contaminated solely with petroleum related products including BTEX, ~~TOX,~~ EOX, or TPH shall be handled as follows:

a. Soils exhibiting greater than 100 milligram per kilogram (mg/kg) of ~~TOX~~ EOX may not be disposed until separate approval from the department is granted. This request shall document the cause for the high ~~TOX~~ EOX level.

b. If the concentration of total BTEX is greater than 10 mg/kg or TPH is greater than 500 mg/kg, the soil cannot be disposed of in any landfill unless the facility permit expressly allows such disposal.

c. If the concentration of TPH is greater than 50 mg/kg and less than 500 mg/kg and total BTEX is less than 10 mg/kg, the disposal of the contaminated soil may be approved for permitted landfills equipped with liners and leachate collection systems.

d. Soil containing less than 50 mg/kg TPH and total BTEX less than 10 mg/kg may be used as fill material. This soil, however, may not be disposed of closer than 100 feet of any regularly flowing surface water body or river, 500 feet of any well, spring or other groundwater source of drinking water, and 200 feet from any residence, school, hospital, nursing home, or recreational park area. In addition, if the soil is not to be disposed of on the generator's property, the generator shall notify the property owner that the soil is contaminated and with what it is contaminated.

3. Soil contaminated with compounds other than petroleum and that is not hazardous waste shall be disposed of according to the criteria approved by the department.

E. Exemptions.

1. Contaminated soil resulting from a petroleum storage tank release or from a spill qualifies for an exemption from the limits and/or testing specified in subdivisions D 2 a, b, and c of this section where the total volume of contaminated soil from a cleanup site is less than 20 cubic yards, and the contaminated soil is not a hazardous waste.

2. The department may approve the disposal of contaminated soil resulting from an emergency cleanup of a spill of petroleum products, provided that the waste is not hazardous.

3. Soil contaminated with petroleum products resulting from ordinary household functions may be disposed with the general household waste.

NOTICE: The following forms used in administering the regulation have been filed by the agency. Amended or added forms are reflected in the listing and are published following the listing. Online users of this issue of the Virginia Register of Regulations may also click on the name to access a form. The forms are also available from the agency contact or may be viewed at the Office of Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

FORMS (9VAC20-81)

Annual Report QA/QC Submission Checklist, DEQ Form ARSC-01 (rev. 7/2011)

Solid Waste Management Facility Permit Applicant's Disclosure Statement, DEQ Form DISC-01 (rev. 9/2020)

Solid Waste Management Facility Permit Applicant - Key Personnel Disclosure Statement, DEQ Form DISC-02 (rev. 9/2020)

Solid Waste Management Facility Disclosure Statement - Quarterly Update, DEQ Form DISC-03 (rev. 9/2020)

Request for Certification (Local Government), DEQ Form SW-11-1 (rev. 6/2016)

Special Waste Disposal Request, DEQ Form SWDR (rev. 8/2018)

Solid Waste Part A Application, DEQ Form SW PTA (rev. 3/2011)

Solid Waste Disposal Facility Part B Application, DEQ Form SW PTB (rev. 3/2011)

Solid Waste Information and Assessment Program Reporting Table, Form DEQ 50-25 with Statement of Economic Benefits Form and Instructions (rev. 12/2018)

Exempt Yard Waste Composting Annual Report, DEQ Form YW-2 (rev. 7/2011)

Exempt Yard Waste Compost Facility - Notice of Intent and Certification, DEQ Form YW-3 (rev. 7/2011)

Exempt Yard Waste & Herbivorous Manures Compost Facility - Notice of Intent and Certification, DEQ Form YW-4 (rev. 7/2011)

Host Agreement Certification Request, SW-11-2, (rev. 8/2018)

VA.R. Doc. No. R21-6661; Filed January 13, 2022, 10:47 a.m.

STATE WATER CONTROL BOARD

Proposed Regulation

Title of Regulation: **9VAC25-260. Water Quality Standards (amending 9VAC25-260-30).**

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

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: April 15, 2022.

Agency Contact: David Whitehurst, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 774-9180, FAX (804) 698-4178, or email david.whitehurst@deq.virginia.gov.

Basis: Section 62.1-44.15 of the Code of Virginia mandates and authorizes the State Water Control Board to establish water quality standards and policies for any state waters, consistent with the purpose and general policy of the State Water Control Law. The federal Clean Water Act at 33 USC § 1313 mandates the board to review and, as appropriate, modify, and adopt water quality standards. The corresponding federal water quality standards regulation at 40 CFR 131.6 describes the minimum requirements for water quality standards, which are use designations, water quality criteria to protect the designated uses and an antidegradation policy. Web address sites where citations can be found: The U.S. Environmental Protection Agency (EPA) Water Quality Standards (40 CFR 131.12) is the regulatory basis for EPA requiring the states to establish within the antidegradation policy the exceptional state waters (ESW) category and the eligibility decision criteria for these waters. EPA retains approval disapproval oversight, but delegates to the states the election and designation of specific water bodies as exceptional state waters.

Purpose: The section of Laurel Fork petitioned for ESW designation meets the eligibility criteria required for consideration. It exhibits high quality waters and unique associated riparian habitat. The proposed amendment is essential to protect the health, safety, and welfare of the citizens of the Commonwealth by preserving ESW waters for the enjoyment of future generations through the prohibition of new or increased point source discharges.

Substance: The proposed amendment to the antidegradation policy designates a portion of Laurel Fork for special protection as ESW. Upon permanent regulatory designation of a water body as an ESW, the quality of that water body will be maintained and protected by not allowing any degradation except on a very short term basis. No new, additional, or increased point source discharge of sewage, industrial wastes, or other pollution would be allowed into waters designated as ESW. In addition, no new mixing zones would be allowed in ESW, and mixing zones from upstream or tributary waters could not extend into the designated sections.

Issues: The primary advantage to the public is that these waters will be protected at their present high level of quality for the use and enjoyment of current and future generations of Virginians. A potential disadvantage to the public may be the prohibition of new or expanded permanent point source discharges imposed within the segment once the regulatory designation is effective. This would cause riparian landowners within the designated segment to seek alternatives to discharging to the designated segment and, therefore, to have additional financial expenditures associated with wastewater or storm water treatment. There is no disadvantage to the public or the Commonwealth that will result from the adoption of these amendments.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to a petition for rulemaking, the State Water Control Board (Board) proposes to designate a portion of Laurel Fork in Highland County, Virginia as Exceptional State Waters (ESW).

Result of Analysis. There is insufficient information to ascertain whether benefits will outweigh costs.

Estimated Economic Impact. In September 2016, the Board received a petition for rulemaking[1] requesting that the Board "designate a segment of Laurel Fork in Highland County, the majority of which is within the property boundary of Rifle Ridge Farm, LP as Exceptional State Waters." The Board now proposes to designate a segment of Laurel Fork "from the Rifle Ridge Farm property line near Collins Run (N38.49270, W79.66611) downstream to a point approximately 0.5 miles upstream from the confluence of Mullenax Run (N38.508322, W79.652757) as ESW. The petitioner, who owns Rifle Ridge Farm, initially requested ESW status for a longer stretch of Laurel Fork "from approximately 0.33 miles upstream of the confluence with Collins Run (Lat. N38.490051, Long. W79.666039) downstream to a point approximately 0.5 miles upstream from the confluence of Mullenax Run (Lat. N38.508322, Long. W79.652757)"[2] This longer stretch, however, ran partly through land owned by Tamarack of Highland, LLC. Because of concerns raised by Tamarack, LLC about possible adverse impacts to their property value and use, the Board's proposal limits the ESW designation only to Laurel Fork as it runs within the boundaries of Rifle Ridge Farm, LP.

Board staff reports, "Upon permanent regulatory designation of a water body as an ESW, the quality of that water body will be maintained and protected by not allowing any degradation except on a very short term basis. No new, additional or increased point source discharge of sewage, industrial wastes or other pollution will be allowed in waters designated as ESW. In addition, no new mixing zones[3] would be allowed in ESW and mixing zones from upstream or tributary waters could not extend into the Exceptional State Waters sections." The Board found that the stretch of Laurel Fork that is the subject of this regulatory action met the criteria to be designated ESW because it was an "exceptional environmental setting" with "exceptional aquatic communities". Specifically, this nominated waterway was found to house a self-sustaining brook trout population.

Board staff reports that this action will provide a benefit by preserving this section of waterway in its current state. By filing the petition that lead to this regulatory action, the petitioner has indicated that he believes that the benefits of having the ESW designation for Laurel Fork within his land boundaries outweigh any costs that he might incur. Board staff reports that affected landowners might be adversely affected by the prohibition against new or additional point source discharge of pollution and further reports that affected landowners may incur increased direct costs associated with wastewater or storm water treatment. The ESW designation might also have the effect of limiting or eliminating land use and development adjacent to the designated stretch of Laurel Fork. Commenters at the NOIRA stage of this action, for instance, expressed concern that future energy development might be negatively impacted by this ESW designation. Board staff reports that there are no landowners upstream within the mixing zone length of the proposed ESW who currently have point source discharge permits. Landowners within the mixing zone length may be adversely impacted in the future if they have reason to seek point source discharge permits because they would not be able to discharge into the mixing zone.[4] There is insufficient information about all possible benefits and costs for this action to ascertain whether benefits will outweigh costs.

Businesses and Entities Affected. This action will directly affect the owner of Rifle Ridge Farm. Although there are currently no point source permit holders within the mixing zone length of this proposed ESW, any landowners within that length have the potential to be adversely affected in the future.

Localities Particularly Affected. The waterway affected by this regulatory action is in Highland County, Virginia.

Projected Impact on Employment. This proposed regulatory change is unlikely to affect employment in the Commonwealth.

Effects on the Use and Value of Private Property. This proposed regulatory change will likely lower the market value of affected land as it limits land use.

Real Estate Development Costs. This proposed regulatory change would likely impede real estate development on land adjacent to the ESW.

Small Businesses:

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

Costs and Other Effects. Rifle Ridge Farm may incur additional costs on account of this regulatory action.

Alternative Method that Minimizes Adverse Impact. There is likely no alternative method that would both allow this designation as requested by the affected small business and minimize adverse impacts.

Adverse Impacts:

Businesses: Rifle Ridge Farm may incur additional costs on account of this regulatory action.

Localities: Localities in the Commonwealth are unlikely to see any adverse impacts on account of this proposed regulatory change.

Other Entities: No other entities are likely to be adversely affected by this proposed change.

[1]http://townhall.virginia.gov/l/ViewPTransmittal.cfm?petitionid=250&version=new

[2]See page two of the Agency's background document submitted at the NOIRA stage of this regulatory action here: http://townhall.virginia.gov/l/GetFile.cfm?File=C:\TownHall\docroot\103\4754\7824\AgencyStatement_DEQ_7824_v2.pdf

[3]DEQ's glossary defines mixing zone as "a segment of a river or stream where pollution from a point source mixes with water and may exceed the recommended concentrations for some pollutants". DEQ's glossary can be found at: http://www.deq.virginia.gov/Resources/Glossary/GlossaryM.aspx

[4]Board staff reports that alternatives to a point source permit might include installing a septic tank, pumping waste into a temporary receptacle and having it periodically hauled away or negotiating an easement to lay a pipe across neighboring land that would be outside of the mixing zone length. All of these options would have costs attached.

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

Summary:

The proposed amendment designates a portion of Laurel Fork in Highland County for special protection as exceptional state waters.

9VAC25-260-30. Antidegradation policy.

A. All surface waters of the Commonwealth shall be provided one of the following three levels, or tiers, of antidegradation protection. This antidegradation policy shall be applied whenever any activity is proposed that has the potential to affect existing surface water quality.

1. As a minimum, existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.

2. Where the quality of the waters exceed water quality standards, that quality shall be maintained and protected unless the board finds, after full satisfaction of the intergovernmental coordination and public participation provisions of the Commonwealth's continuing planning process, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation or lower water quality, the board shall assure water quality adequate to protect existing uses fully. Further, the board shall assure that there shall be achieved the highest statutory and regulatory requirements applicable to all new or existing point source discharges of effluent and all cost-effective and reasonable best management practices for nonpoint source control.

3. Surface waters, or portions of these, which provide exceptional environmental settings and exceptional aquatic communities or exceptional recreational opportunities may be designated and protected as described in subdivisions 3 a, b and c of this subsection.

a. Designation procedures.

(1) Designations shall be adopted in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) and the board's public participation guidelines.

(2) Upon receiving a nomination of a waterway or segment of a waterway for designation as an exceptional state water pursuant to the board's antidegradation policy, as required by 40 CFR 131.12, the board shall notify each locality in which the waterway or segment lies and shall make a good faith effort to provide notice to impacted riparian property owners. The written notice shall include, at a minimum: (i) a description of the location of the waterway or segment; (ii) the procedures and criteria for designation as well as the impact of the designation; (iii) the name of the person making the nomination; and (iv) the name of a contact person at the Department of Environmental Quality who is knowledgeable about the nomination and the waterway or segment. Notice to property owners shall be based on names and addresses taken from local tax rolls. Such names and addresses shall be provided by the Commissioners of the Revenue or the tax assessor's office of the affected jurisdiction upon request by the board. After receipt of the notice of the nomination, localities shall be provided 60 days to comment on the consistency of the nomination with the locality's comprehensive plan. The comment period established by subdivision 3 a (2) of this subsection shall in no way impact a locality's ability to comment during any additional comment periods established by the board.

b. Implementation procedures.

(1) The quality of waters designated in subdivision 3 c of this subsection shall be maintained and protected to prevent permanent or long-term degradation or impairment.

(2) No new, additional, or increased discharge of sewage, industrial wastes or other pollution into waters designated in subdivision 3 c of this subsection shall be allowed.

(3) Activities causing temporary sources of pollution may be allowed in waters designated in subdivision 3 c of this subsection even if degradation may be expected to temporarily occur provided that after a minimal period of time the waters are returned or restored to conditions equal to or better than those existing just prior to the temporary source of pollution.

c. Surface waters designated under this subdivision are as follows:

(1) Little Stony Creek in Giles County from the first footbridge above the Cascades picnic area, upstream to the 3,300-foot elevation.

(2) Bottom Creek in Montgomery County and Roanoke County from Route 669 (Patterson Drive) downstream to the last property boundary of the Nature Conservancy on the southern side of the creek.

(3) Lake Drummond, located on U.S. Fish and Wildlife Service property, in its entirety within the cities of Chesapeake and Suffolk excluding any ditches and/or tributaries.

(4) North Creek in Botetourt County from the first bridge above the United States Forest Service North Creek Camping Area to its headwaters.

(5) Brown Mountain Creek, located on U.S. Forest Service land in Amherst County, from the City of Lynchburg property boundary upstream to the first crossing with the national forest property boundary.

(6) Laurel Fork, located on U.S. Forest Service land in Highland County, from the national forest property boundary below Route 642 downstream to the Virginia/West Virginia state line.

(7) North Fork of the Buffalo River, located on U.S. Forest Service land in Amherst County, from its confluence with Rocky Branch upstream to its headwaters.

(8) Pedlar River, located on U.S. Forest Service land in Amherst County, from where the river crosses FR 39 upstream to the first crossing with the national forest property boundary.

(9) Ramseys Draft, located on U.S. Forest Service land in Augusta County, from its headwaters (which includes Right and Left Prong Ramseys Draft) downstream to the Wilderness Area boundary.

(10) Whitetop Laurel Creek, located on U.S. Forest Service land in Washington County, from the national forest boundary immediately upstream from the second railroad trestle crossing the creek above Taylors Valley upstream to the confluence of Green Cove Creek.

(11) Ragged Island Creek in Isle of Wight County from its confluence with the James River at a line drawn across the creek mouth at N36Â°56.306'/W76Â°29.136' to N36Â°55.469'/W76Â°29.802' upstream to a line drawn across the main stem of the creek at N36Â°57.094'/W76Â°30.473' to N36Â°57.113'/W76Â°30.434', excluding wetlands and impounded areas and including only those tributaries completely contained within the Ragged Island Creek Wildlife Management Area on the northeastern side of the creek.

(12) Big Run in Rockingham County from its headwaters downstream to the first crossing with the Shenandoah National Park boundary and all tributaries to this segment of Big Run within the confines of Shenandoah National Park.

(13) Doyles River in Albemarle County from its headwaters to the first crossing with the Shenandoah National Park boundary and Jones Falls Run from its headwaters to its confluence with Doyles River and all tributaries to these segments of Doyles River and Jones Fall Run within the confines of Shenandoah National Park.

(14) East Hawksbill Creek in Page County from its headwaters downstream to the first crossing with the Shenandoah National Park boundary and all tributaries to this segment of East Hawksbill Creek within the confines of Shenandoah National Park.

(15) Jeremys Run in Page County from its headwaters downstream to the first crossing with the Shenandoah National Park boundary and all tributaries to this segment of Jeremys Run within the confines of Shenandoah National Park.

(16) East Branch Naked Creek in Page County from its headwaters downstream to the first crossing with the Shenandoah National Park boundary and all tributaries to this segment of East Branch Naked Creek within the confines of Shenandoah National Park.

(17) Piney River in Rappahannock County from its headwaters downstream to the first crossing with the Shenandoah National Park boundary and all tributaries to this segment of the Piney River within the confines of Shenandoah National Park.

(18) North Fork Thornton River in Rappahannock County from its headwaters downstream to the first crossing with the Shenandoah National Park boundary and all tributaries to this segment of the North Fork Thornton River within the confines of Shenandoah National Park.

(19) Blue Suck Branch from its headwaters downstream to the first crossing with the George Washington National Forest boundary.

(20) Downy Branch from its headwaters downstream to the first crossing with the George Washington National Forest boundary.

(21) North Branch Simpson Creek (Brushy Run) from its headwaters downstream to its confluence with Simpson Creek.

(22) Roberts Creek from its confluence with the Pedlar River upstream to its first crossing with the National Forest boundary.

(23) Shady Mountain Creek from its headwaters downstream to its confluence with the Pedlar River.

(24) Cove Creek from its headwaters downstream to the National Forest boundary.

(25) Little Cove Creek and its tributaries from the headwaters downstream to the National Forest boundary.

(26) Rocky Branch from its headwaters downstream to its confluence with the North Fork of the Buffalo River.

(27) North Fork of the Buffalo River from its confluence with Rocky Branch downstream to the National Forest Boundary.

(28) The Hazel River in Rappahannock County from its headwaters to the first downstream crossing with the

Shenandoah National Park boundary and all tributaries within this segment within the confines of Shenandoah National Park.

(29) Little Stony Creek in Scott County from Bark Camp Lake dam to its confluence with Bakers Branch.

(30) North River in Augusta County from the Staunton Reservoir dam to the first crossing with National Forest lands boundary (near Girl Scout Camp May Flather).

(31) Laurel Fork in Highland County, from the Rifle Ridge Farm property line near Collins Run (N38.49270, W79.66611) downstream to a point approximately 0.5 miles upstream from the confluence of Mullenax Run (N38.508322, W79.652757).

B. Any determinations concerning thermal discharge limitations made under § 316(a) of the Clean Water Act will be considered to be in compliance with the antidegradation policy.

VA.R. Doc. No. R17-04; Filed January 14, 2022, 8:28 a.m.

Proposed Regulation

REGISTRAR'S NOTICE: The State Water Control Board is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 8 of the Code of Virginia, which exempts general permits issued by the State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.) and Chapters 24 (§ 62.1-242 et seq.) and 25 (§ 62.1-254 et seq.) of Title 62.1 of the Code of Virginia if the board (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01 of the Code of Virginia; (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action, forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit; (iii) provides notice and receives oral and written comment as provided in § 2.2-4007.03 of the Code of Virginia; and (iv) conducts at least one public hearing on the proposed general permit. 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: **9VAC25-920. General Permit for the Use of Irrigation Withdrawals from the Surficial Aquifer Greater Than 300,000 Gallons in any One Month (adding 9VAC25-920-10 through 9VAC25-920-100).**

Statutory Authority: §§ 62.1-256, 62.1-258.1, and 62.1-266 of the Code of Virginia.

Public Hearing Information:

March 8, 2022 - 6:30 p.m. - Eastern Shore Community College, 29300 Lankford Highway, Melfa, Virginia

March 9, 2022 - 6:30 p.m. - New Kent Middle School, 7501 Egypt Road, New Kent, Virginia

Public Comment Deadline: April 15, 2022.

Agency Contact: Joseph Grist, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4031, or email joseph.grist@deq.virginia.gov.

Summary:

The proposed regulatory action establishes a new general permit promoting the use of the surficial aquifer system for nonagricultural withdrawal in any groundwater management area and includes (i) permit terms, (ii) withdrawal limits, (iii) reporting requirements, and (iv) criteria for determining adequate quality and quantity from the surficial aquifer necessary to permit withdrawals. The intent of this new regulation is to conserve groundwater in the confined aquifer system within the groundwater management areas for potable needs.

Chapter 920

General Permit for the Use of Irrigation Withdrawals from the Surficial Aquifer Greater Than 300,000 Gallons in any One Month

9VAC25-920-10. Definitions.

The words and terms used in this chapter shall have the meanings defined in § 62.1-254 et seq. of the Code of Virginia (Ground Water Management Act of 1992) and 9VAC25-610 (Groundwater Withdrawal Regulation), except that for the purposes of this chapter, the following words and terms shall have the following meanings unless the context clearly indicates otherwise:

"Adverse impact" means reductions in groundwater levels or changes in groundwater quality that limit the ability of any existing groundwater user lawfully withdrawing or authorized to withdraw groundwater at the time of permit or special exception issuance to continue to withdraw the quantity and quality of groundwater required by the existing use. Existing groundwater users include all those persons that have been granted a groundwater withdrawal permit subject to this chapter and all other persons who are excluded from permit requirements by 9VAC25-610-50.

"Agricultural irrigation" means irrigation that is used to support any operation devoted to bona fide production of crops, animals, or fowls, including the production of fruits and vegetables of any kinds; meat, dairy, and poultry products; nuts, tobacco, and floral products; and the production and harvest of products from silvicultural activity.

"Applicant" means a person filing an application to initiate or enlarge a groundwater withdrawal in a groundwater management area.

"Area of impact" means the areal extent of each aquifer where more than one foot of drawdown is predicted to occur due to a proposed withdrawal.

"Beneficial use" includes domestic, including public water supply; agricultural; commercial; and industrial uses.

"Board" means the State Water Control Board.

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

"Eastern Shore Groundwater Management Area" means the groundwater management area declared by the board encompassing the Counties of Accomack and Northampton.

"Eastern Virginia Groundwater Management Area" means the groundwater management area declared by the board encompassing the Counties of Charles City, Essex, Gloucester, Isle of Wight, James City, King George, King and Queen, King William, Lancaster, Mathews, Middlesex, New Kent, Northumberland, Prince George, Richmond, Southampton, Surry, Sussex, Westmoreland, and York; the areas of Caroline, Chesterfield, Fairfax, Hanover, Henrico, Prince William, Spotsylvania, and Stafford Counties east of Interstate 95; and the Cities of Chesapeake, Franklin, Hampton, Hopewell, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach, and Williamsburg.

"Groundwater" means any water, except capillary moisture, beneath the land surface in the zone of saturation or beneath the bed of any stream, lake, reservoir, or other body of surface water wholly or partially within the boundaries of this Commonwealth, whatever the subsurface geologic structure in which such water stands, flows, percolates, or otherwise occurs.

"Groundwater management area" means a geographically defined groundwater area in which the board has deemed the levels, supply, or quality of groundwater to be adverse to public welfare, health, and safety.

"Irrigation" means the controlled application through man-made systems to supply water requirements not satisfied by rainfall to assist in the growing or maintenance of vegetative growth.

"Mitigate" means to take actions necessary to assure that all existing groundwater users at the time of issuance of a permit or special exception who experience adverse impacts continue to have access to the amount and quality of groundwater needed for existing uses.

"Nonagricultural irrigation" means all irrigation other than agricultural irrigation.

"Permit" means a groundwater withdrawal permit issued under the Ground Water Management Act of 1992 (§ 62.1-254 et seq. of the Code of Virginia) permitting the withdrawal of a specified quantity of groundwater under specified conditions in a groundwater management area.

"Permittee" means a person that currently has an effective groundwater withdrawal permit, or coverage under a general permit, issued under the Ground Water Act of 1992.

"Surface water and groundwater conjunctive use system" means an integrated water supply system wherein surface water is the primary source and groundwater is a supplemental source that is used to augment the surface water source when the surface water source is not able to produce the amount of water necessary to support the annual water demands of the system.

"Virginia Drought Evaluation Regions" means those drought evaluation regions encompassing the Counties of Charles City, Essex, Gloucester, Isle of Wight, James City, King George, King and Queen, King William, Lancaster, Mathews, Middlesex, New Kent, Northumberland, Prince George, Richmond, Southampton, Surry, Sussex, Westmoreland, and York; the areas of Caroline, Chesterfield, Fairfax, Hanover, Henrico, Prince William, Spotsylvania, and Stafford Counties east of Interstate 95; and the Cities of Chesapeake, Franklin, Hampton, Hopewell, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach, and Williamsburg.

9VAC25-920-20. Information requirements.

Pursuant to 9VAC25-610-380, the board may request (i) such plans, specifications, and other pertinent information as may be necessary to determine the effect of an applicant's groundwater withdrawal; and (ii) such other information as may be necessary to accomplish the purposes of this chapter. Any owner, permittee, or person applying for a general permit coverage shall provide the information requested by the board.

9VAC25-920-30. Purpose.

The purpose of this chapter is to establish a general permit for the use of irrigation water withdrawals from the surficial aquifer greater than 300,000 gallons in any one month under the provisions of 9VAC25-610. Applications for coverage under this general permit shall be processed for approval or denial by the board. Coverage or application denial by the board shall constitute the general permit action and shall follow all provisions in the Ground Water Management Act of 1992 (§ 62.1-254 et seq. of the Code of Virginia), except for the public comment and participation provisions, from which each general permit action is exempt.

9VAC25-920-40. Delegation of authority.

The director or an authorized representative may perform any act of the board provided under this chapter, except as limited by § 62.1-44.14 of the Code of Virginia.

9VAC25-920-50. Effective date of the permit.

The general permit in 9VAC25-920-90 becomes effective on (insert the effective date of the regulation) and expires on (insert the date 15 years after effective date of the regulation). Any coverage that is granted pursuant to 9VAC25-920-90 shall remain in full force and effect until 11:59 p.m. on (insert the date 15 years after the effective date of the regulation) unless the general permit coverage is terminated or revoked on or before that date.

9VAC25-920-60. Authorization to withdrawal groundwater from the surficial aquifer of a groundwater management area..

A. A person granted coverage under this general permit may withdraw groundwater from the surficial aquifer of the Eastern Shore Groundwater Management Area or the Eastern Virginia Groundwater Management Area, as defined in this chapter, provided that:

1. The applicant submits an application in accordance with 9VAC25-920-90;

2. The applicant remits any required permit application fee;

3. The applicant receives general permit coverage from the Department of Environmental Quality under 9VAC25-920-100 and complies with the limitations and other requirements of the general permit, the general permit coverage letter, and the Ground Water Management Act of 1992 and attendant regulations; and

4. The applicant has not been required to obtain an individual permit under 9VAC25-610 for the proposed project withdrawals. Any applicant that is eligible for general permit coverage may, at the applicant's discretion, seek an individual permit instead of coverage under this general permit.

B. Application may be made at any time for an individual permit in accordance with 9VAC25-610.

C. Coverage under this general permit does not relieve the permittee of the responsibility to comply with other applicable federal, state, or local statutes, ordinances, or regulations.

D. The activity to withdraw water shall not have been prohibited by state law or regulations, nor shall it contravene applicable Groundwater Withdrawal Regulations (9VAC25-610).

E. Coverage under this general permit is not required if the activity is excluded from permitting in accordance with 9VAC25-610-50.

9VAC25-920-70. Reasons to deny coverage.

A. The board shall deny application for coverage under this general permit to:

1. An activity outside a groundwater management area.

2. An activity in an aquifer other than the surficial aquifer of a groundwater management area.

3. An activity that causes, may reasonably be expected to cause, or may contribute to causing more than minimal water level declines in the underlying confined aquifer system or degradation in water quality, stream or wetland hydrology, or other instream beneficial uses.

B. The board may require an individual permit in accordance with 9VAC25-610-95 B rather than granting coverage under this general permit.

9VAC25-920-80. Exclusions.

A. It shall be unlawful on or after (insert the effective date of the regulation) for any person to construct a well for nonagricultural irrigation withdrawal purposes greater than 300,000 gallons in any one month in a groundwater management area except in the surficial aquifer, unless the Department of Environmental Quality has determined the quantity or quality of the groundwater in the surficial aquifer, as provided in subsection B of this section, is not adequate to supply the proposed beneficial use.

B. Any person may construct a well for nonagricultural irrigation purposes in a groundwater management area outside of the surficial aquifer if any of the following criteria for the proposed location for surficial water withdrawal are documented to the satisfaction of the department:

1. That a ratio of greater than one surficial well per acre would be required to support the proposed beneficial use water withdrawal volume based on the yield test results from at a minimum of two surficial aquifer test wells, separated by a minimum of 500 feet, unless the Department of Environmental Quality has determined that the separation distance between test wells can be less than 500 feet;

2. That any two surficial aquifer water quality sample tests, analysis, measurements, or monitoring results at the proposed or existing water withdrawal site conducted by a laboratory certified by the Environmental Laboratory Certification Program (§ 2.2-1105 of the Code of Virginia), Certification for Noncommercial Environmental Laboratories (1VAC30-45), or Accreditation for Commercial Environmental Laboratories (1VAC30-46) and collected at least 30 days but no more than 60 days apart, exceeds any of the water quality values as follows:

a. Bicarbonate levels greater than 120 mg/l;

b. Chloride (Cl) levels greater than 70 mg/l;

c. Sodium (Na) levels greater than 70 mg/l;

d. Manganese (Mn) levels greater than 0.2 mg/l;

e. Iron (Fe) levels greater than 5 mg/l; or

f. Electric conductivity greater than 1.5 ds/m.

C. Any person who satisfies the criteria in subsection B of this section may construct a well for nonagricultural irrigation purposes outside of the surficial aquifer but shall be required to apply for an individual permit in accordance with 9VAC25-610-95 B prior for the purposes of withdrawing 300,000 gallons or more of groundwater in any month rather than obtaining coverage under this general permit.

9VAC25-920-90. Application.

A. The applicant shall file a complete application in accordance with this section for coverage under this general permit for use of the surficial aquifer in a groundwater management area.

B. A complete application for general permit coverage, at a minimum, consists of the following information:

1. The permit fee as required by the Fees for Permits and Certificates (9VAC25-20).

2. A groundwater withdrawal permit application completed in its entirety with all maps, attachments, and addenda that may be required. Application forms shall be submitted in a format specified by the board. The application forms are available from the Department of Environmental Quality.

3. A signature as described in 9VAC25-610-150.

4. A completed well construction report for all existing wells associated with the application submitted on the Water Well Completion Report, Form GW2;

5. For all proposed wells, the well name, proposed well depth, screen intervals, pumping rate, and latitude and longitude.

6. Locations of all existing and proposed wells associated with the application shown on a USGS 7.5 minute topographic map or equivalent computer generated map. The map shall be of sufficient detail such that all wells may be easily located for site inspection. The applicant shall provide the latitude and longitude coordinates in a datum specified by the department for each existing and proposed well. The map must show the outline of the property and the location of each of its existing and proposed wells and must include all springs, rivers, and other surface water bodies.

7. Information on surface water and groundwater conjunctive use systems as described in 9VAC25-610-104 if applicable.

8. Notification from the local governing body in which the withdrawal is to occur that the location and operation of the withdrawing facility is in compliance with all ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2 of the Code of Virginia. If the governing body fails to respond to the applicant's request for certification within 45 calendar days of receipt of the written request, the location and operation of the proposed facility shall be deemed to comply with the provisions of such ordinances for the purposes of this chapter. The applicant shall document the local governing body's receipt of the request for certification through the use of certified mail or other means that establishes proof of delivery.

9. Documentation justifying the volume of groundwater withdrawal requested as described in the groundwater withdrawal application provided in accordance with 9VAC25-920-90 B 2.

10. The department shall require a complete suite of geophysical logs (16"/64" Normal, Single Point, Self Potential, Lateral, and Natural Gamma at a scale of 20 feet per inch), as follows:

a. The geophysical logs shall be obtained from boreholes at the locations and depths approved by the department;

b. At least four months prior to the scheduled geophysical logging, the applicant shall notify the department of the drilling timetable to receive further guidance needed on performing the geophysical logging and to allow scheduling of department staff to make a site visit during the drilling of the borehole and the geophysical logging; and

c. Geophysical log data collected without the oversight of the department will not be accepted by the department.

11. In cases where the area of impact does not remain on the property owned by the applicant or existing groundwater withdrawers will be included in the area of impact, the applicant shall provide and implement a plan to mitigate all adverse impacts on existing groundwater users. Approvable mitigation plans shall, at a minimum, contain the following features and implementation of the mitigation plan shall be included as enforceable permit conditions:

a. The rebuttable presumption that water level declines that cause adverse impacts to existing wells within the area of impact are due to the proposed withdrawal;

b. A commitment by the applicant to mitigate undisputed adverse impacts due to the proposed withdrawal in a timely fashion;

c. A speedy, nonexclusive, low-cost process to fairly resolve disputed claims for mitigation between the applicant and any claimant; and

d. The requirement that the claimant provide documentation that the claimant is the owner of the well; documentation that the well was constructed and operated prior to the initiation of the applicant's withdrawal; the depth of the well, the pump, and screens and any other construction information that the claimant possesses; the location of the well with enough specificity that it can be located in the field; the historic yield of the well, if available; historic water levels for the well, if available; and the reasons the claimant believes that the applicant's withdrawals have caused an adverse impact on the well.

C. The board may waive the requirement for information listed in subsection B of this section to be submitted if it has access to substantially identical information that remains accurate and relevant to the permit application.

D. If an application is not accepted as complete by the board under the requirements of subsection B of this section, the

board will require the submission of additional information pursuant to 9VAC25-610-98.

E. An incomplete permit application for coverage under this general permit may be administratively withdrawn from processing by the board for failure to provide the required information after 60 calendar days from the date of the latest written information request made by the board. An applicant may request a suspension of application review by the board. A submission by the applicant making such a request shall not preclude the board from administratively withdrawing an incomplete application. Resubmittal of a permit application for the same or similar project after the time that the original permit application was administratively withdrawn shall require submittal of an additional permit application fee.

9VAC25-920-100. General permit.

An owner whose application is accepted by the board will receive coverage under the following permit and shall comply with the requirements in the permit and be subject to all requirements of 9VAC25-610 and the Ground Water Management Act of 1992.

Effective date: (insert the effective date of the regulation).

Expiration date: (insert the date 15 years after the effective date of the regulation).

GENERAL PERMIT FOR THE USE OF IRRIGATION WITHDRAWALS FROM THE SURFICIAL AQUIFER GREATER THAN 300,000 GALLONS IN ANY ONE MONTH

Pursuant to § 62.1-256 of the Ground Water Management Act of 1992 (§ 62.1-254 et seq. of the Code of Virginia) and Groundwater Withdrawal Regulations (9VAC25-610), the State Water Control Board hereby authorizes the permittee to withdraw and use groundwater in accordance with this permit.

The authorized withdrawals shall be in accordance with the information submitted with the application, this cover page, Part I – Operating Conditions, and Part II – Conditions Applicable to All Groundwater Withdrawal Permits, as set forth in this general permit.

Part I.
Operating Conditions.

A. Authorized withdrawal. The withdrawal of groundwater shall be limited to the wells identified in the groundwater withdrawal application submitted in accordance with 9VAC25-920-90.

B. Reporting.

1. Water withdrawn from each well shall be recorded monthly at the end of each month, and reported to the department annually, in paper or electronic format, on a form provided by the department, by July 10 for the respective previous 12 months. Records of water use shall be maintained by the Permittee in accordance with Part II F 1 through F 4 of this general permit.

2. The permittee shall report any amount in excess of the permitted withdrawal limit by the fifth day of the month following the month when such a withdrawal occurred. Failure to report may result in compliance or enforcement activities.

C. Water conservation and management plan.

1. The permittee shall conduct an annual water audit quantifying the flows of the water in the system to understand its usage, reduce losses, and improve water conservation. The audit shall include:

a. Documentation of an annual review of the amount of water used compared with the expected need of the system to ensure that the water system uses the minimum amount of water necessary;

b. A list of any new water saving equipment, procedures, or improvements installed or water saving processes implemented during the previous year;

c. Documentation of implementation and evaluation of a leak detection and repair process, including documented quarterly visual monitoring during withdrawal periods where the permittee will locate and correct system leaks; and

d. A Groundwater Withdrawal Water Conservation and Management Audit Form, completed in its entirety, provided by the department.

2. Results of the annual audit shall be maintained onsite and available to the department upon request.

3. When a drought emergency is declared by the Commonwealth of Virginia in the permittee's Virginia Drought Evaluation Region or in accordance with a county or locality drought management ordinance, the permittee shall implement either the provisions directed by the Commonwealth or the drought management ordinance, whichever is the most restrictive. The permittee shall be responsible for determining when drought emergencies are declared. The permittee shall retain records documenting that mandatory conservation measures were implemented during declared drought emergencies.

D. Mitigation plan. In cases where the area of impact does not remain on the property owned by the applicant or existing groundwater withdrawers will be included in the area of impact, the applicant shall provide and implement a plan to mitigate all adverse impacts on existing groundwater users. Approvable mitigation plans shall, at a minimum, contain the following features and implementation of the mitigation plan shall be included as enforceable permit conditions:

1. The rebuttable presumption that water level declines that cause adverse impacts to existing wells within the area of impact are due to the proposed withdrawal;

2. A commitment by the applicant to mitigate undisputed adverse impacts due to the proposed withdrawal in a timely fashion;

3. A speedy, nonexclusive, low-cost process to fairly resolve disputed claims for mitigation between the applicant and any claimant; and

4. The requirement that the claimant provide documentation that the claimant is the owner of the well; documentation that the well was constructed and operated prior to the initiation of the applicant's withdrawal; the depth of the well, the pump, and screens and any other construction information that the claimant possesses; the location of the well with enough specificity that it can be located in the field; the historic yield of the well, if available; historic water levels for the well, if available; and the reasons the claimant believes that the applicant's withdrawals have caused an adverse impact on the well.

E. Property rights. The issuance of coverage under this general permit does not convey property rights in either real or personal property or exclusive privileges, nor does it authorize injury to private property, an invasion of personal property rights, or an infringement of federal, state, or local laws or regulations. The fact that an owner obtains coverage under this general permit shall not constitute a defense in a civil action involving private rights.

F. Well tags. Each well that is included in the coverage under this general permit shall have affixed to the well casing, in a prominent place, a permanent well identification plate that records, at a minimum, the DEQ well identification number, the groundwater withdrawal permit number, the total depth of the well, and the screened intervals in the well. Such well identification plates shall be in a format specified by the board and are available from the department.

G. Well abandonment. The permittee shall permanently abandon out-of-service wells in accordance with the Virginia Department of Health regulations and shall submit documentation to the Department of Environmental Quality within 30 calendar days of abandonment. At least two weeks prior to the scheduled abandonment, the permittee shall notify the department of the scheduled abandonment date.

Part II.
Conditions Applicable to All Groundwater Withdrawal Permits.

A. Duty to comply. The permittee shall comply with all conditions of the permit. Nothing in this permit shall be construed to relieve the permit holder of the duty to comply with all applicable federal and state statutes, regulations, and prohibitions. Any permit violation is a violation of the law and is grounds for enforcement action, permit termination, revocation, modification, or denial of a permit application.

B. Duty to cease or confine activity. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the activity for which a permit has been granted in order to maintain compliance with the conditions of the permit.

C. Duty to mitigate. The permittee shall take all reasonable steps to avoid all adverse impacts that may result from this withdrawal as defined in 9VAC25-610-10 and to provide mitigation of the adverse impact in accordance with Part I D of this general permit.

D. Inspection, entry, and information requests. Upon presentation of credentials, the permittee shall allow the board, the department, or any duly authorized agent of the board at reasonable times and under reasonable circumstances (i) to enter upon the permittee's property, public or private; (ii) to have access to, inspect, and copy any records that must be kept as part of the permit conditions; and (iii) to inspect any facilities, well, water supply system, operations, or practices, including sampling, monitoring and withdrawal, that are regulated or required under the permit. For the purpose of this section, the time for inspection shall be deemed reasonable during regular business hours. Nothing contained in this general permit shall make an inspection time unreasonable during an emergency.

E. Duty to provide information. The permittee shall furnish to the board or department, within a reasonable time, information that the board may request to determine whether cause exists for modifying, revoking, reissuing, or terminating the permit or to determine compliance with the permit. The permittee shall also furnish to the board or department, upon request, copies of records required to be kept by regulation or this permit.

F. Water withdrawal volume records requirements.

1. The permittee shall maintain a copy of the permit on-site and shall make the permit available upon request.

2. Measurements taken for the purpose of monitoring shall be representative of the metered activity.

3. The permittee shall retain records of all metering information, including (i) all calibration and maintenance records, (ii) copies of all reports required by the permit, and (iii) 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 expiration of coverage under this general permit. This period may be extended by request of the board at any time.

4. Records of metering information shall include, as appropriate:

a. The date, exact place, and time of measurements;

b. The names of the individuals who performed measurements;

c. The date the measurements were performed; and

d. The results of the measurements.

G. Water withdrawal volume metering and equipment requirements. Each well and impoundment or impoundment system shall have an in-line totalizing flow meter to read gallons, cubic feet, or cubic meters installed prior to beginning the permitted use. Meters shall produce volume determinations within plus or minus 10% of actual flows.

1. A defective meter or other device shall be repaired or replaced within 30 business days of discovery.

2. A defective meter is not grounds for not reporting withdrawals. During any period when a meter is defective, generally accepted engineering methods shall be used to estimate withdrawals. The period during which the meter was defective must be clearly identified in the groundwater withdrawal report required by Part I B of this permit. An alternative method for determining flow may be approved by the board on a case-by-case basis.

H. Well construction. At least four months prior to the scheduled construction of any well, the permittee shall notify the department of the construction timetable and shall receive prior approval of the well location and acquire the DEQ well number. All wells shall be constructed in accordance with the following requirements.

1. A well site approval letter or well construction permit shall be obtained from the Virginia Department of Health prior to construction of the well.

2. For wells the Department of Environmental Quality estimates shall be within 20 feet below land surface of an aquifer top confining layer a complete suite of geophysical logs (16"/64" Normal, Single Point, Self-Potential, Lateral, and Natural Gamma) shall be completed for the well and submitted to the department along with the corresponding completion report as required by 9VAC25-920-90 B 10.

3. The permittee's determination of the surficial aquifer depth shall be submitted to the department for review and approval, or approved on site by the department's geologist, prior to installation of any pump.

4. A completed Uniform Water Well Completion Report, Form GW-2 and any additional water well construction documents shall be submitted to the department within 30 calendar days of the completion of any well and prior to the initiation of any withdrawal from the well. The assigned DEQ well number shall be included on all well documents.

I. Transfer of permits.

1. Permits are not transferable to any person except after notice to the department.

2. Coverage under this permit may be automatically transferred to a new permittee if:

a. The current permittee notifies the department within 30 business days of the proposed transfer of the title to the facility or property, unless permission for a later date has been granted by the board;

b. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and

c. The board does not notify the existing permittee and the proposed new permittee of its intent to deny the new permittee coverage under the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part II I 2 b of this permit.

J. Notice of planned change. The permittee shall give notice to the department at least 30 business days prior to any planned alterations or additions to the permitted water withdrawal system.

K. Revocation and termination of coverage.

1. General permit coverage may be revoked in accordance with 9VAC25-610-290 and 9VAC25-610-300.

2. The permittee may terminate coverage under this general permit by filing a complete notice of termination with the department. The notice of termination may be filed after one or more of the following conditions have been met:

a. Operations have ceased at the facility and there are no longer withdrawals from the surficial aquifer.

b. A new owner has assumed responsibility for the facility. A notice of termination does not have to be submitted if a Change of Ownership Agreement Form has been submitted.

c. All groundwater withdrawals associated have been covered by an individual groundwater withdrawal permit.

d. Termination of coverage is being requested for another reason, provided the board agrees that coverage under this general permit is no longer needed.

3. The notice of termination shall contain the following information:

a. The owner's name, mailing address, telephone number, and email address, if available;

b. The facility name and location;

c. The general permit number;

d. A completed Termination Agreement Form obtained from the department; and

e. The basis for submitting the notice of termination, including:

(1) A statement indicating that a new owner has assumed responsibility for the facility;

(2) A statement indicating that operations have ceased at the facility, and there are no longer groundwater withdrawals from the surficial aquifer;

(3) A statement indicating that all groundwater withdrawals have been covered by an individual Groundwater Withdrawal permit; or

(4) A statement indicating that termination of coverage is being requested for another reason (state the reason); and

(5) The following certification: "I certify under penalty of law that all groundwater withdrawals from the surficial aquifer at the identified facility that are authorized by this general permit have been eliminated, or covered under a groundwater withdrawal individual permit, or that I am no longer the owner of the facility, or permit coverage should be terminated for another reason listed above. I understand that by submitting this notice of termination, that I am no longer authorized to withdraw groundwater in accordance with the general permit, and that withdrawing groundwater is unlawful where the withdrawal is not authorized by a groundwater withdrawal permit or otherwise excluded from permitting. I also understand that the submittal of this notice of termination does not release an owner from liability for any violations of this permit or the Virginia Groundwater Management Act."

4. The notice of termination shall be signed in accordance with 9VAC25-610-150.

L. Continuation of coverage. Permit coverage shall expire at the end of its term. However, expiring permit coverages are automatically continued if the owner has submitted a complete application at least 90 calendar days prior to the expiration date of the permit, or a later submittal established by the board, which cannot extend beyond the expiration date of the original permit. The permittee is authorized to continue to withdraw until such time as the board either:

1. Issues coverage to the owner under this general permit; or

2. Notifies the owner that the withdrawal is not eligible for coverage under this general permit.

M. Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall apply for and obtain coverage under a new permit. All permittees with currently effective permit coverage shall submit a new application at least 90 calendar days before the expiration date of the existing permit, unless permission for a later date has been granted in writing by the board. The board shall not grant permission for application to be submitted later than the expiration date of the existing permit.

NOTICE: The following forms used in administering the regulation have been filed by the agency. Amended or added forms are reflected in the listing and are published following the listing. Online users of this issue of the Virginia Register of Regulations may also click on the name to access a form. The forms are also available from the agency contact or may be viewed at the Office of Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

FORMS (9VAC25-920)

Application for a General Permit for the Use of Irrigation Withdrawals from the Surficial Aquifer Greater Than 300,000 Gallons in Any One Month, GWP-SAGP-Application (eff. 12/2021)

Application for a General Permit for the Use of Irrigation Withdrawals from the Surficial Aquifer Greater Than 300,000 Gallons in Any One Month, GWP-SAGP-Application (eff. 12/2021)

General Permit For The Use Of Irrigation Withdrawals From the Surficial Aquifer Greater Than 300,000 Gallons in Any One Month Groundwater Withdrawal Water Conservation and Management Audit Form, GWP-SAGP-WCMP (eff. 12/2021)

General Permit For The Use Of Irrigation Withdrawals From The Surficial Aquifer Greater Than300,000 Gallons In Any One Month Annual Groundwater Withdrawal Report, GWP-SAGP-Reporting (eff. 12/2021)

Groundwater Withdrawal Permit Uncontested Termination Agreement Form, GWP-Termination (eff.12/2020)

Local Government Ordinance Form, GWP-LGOF (rev. 8/2019)

Uniform Water Well Completion Report Form GW-2 (rev. 8/2016)

VA.R. Doc. No. R21-6550; Filed January 20, 2022, 12:11 p.m.

TITLE 11. GAMING

VIRGINIA LOTTERY BOARD

Final Regulation

Title of Regulation: **11VAC5-90. Casino Gaming (adding 11VAC5-90-10 through 11VAC5-90-210).**

Statutory Authority: §§ 58.1-4101 and 58.1-4102 of the Code of Virginia.

Effective Date: March 16, 2022.

Agency Contact: Amy Roper, Regulatory Coordinator, Virginia Lottery Board, 600 East Main Street, 1st Floor, Richmond, VA 23219, telephone (804) 692-7133, FAX (804) 692-7325, or email aroper@valottery.com.

Summary:

Pursuant to Chapters 1197 and 1248 of the 2020 Acts of Assembly, the new regulation establishes requirements for licensure of casino gaming operators and the conduct of casino gaming. The regulation establishes (i) how the Virginia Lottery will issue casino licenses and permits; (ii) casino facility and gaming security and control standards; (iii) rules for slot machine, mechanical casino games, and

table games and on-premises mobile casino gaming; (iv) reporting requirements; (v) facility, employee, and equipment investigation procedures and nonmonetary sanctions and penalties for violations; (vi) procedures for payment of taxes, fees, and penalties; and (vii) information system as well as other system integrity requirements. Pursuant to Chapter 7 of the 2021 Acts of Assembly, Special Session I, the proposed regulation includes requirements and controls for sports betting when it occurs in a casino, and pursuant to Chapter 15 of the 2021 Acts of Assembly, Special Session I, the provisions include a training course be provided on how to recognize and report suspected human trafficking.

Chapter 90
Casino Gaming

11VAC5-90-10. Definitions.

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

"Adjusted gross receipts" means the gross receipts from casino gaming less winnings paid to winners.

"Annuity jackpot" means a casino game jackpot in which a player wins the right to receive fixed cash payments at specified intervals.

"Applicant" means a person who has submitted an application to the board.

"Application" means a written request for a license or permit that has been submitted to the board.

"Associated equipment" means hardware located on a facility operator's premises that is connected to the slot machine system for the purpose of performing communication, validation, or other functions, but not including the communication facilities of a regulated utility or the slot machines.

"Automated jackpot payout machine" means the collective hardware, software, communications technology, and other ancillary equipment used to facilitate the payment of a jackpot that is not totally and automatically paid directly from a casino gaming machine.

"Average payout percentage" means the average percentage of money used by players to play a slot machine or mechanical casino game that is returned to players of that game.

"Background investigation" means a security, criminal, and credit investigation of a person who applies for or who is granted a license or permit under this chapter.

"Board" means the Virginia Lottery Board established in the Virginia Lottery Law (§ 58.1-4100 et seq.) of Title 58.1 of the Code of Virginia.

"Books and records" means any document pertaining to, prepared in, or generated by a facility operator without regard to the medium through which the record is generated or maintained, including all general ledger records, subsidiary records and ledgers, computer-generated data, forms, documents, internal audit reports and work papers, correspondence, and personnel records.

"Cash" means currency and coin.

"Cashable credit" means a credit on a casino game that activates play and is convertible to cash at the conclusion of play.

"Cash equivalent" means a:

1. Certified check, cashier's check, treasurer's check, travelers check, or money order that is:

a. Payable to the facility operator, "bearer," or "cash,"

b. Drawn for a specific amount;

c. Currently dated not postdated;

d. Payable on demand; and

e. Without an endorsement; or

2. Certified check, cashier's check, treasurer's check, or money order that is:

a. Made payable to the presenting player;

b. Drawn for a specific amount;

c. Currently dated not postdated;

d. Payable on demand;

e. Endorsed by the presenting player; and

f. Without an endorsement other than that of the presenting player.

"Cashless funds transfer system" means the collective hardware, software, communications technology, and other ancillary equipment used to facilitate the electronic transfer of cashable or noncashable credits to a patron at a casino game.

"Cash storage box" means a secure tamper resistant container in a bill validator into which currency, gaming tickets, promotional play instruments, or other instruments authorized by the department are placed.

"Casino gaming" or "casino game" or "game" means baccarat, blackjack, twenty-one, poker, craps, dice, slot machines, roulette wheels, Klondike tables, punchboards, faro layouts, numbers tickets, push cards, jar tickets, or pull tabs and any other activity that is authorized by the board as a wagering game or device under this chapter. "Casino gaming" or "casino game" or "game" includes on-premises mobile casino gaming.

"Casino gaming law" or "gaming law" means Chapter 41 (§ 58.1-4100 et seq.) of Title 58.1 of the Code of Virginia.

"Casino gaming machine" means an electronic or mechanical device approved by the department that a player may use to gamble without the assistance of a dealer or other casino employee.

"Casino management system" means the collective hardware, software, communications technology, and other ancillary equipment used to collect, monitor, interpret, analyze, report, and audit data with regard to consumer gaming activity, inclusive of slot machine level accounting transactions, player tracking, and productivity analysis.

"Central monitor and control system" means a centralized computer system maintained or operated by or on behalf of the department that allows the department to monitor electronic gameplay and measure its share of gross revenue with respect to those games.

"Cheat" or "cheating" means to alter the selection criteria that determine the result of a game or the amount or frequency of payment in a game for the purpose of obtaining an advantage for one or more participants in a game over other participants in a game.

"Civil penalty" or "penalty" means a monetary enforcement action that the director or the board may impose on a licensee or permit holder under the casino gaming law and this chapter.

"Concessionaire" means a person who provides to a facility operator those services that do not require a supplier permit.

"Contractor" means a person or individual, other than an employee of a facility operator, who contracts with a facility operator or other person to:

1. Manage or operate a facility;

2. Provide security for a facility;

3. Perform service, maintenance, or repairs of a slot machine, mechanical casino game, table game device, central operating system, associated equipment, or software;

4. Own or control a person that performs or provides services as described in subdivisions 1, 2, and 3 of this definition;

5. Provide junket enterprise services; or

6. Provide any other service that is essential to operation of a casino gaming facility.

"Control" means the authority to direct the management and policies of an applicant, licensee, or permit holder.

"Controlling entity" means an entity that possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of a person, whether through ownership of voting securities, by contract, by beneficial ownership, or otherwise.

"Date of final action on a civil penalty or sanction" means:

1. If, after the director sends a deficiency notice under the department's regulations, a licensee or permit holder fails to submit a timely, acceptable corrective action plan, the date the board adopts as final the director's deficiency notice; or

2. If the board holds a hearing on the director's recommendation to impose a civil penalty or sanction, the date of the board's written decision.

"Date of final action on a denial" means:

1. If, after the director sends written notice of license or permit denial or recommendation of denial, an applicant fails to timely request a reconsideration meeting, the date of the director's written notice;

2. If, after a reconsideration meeting, an applicant fails to timely request a board hearing, the date of the director's written notice after the reconsideration meeting; or

3. If the board holds a hearing on an appeal of the director's license, or permit denial or reconsideration of such a denial, the date of the board's written decision.

"Dealer" means an employee of a facility operator whose primary function is to directly operate and conduct table games.

"Department" or "lottery" means the Virginia Lottery Department, the independent department responsible under the casino gaming law for the administration of the casino gaming program in the Commonwealth of Virginia.

"Director" means the Executive Director of the Virginia Lottery or the director's designees.

"Electronic table game system" means the collective hardware, software, communications technology, and other ancillary equipment used to permit wagering to be conducted on an electronic table game.

"Eligible host city" or "host city" means a city described in § 58.1-4107 of the Code of Virginia in which a casino gaming establishment is authorized to be located.

"Entity" means a person that is not a natural person.

"External bonusing system" means the collective hardware, software, communications technology, and other ancillary equipment used in conjunction with casino games to deliver randomly selected player incentives (bonus awards) to active players and to effect the accurate metering of the bonus award event on the casino game.

"Facility" or "casino gaming facility" or "casino gaming establishment" means the premises upon which lawful casino gaming is authorized and licensed under the casino gaming law and this chapter and does not include a riverboat or similar vessel.

["Facility general manager" means an individual who is:

1. Based for employment purposes at a casino gaming facility;

2. The holder of a supplier permit as key manager; and

3. Ultimately responsible for the daily conduct of all operations at the facility.

"Facility general manager" includes any individual approved by the department who acts as the facility general manager's designee.]

"Facility operator" or "casino gaming operator" means a person who operates or manages the operation of a casino gaming establishment.

"Facility operator's license" means the authority given by the board to a facility operator for the legal operation of casino gaming.

"Fill" means the distribution of gaming chips, coins, and plaques to a gaming table to replenish the table inventory.

"Floorperson" means an employee of a facility operator whose primary function is to supervise the conduct of table games at multiple tables on the gaming floor.

"Gaming chip" means a roulette chip, poker rake chip, tournament chip, or value chip.

"Gaming day" means a period of time determined by the department not to exceed 24 hours marking the beginning and ending times of gaming activities for the purposes of accounting reports and determination by the central monitor and control system of daily proceeds.

"Gaming employee" means an individual who:

1. Is employed by or is seeking to be employed by an applicant for or holder of an operation license, whose duties relate or will relate to the operation of a facility, and who performs or supervises or will perform or supervise the performance of:

a. Operating, servicing, or maintaining a casino gaming machine, table game, or associated equipment;

b. Accounting, maintaining, or auditing a facility's financial records;

c. Counting or processing casino gaming machine or table game revenue;

d. Conducting security or surveillance in or around a facility; or

e. Operating or maintaining a facility's information systems;

2. Is employed by a permit holder and whose duties directly relate to the repair, service, or distribution of a casino gaming machine, table game, or associated equipment or is otherwise required to be present on the gaming floor or in a restricted area of the facility;

3. Is employed by a permit holder as a junket representative; and

4. Is otherwise required by the department to hold a service permit as a gaming employee.

"Gaming floor" means that part of a facility where casino gaming machines or table games have been installed for use or play.

"Gaming operation" means the conduct of authorized casino gaming within a casino gaming establishment.

"Gaming ticket" means an instrument that upon insertion into a bill validator entitles the player inserting the gaming ticket to credits on a casino gaming machine corresponding to the amount printed on the gaming ticket. A gaming ticket may be an electronic ticket or card.

"Gaming ticket system" means the collective hardware, software, communications technology, and other ancillary equipment owned or leased by a facility operator to facilitate the issuance or redemption of a gaming ticket.

"Gross receipts" means the total amount of money exchanged for the purchase of chips, tokens, or electronic tickets or cards by casino gaming players.

"Immediate family" means

1. A spouse; and

2. Any other person residing in the same household as an officer or employee and who is a dependent of the officer or employee or of whom the officer or employee is a dependent.

"Independent certified testing laboratory" means a person engaged in the testing and verification of casino gaming machines and the equipment, systems, and software utilized to collect, monitor, interpret, analyze, authorize, issue, redeem, report, and audit data with regard to activity at casino gaming machines that:

1. Holds a certificate in good standing for compliance with:

a. International Organization for Standardization # 17025 -- General Requirements for the Competence of Testing and Calibration Laboratories; and

b. International Organization for Standardization # 17020 -- General Criteria for the Operation of Various Types of Bodies Performing Inspections;

2. Has performed testing and certification of gaming equipment, systems, and software on behalf of a state within the United States for a period of five or more years; and

3. Has been approved by the department to test and certify equipment, systems, and software used in the Commonwealth of Virginia.

"Individual" means a human being and not a corporation, partnership, association, trust, or other entity.

"Institutional investor" means:

1. A retirement fund administered by a public agency for the exclusive benefit of federal, state, or local public employees;

2. An investment company registered under the Investment Company Act of 1940 (15 USC § 80a et seq.);

3. A collective investment trust organized by banks under Part 9 of the rules of the Comptroller of the Currency;

4. A closed end investment trust;

5. A chartered or licensed life insurance company;

6. A property and casualty insurance company;

7. A banking or other chartered or licensed lending institution;

8. An investment advisor registered under the Investment Advisers Act of 1940 (15 USC § 80b et seq.); or

9. Any other person registered in any foreign jurisdiction and regulated in accordance with a statute of any foreign jurisdiction that the board determines to be substantially similar to that regulated by the Investment Company Act of 1940 or the Investment Advisors Act of 1940.

"Jackpot" means any cash, annuity, or merchandise to be paid to a player as a result of a specific combination of characters on a casino gaming machine.

"Junket" means an arrangement:

1. That is intended to induce an individual who is selected or approved for participation based on the individual's ability to satisfy financial qualification obligations, willingness to gamble, or any other basis related to propensity to gamble; and

2. Under which, or as consideration for which, any or all of the cost of transportation, food, lodging, and entertainment for an individual is directly or indirectly paid by a facility operator or an employee or agent of a facility operator.

"Junket enterprise" means a person, other than a facility operator, that employs or otherwise engages the services of a junket representative in connection with a junket to a facility, regardless of whether the activity occurs in the Commonwealth of Virginia.

"Junket representative" means an individual who negotiates the terms of, or engages in the referral or selection of an individual who may participate in, a junket to a facility, regardless of whether the activity occurs in the Commonwealth of Virginia.

"Key manager" means:

1. An individual who owns, controls, or manages a licensee or otherwise exercises control over the gaming functions of a licensee;

2. An employee of a permit holder who manages or operates the facility, supervises the security of the facility, or is otherwise considered by the department to be a key manager; and

3. Is not a gaming employee.

"Licensee" or "license holder" means a person holding an operator's license under § 58.1-4111 of the Code of Virginia.

"Linked" means to be connected with.

"Manufacturer" means

1. A person:

a. That is engaged in the business of designing, building, constructing, assembling, manufacturing, or distributing a central monitor and control system, slot machines, associated equipment or software, mechanical casino games, or the cabinet in which a slot machine or mechanical casino game is housed;

b. That produces a product that is intended for sale, lease, or other assignment to the [~~Commission~~ department] or a licensee; and

c. That contracts with the board, a licensee, or permit holder for the sale, lease, or other assignment of a product described in subdivision 1 a of this definition.

2. A person:

a. That is engaged in the business of designing, building, constructing, assembling, manufacturing, or distributing table games or table game equipment;

b. That produces a product related to table games that is intended for sale, lease, or other assignment to a licensee or permit holder; and

c. That contracts with a licensee or permit holder for the sale, lease, or other assignment of a product described in subdivision 2 a of this definition.

"Mechanical casino gaming machine" or "mechanical casino game" means a device approved by the department for play on the gaming floor of a casino gaming facility that relies primarily on a non-electronic form of interaction with the player, and includes such devices as jar tickets and pull tabs. "Mechanical casino gaming machine" or "mechanical casino game" does not mean table game equipment.

"Merchandise" means goods, commodities, or other things of value.

"Merchandise jackpot" means a casino game jackpot in which a player wins:

1. Merchandise;

2. A combination of a cash payout and merchandise; or

3. An option to choose between a cash payout and merchandise.

"Minor" means an individual who is younger than 21 years of age.

"Mobile casino gaming" means any interactive platform for use through the Internet, mobile device, or computer, which has been approved by the Virginia Lottery Board for operation of gaming by a facility operator.

"Mobile casino gaming platform" means a website, mobile application, or other platform accessible via the Internet or mobile, wireless, or similar communications technology that players may use to participate in on-premises mobile casino gaming.

"Multi-factor authentication" means a strong procedure that requires more than one method to verify a player's identity through a combination of two or more independent credentials such as information known only to the player, such as a password, pattern or answers to challenge questions and a player's personal biometric data, such as fingerprints, facial, or voice recognition, to the extent it does not violate any privacy laws.

"Noncashable credit" means a credit on a casino game that activates play but is not convertible to cash at the conclusion of play.

"Nongaming employee" means an individual who is:

1. Employed or is seeking to be employed by an applicant for or holder of an operation license and whose duties are or will be other than the duties of a gaming employee; or

2. Otherwise required by the department to hold a service permit as a gaming employee.

"On-premises mobile casino gaming" means casino gaming offered by a casino gaming operator at a casino gaming establishment using a computer network of both federal and nonfederal interoperable packet-switched data networks through which the casino gaming operator may offer casino gaming to individuals who have established an on-premises mobile casino gaming account with the casino gaming operator and who are physically present on the premises of the casino gaming establishment, as authorized by the casino gaming law, this chapter, and department policy or directive.

"Operator's license," "facility operator's license," or "casino gaming facility license" means the formal permission granted by the board to legally operate a casino gaming establishment or facility in the Commonwealth of Virginia.

"Notice" or "written notice" means notice provided in paper or electronic form, including electronic mail.

"Permit" means the authority given by the department to a supplier or a service permit holder that authorizes that person or individual to perform the functions permitted by the department.

"Permit holder" means a person holding a supplier or service permit pursuant to this chapter.

"Person" means any individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or any other legal or commercial entity and any successor, representative, agent, agency or instrumentality thereof.

"Plaque" means a rectangular, square, or oval marker that can be used instead of value chips.

"Player" means an individual who participates in casino gaming.

"Player account" means a specific account that (i) is managed by the facility operator, (ii) has a specific identifiable record of deposits, wagers, and withdrawals, and (iii) is established by a facility operator on behalf of an individual for the individual to use for casino gaming.

"Player tracking system" means the collective hardware, software, communications technology, and other ancillary equipment owned or leased by a facility operator to collect, monitor, interpret, analyze, authorize, report, and audit data pertaining to:

1. Player activity generally at casino games, onsite mobile casino games, or sports betting; and

2. Individual player activity at casino games where the player has registered with the facility operator for inclusion in the player tracking system.

"Preferred casino gaming operator" means the proposed casino gaming establishment and operator thereof submitted by an eligible host city to the board for licensure.

"Principal" means an individual who, solely or together with the individual's immediate family members, (i) owns or controls, directly or indirectly, 5.0% or more of the pecuniary interest in any entity that is a licensee or (ii) has the power to vote or cause the vote of 5.0% or more of the voting securities or other ownership interests of such entity, and any person that manages a gaming operation on behalf of a licensee.

"Prize" means:

1. A monetary award;

2. Merchandise; or

3. An experiential award, such as:

a. A trip;

b. An outing; or

c. A designated activity involving personal participation.

"Progressive controller" means a device independent of the operating system of a slot machine that calculates and transmits to a slot machine the amount of an available progressive jackpot based on:

1. A preestablished rate of progression; and

2. Denomination of the slot machine.

"Progressive jackpot" means a jackpot offered by a casino game that may increase uniformly in value based on wagers as the casino game is played.

"Progressive jackpot system" means a system capable of linking one or more casino games in one or more licensed facilities and offering one or more common progressive jackpots.

"Promotional play" means an award by a facility operator of noncashable credits on a casino game:

1. Directly or indirectly to a player; and

2. With or without regard to the:

a. Identity of the player; or

b. Player's level of gaming activity.

"Promotional play system" means the collective hardware, software, communications technology, and other ancillary equipment owned or leased by a facility operator to facilitate the award of promotional play by means of a:

1. Promotional play instrument; or

2. Download from the system to the casino game.

"Restricted area" means that part of a facility directly related to the operation of the gaming floor where access is specifically designated by the department as restricted, including:

1. Cashier's cage, including a satellite cashiers' cage and ancillary offices;

2. Computer space allocated to the central monitor and control system;

3. Count room and trolley storage areas;

4. Areas designated for the storage or repair of equipment of casino gaming machines or table game devices;

5. Information technology department operations centers;

6. Progressive controller locations;

7. Surveillance monitoring rooms;

8. Vault and armored car bay locations; and

9. Any area that the facility operator has designated as restricted in its department-approved accounting and internal control systems.

"Retailer" or "lottery retailer" means a business or person that has been licensed by the department to sell lottery tickets.

"Sanction" means a nonmonetary enforcement action that the director or the board may take against a licensee or permit holder for a violation of the casino gaming law, this chapter, and any other law, regulation, or condition of the department related to casino gaming and includes suspension, revocation, or nonrenewal of a license or permit, reprimand, or imposition of a condition on a licensee or permit holder.

"Security" has the same meaning as provided in § 13.1-501 of the Code of Virginia and, if the department finds that any obligation, stock, or other equity interest creates control of or voice in the management operations of an entity in the manner of a security, then such interest shall be considered a security.

"Service permit" means the authority given by the department to a casino employee or a concessionaire or concessionaire employee that authorizes that person or individual to perform the functions permitted by the department.

"Signature" for a facility employee or contractor, means:

1. At a minimum, the first initial, last name, and department license or permit identification number, written by the facility employee or contractor; or

2. The unique identification code issued to the facility employee or contractor by the facility operator if the document to be signed is authorized by the department to be generated by a system and the method of signature is approved or required by the department.

"Slot machine" means a machine or other device that:

1. On insertion of a token, voucher, gaming ticket, coupon, or similar item, or on payment of any consideration is available to play or simulate the play of any game of chance in which the results, including the options available to the player, are randomly determined by the machine or other device; and

2. By the element of chance, may deliver or entitle the player who operates the machine or device to receive cash, premiums, merchandise, tokens, or anything of value, whether the payout is made automatically from the device or in any other manner.

"Slot machine" includes a machine or device that (i) does not directly dispense money, tokens, or anything of value to winning players; and (ii) uses a cashless funds transfer system making the deposit of bills, coins, or tokens unnecessary.

"Slot machine management system provider" means an entity that operates or manages the department's central monitor and control system or a casino management system.

"Sports betting" means the same as such term is defined in § 58.1-4030 of the Code of Virginia and is regulated under 11VAC5-70 and this chapter.

"Sports betting facility" means an area, kiosk, or device located inside a casino gaming establishment that is designated for sports betting.

"State" means any state in the United States of America and includes any United States territories and the District of Columbia.

"Submit" means to deliver a document:

1. In a manner that ensures its receipt by the party to whom it is addressed; and

2. That is considered complete only upon actual receipt by that party.

"Supplier" means any person that sells or leases, or contracts to sell or lease, any casino gaming equipment, devices, or supplies, or provides any management services, to a licensee.

"Table games" means:

1. Roulette, baccarat, blackjack, craps, big six wheel, poker, pai gow, and sic bo shakers, pai gow tiles, any variation and composites of such games, and other games that the department has approved for play in a casino; and

2. Gaming tournaments in which players compete against one another in one or more of the games authorized under this chapter.

"Table game equipment" means equipment that is related to the operation of table games and that is owned or leased by a facility operator and located on the casino's premises and includes table layouts, cards, dice, chips, shufflers, tiles, wheels, or any mechanical, electrical, or computerized device, apparatus, or supplies used to conduct a table game or designated by the department as table game equipment.

"Table game equipment" does not mean (i) a table or base that does not have a device that is attributable to a specific table game or is not identified with the facility operator's logo on the layout; or (ii) an item described in clause (i) of this definition that is unfinished or inoperable.

"Terminal" means a computerized unit specifically designed for issuing and processing tickets and for printing of special reports.

"Ticket redemption unit" means the collective hardware, software, communications technology, and other ancillary equipment used to facilitate the payment of gaming tickets and that may be configured to function as a bill breaker changing bills of one denomination into bills of a smaller denomination.

"Transport" or "transportation" means any shipping, transfer, delivery, or other movement of a slot machine, mechanical casino gaming machine, or table game equipment into or out of the state, or between facilities within the state. "Transport" or "transportation" does not include the movement of a slot machine, mechanical gaming device, or table game equipment within a casino gaming facility.

"Unclaimed jackpot" means any cash, annuity, merchandise, cashable credit, table game payout, or gaming ticket to be paid or dispensed to a player.

"Value chip" means a chip that contains a denomination on each face.

"Vendor" means a person that provides goods or services to a casino gaming facility applicant or licensee and that is not required to be licensed as a manufacturer or contractor under the gaming law, this chapter, or department policy and directive, and includes:

1. Except for Virginia Alcoholic Beverage Control, providers of alcoholic beverages;

2. Providers of food and nonalcoholic beverages;

3. Refuse handlers;

4. Vending machine providers and service personnel;

5. Janitorial and maintenance companies;

6. Tenant businesses or franchises located within facilities if such goods and services are not gaming related;

7. Providers of transportation services if such services are not gaming related;

8. Persons involved in the construction of a facility;

9. Lessors of real property or goods;

10. Payroll services and other employer related services;

11. Employee recruiting services; and

12. Persons whose services the board reviews and determines must be registered or certified under this regulation.

"Virginia Indian tribe" means an Indian tribe recognized in House Joint Resolution No. 54 (1983) and acknowledged by the Assistant Secretary-Indian Affairs for the U.S. Department of the Interior as an Indian tribe within the meaning of federal law that has the authority to conduct gaming activities as a matter of claimed inherent authority or under the authority of the federal Indian gaming law.

"Voluntary exclusion program" means the self-exclusion program maintained by the department under 11VAC5-60.

"Wide area progressive system" means a system independent of the operating system of a casino game that calculates and transmits to casino games linked in two or more facilities in or outside the Commonwealth of Virginia the amount of an available progressive jackpot based on:

1. A preestablished rate of progression; and

2. Denomination of the casino game.

"Wire transfer" means a transfer of funds by means of the Federal Reserve Bank wire system in accordance with the requirements of 12 CFR 210.25 et seq.

11VAC5-90-20. Unclaimed jackpots.

A. A player shall have a maximum of 180 days from the date an unclaimed jackpot is won to claim it.

B. After 180 days, an unclaimed jackpot shall be distributed to the Lottery for deposit in the Problem Gambling Treatment and Support Fund established by § 37.2-314.1 of the Code of Virginia.

11VAC5-90-30. Waiver request.

A. A person seeking an exemption from this chapter shall submit a written waiver request in a format specified by the department.

B. A written waiver request shall contain at least the following:

1. The regulation for which the waiver is sought;

2. Detailed facts in support of the waiver request;

3. An explanation of the unique circumstances justifying the request; and

4. Any other information requested by the department.

C. Upon receipt of a waiver request that fails to comply with this section, department staff shall notify the requestor:

1. Of any deficiency in the waiver request; and

2. That the waiver request will not be presented to the board unless the identified deficiency is corrected.

D. Upon receipt of a waiver request that complies with this section, department staff shall present the waiver request to the board as soon as practicable.

E. In evaluating whether to grant a waiver request, the board may consider:

1. The particular facts supporting the waiver request;

2. Whether enforcement of the regulation as to the subject of the waiver request is necessary to protect the public interest or accomplish the policies established by the casino gaming law;

3. Limiting or restricting the relief sought as the board considers necessary in the public interest;

4. Granting the waiver request subject to a condition;

5. Requiring the requestor to submit any additional information; and

6. Any other relevant information.

F. The board shall provide the requestor with written notification of its decision.

G. A decision of the board on a waiver request is not appealable.

11VAC5-90-40. Licenses and permits generally.

A. Applications.

1. An applicant for a license or permit shall submit an electronic application in the form and format established by the department and, as required by the director, may include an original and copies.

2. Upon filing of an application for a license or permit under this chapter, the applicant shall pay by wire transfer the applicable investigation and nonrefundable application fees established by the director.

3. If a license or permit application or related documentation must be submitted to the director by a particular date, the application documents shall be delivered to the director not later than 11:59:59 p.m. local time at the headquarters of the department on the last day of the specified period, and an application or documents submitted after the deadline may not be accepted or considered.

4. A person may not submit an application earlier than one year after the board has:

a. Taken final action on a license or permit denial of a previous application involving the applicant;

b. Taken final action on a sanction resulting in revocation of a previous application involving the applicant; or

c. Provided a person with written notice of termination of a temporary permit.

5. Documents and information submitted to the director in a license or permit application shall be verified under oath or affirmation and sworn under the penalties of perjury as to their truth and validity by the applicant or, if the applicant is not an individual, by an officer or director of the applicant.

6. Upon receipt of an application by the department, department staff shall review the application to determine whether it contains all the information required under this chapter.

7. If the director determines that the required information has not been submitted, department staff shall notify the applicant in writing and state the nature of the deficiency.

8. An applicant notified in accordance with subdivision 7 of this subsection shall submit the information necessary to complete the application not later than 15 days after issuance of the notification.

9. Neither the director nor the board will consider the application of an applicant that is notified in accordance with subdivision 7 of this subsection but fails to submit the requested information in a timely manner.

10. The director and the board will consider only a timely, complete application.

B. Changes in application.

1. If information submitted by an applicant as part of a license or permit application changes or becomes inaccurate before the board acts on the application, the applicant shall immediately notify the department staff in writing of the change or inaccuracy.

2. After an application has been filed by an applicant, the applicant may not amend the application except:

a. To address a deficiency in accordance with a notice sent under subdivision A 7 of this section;

b. As required by the board or department staff for clarification of information contained in the application; or

c. To address a change in the circumstances surrounding the application that was outside the control of the applicant and that affects the ability of the applicant to comply with the law or the regulations of the board.

3. To amend an application under this subsection, an applicant shall submit to the department a written request to amend the application, stating:

a. The change in the circumstances surrounding the application that necessitates the amendment;

b. The nature of the amendment; and

c. The reason why the amendment is necessary to bring the application into compliance with the law or the regulations of the board.

4. The director or department staff shall grant or deny each request submitted under subdivision 2 c of this subsection.

5. A request shall be granted if the applicant demonstrates to the satisfaction of the director that:

a. Before the change in the circumstances surrounding the application, the application complied with the pertinent provisions of the law or the regulations of the board; and

b. The amendment is necessary to bring the application into compliance with the pertinent provisions of the law or the regulations of the board.

6. An application for a license or permit may be withdrawn if the:

a. Applicant submits a written request to the director to withdraw the application; and

b. Written request is submitted before the board has:

(1) Denied the application; or

(2) Terminated a temporary permit.

C. Burden of proof.

1. The burden of proof shall be on an applicant to show by clear and convincing evidence that:

a. The applicant complies with the laws of the Commonwealth of Virginia and the regulations of the board regarding eligibility and qualifications for the license or permit;

b. The applicant is not otherwise disqualified from holding a license or permit; and

c. Award of the license or permit will provide benefit to the people of the Commonwealth of Virginia and assist economic development, promote tourism, and provide for the implementation of casino gaming operations of the highest quality, honesty, integrity; free of any corrupt, incompetent, dishonest, or unprincipled practices.

2. The board may deny a license or permit to an applicant whose gaming license has been suspended or revoked in another jurisdiction.

3. The board may deny a license or permit to an applicant whose past or present conduct would bring the Commonwealth into disrepute.

D. Impact of sports betting permit or license.

1. The department may use or rely on any application, supporting documentation, or information submitted pursuant to § 58.1-4032 of the Code of Virginia and 11VAC5-70 in reviewing and verifying an application and to qualify and issue a license or permit under this chapter.

2. Subdivision 1 of this subsection does not prohibit the department from requiring additional information from an applicant or requiring the applicant to pay additional background investigation or other fees.

E. Bonds.

1. The department shall require an applicant for or holder of a facility operator's license to obtain a bond and submit the original to the director before the board issues or reissues the operator's license.

2. The department may require an applicant for or holder of a permit to obtain a bond and submit the original to the director before the license or permit is issued.

3. A bond shall be for the benefit of the Commonwealth for the faithful performance of the requirements imposed by the laws of the Commonwealth and this chapter, shall be renewable annually, and may not be canceled without at least a 30-day written notice submitted to the director.

4. A bond shall be issued only by a company that is financially rated A or better by a nationally recognized rating agency and that is permitted to transact business in the Commonwealth of Virginia.

5. The amount of the bond shall be in an amount determined by the director to be sufficient to cover any loss or indebtedness to the Commonwealth incurred by the licensee or permit holder.

6. For a facility operator or supplier, the amount of the bond may not exceed $50 million.

7. For a service permit holder, the amount of the bond may not exceed $100,000.

8. The bond for a facility operator or supplier shall include coverage for all its officers, principals, managers, directors, and employees.

9. The director may apply a bond to the payment of an unpaid liability of the facility operator or permit holder associated with the casino gaming law or this chapter.

10. On an annual basis, the director shall review the amount of bonds required of a facility operator.

F. Denial of license or permit.

1. In addition to the hearing requirements in subdivision 3 of this subsection, the process set out in subdivision 2 of this subsection shall precede a hearing by the board on the denial or nonrenewal of a license or permit.

2. After reviewing an application submitted for a license or permit, department staff may recommend that the director or board deny the application or renewal of an applicant that:

a. Has not established by clear and convincing evidence that the applicant meets applicable qualifications set out in the casino gaming law and this chapter, including demonstration of the good character, honesty, and integrity of the applicant and its officers, principals, managers and directors.

b. Is prohibited from holding a license or permit by the casino gaming law or this chapter.

c. Has violated:

(1) A provision of the casino gaming law of this or any other jurisdiction; or

(2) A provision of this chapter or any other law, regulation, or condition of the department related to casino gaming.

d. If department staff recommends that the director or board deny or refuse to renew a license or permit, the director or the director's designee shall promptly provide the applicant with written notice of:

(1) The recommendation and the basis therefor; and

(2) The applicant's right to request an informal fact-finding conference with the director or the director's designee as provided by § 58.1-4007 of the Code of Virginia.

e. An applicant may submit to the director a written request for an informal fact-finding conference within 15 days of the date of the notice described in subdivision d of this subsection.

f. If an applicant fails to timely submit a request, the director:

(1) May adopt as final the recommendation of department staff;

(2) Shall refuse to renew a license or permit;

(3) Shall forward a denial recommendation to the board for final action; and

(4) Notify the applicant of the director's actions and the applicant's appeal rights.

g. During an informal fact-finding conference, an applicant may:

(1) Be represented by counsel; and

(2) Present evidence as to why the license or permit should be granted or renewed.

h. If after the informal fact-finding conference, the applicant is dissatisfied with the decision of the director, the applicant may submit to the board, in writing:

(1) A request for hearing before the board on the decision; and

(2) The applicant's legal and factual bases for disagreeing with the recommendation of the director.

i. An applicant may submit a hearing request to the board within 15 days of the date of notice of the recommendation of the director after an informal fact-finding conference.

j. If an applicant fails to timely submit a request for an informal fact-finding conference or a written hearing request, the director's recommendation for denial shall be adopted by the board as final.

3. Board process.

a. Upon receipt of a timely written hearing request, the board shall provide the applicant a hearing notice for a hearing before the board.

b. The board's hearing notice, and the board's hearing at which the director's denial will be considered, shall comply with the requirements of the Virginia Administrative Process Act, Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

c. Following a hearing, the board shall:

(1) Grant the license or permit after determining that the applicant is qualified for and not prohibited from holding a license or permit; or

(2) Deny the license or permit after determining that the applicant:

(a) Is not qualified for a license or permit or is disqualified from holding a permit or license;

(b) Has violated a provision described in subdivision F 2 of this section; or

(c) Has failed to demonstrate by clear and convincing evidence that its application or renewal request should be granted.

d. Following a hearing, if the board decides to uphold the decision of the director on a renewal or on a recommendation to deny a license or permit, the board shall:

(1) Prepare an order denying the license or permit with a statement of the reasons and specific findings of fact; and

(2) Provide the applicant with written notice of its final action.

e. The board's final action on a license or permit denial is subject to judicial review as provided in § 58.1-4105 of the Code of Virginia.

f. Unless a waiver under 11VAC5-90-30 has been granted, a person may not reapply for a permit that has been denied any sooner than five years after the date of final action on the denial or nonrenewal.

G. Effect of license or permit.

1. Participation in casino gaming operations by a licensee or permit holder shall be deemed a revocable privilege and shall be conditioned on the proper and continued qualification of the licensee or permit holder and on the discharge of the affirmative responsibility of each licensee and permit holder to provide to the regulatory and investigatory authorities under this chapter or any other provision of law, any assistance and information necessary to assure that the policies underlying this chapter are achieved.

2. Consistent with the policy described in subdivision 1 of this subsection, this chapter:

a. Precludes:

(1) The creation of any property right in any license or permit required under this chapter;

(2) The accrual of any monetary value to the privilege of participation in casino gaming operations; and

(3) Except as specifically provided by the casino gaming law and this chapter, the transfer of any license or permit issued under this chapter; and

b. Requires that participation in casino gaming operations be conditioned solely on the continuing qualifications of the person that seeks the privilege.

3. The holder of a facility operator's license may sublicense, convey, concede, or otherwise transfer its license to a third party only after the transferee:

a. Applies and pays all application and background investigation fees for a license;

b. Receives the approval of the board; and

c. Pays to the department a nonrefundable transfer fee of $15 million.

H. Continuing obligations.

1. Applicants who are awarded a license or permit shall, during the term of their license or permit, conform to all of the information contained in their applications, including all information submitted by a license applicant to a host city.

2. If information submitted by an applicant that is issued a license or permit changes during the term of the license or permit, the licensee or permit holder shall immediately submit to the department notice in writing of the change.

3. Every five years after the date a license is issued, a facility operator shall submit to the department for review and approval a reinvestment projection related to the casino gaming establishment to cover the succeeding five-year period of operations.

4. As a condition of holding a license or permit, a licensee or permit holder must comply with all requirements of the casino gaming law, this chapter, and any other law, regulation, or condition of the department related to casino gaming.

5. Failure to comply with the obligations of subdivision 1, 2, 3, or 4 of this subsection shall be grounds for the director taking enforcement action against the licensee or permit holder.

I. Identification cards.

1. The director shall issue an identification card to an individual who has been issued a supplier or service permit.

2. An identification card shall display a photograph of the individual and, at a minimum, indicate:

a. The individual's name;

b. By color, pattern, or symbol, the permit category; and

c. The permit expiration date.

3. An identification card is evidence that the individual is authorized to be employed in the designated permit category by a facility operator, supplier, or service permit holder.

4. An identification card is the property of the director.

5. An individual issued an identification card:

a. Shall wear or otherwise prominently display the identification card at all times while working unless otherwise approved by the director for a specific date and time;

b. Shall immediately report a loss or theft of the card to the individual's employer and the director;

c. May not allow another individual to possess the card; and

d. Shall comply with an order of the director to surrender the card.

6. If an identification card issued under this section is lost or stolen:

a. The individual shall immediately report the loss or theft to the individual's employer;

b. In a form or format designated by the director, the individual shall submit to the director a written description of the circumstances of the loss or theft; and

c. After verifying the permit holder's identity, the director may issue a new identification card to the individual.

7. If an identification card issued under this section is temporarily unavailable to the individual:

a. The individual shall immediately report the temporary unavailability of the card to the individual's employer;

b. In a form or format designated by the director, the individual shall submit to the director or department staff a written description as to why the card is temporarily unavailable;

c. After verifying the permit holder's identity, the director may issue an emergency credential that is valid for one day; and

d. The individual shall surrender the emergency credential to the director or department staff at the end of the shift on the day when the individual received the card.

8. If the director issues a replacement or temporary identification card to an individual, the individual's employer shall pay the director:

a. $40 for the cost of a replacement identification card; or

b. $20 for the cost of a temporary identification card.

9. The employer of an individual issued an identification card under this section shall ensure that the employee's identification card is surrendered to the director if the:

a. Director suspends or revokes the individual's service permit;

b. Service permit is not renewed;

c. Individual separates from employment with the individual's employer; or

d. The individual is otherwise ordered by the department to surrender the identification card.

10. If an identification card is not surrendered as required under this section, the individual's employer may be subject to enforcement action under this chapter.

11. If an identification card was surrendered when an individual separated employment from the individual's employer, the director may issue that individual another identification card if the:

a. Individual obtains employment with a facility operator, supplier, or service permit holder;

b. Term of the individual's service permit has not expired; and

c. Director verifies the individual's identity and confirms that the individual's service permit was in good standing when the card was surrendered, has not expired, and remains in good standing.

12. There is no fee for an identification card issued under subdivision 11 of this subsection.

13. Nothing in subdivision 11 of this subsection shall preclude the director from taking enforcement action against a service permit holder based on the circumstances related to the individual's separation from employment.

11VAC5-90-50. Investigations.

A. An applicant for a license or permit shall submit to a personal and background investigation conducted by the department.

B. A person who is required to provide personal and background information under this chapter shall provide a statement that irrevocably gives consent to the director, department staff and its investigative contractors, and persons authorized by the director to:

1. Verify all information provided in the application; and

2.Conduct a background investigation of the individual.

C. An applicant shall authorize the director, department staff, and investigative contractors to have access to any and all information the applicant has provided to any other jurisdiction while seeking a gaming or similar license in that other jurisdiction, as well as the information obtained by that other jurisdiction during the course of any investigation it may have conducted regarding the applicant.

D. The background investigation shall include a criminal history records check and fingerprinting for:

1. Every individual applying for a license or permit pursuant to this chapter;

2. Every individual who is an officer, director, or principal of a licensee or applicant for a license and every employee of the licensee who conducts gaming operations;

3. All individual security personnel of any licensee; and

4. All permit holders and officers, directors, principals, and employees of permit holders whose duties relate to gaming operations in Virginia.

E. In the form and format required by the department, each individual required by subsection D of this section to undergo a criminal history records check shall submit fingerprints and personal descriptive information to the Central Criminal Records Exchange to be forwarded to the Federal Bureau of Investigation for a national criminal records search and to the Department of State Police for a Virginia criminal history records check. The results of the background check and national and state criminal records check shall be returned to the department.

F. Administrative costs of background investigations.

1. An applicant is responsible for the administrative costs to the department of conducting the personal and background investigations required by this chapter.

2. The administrative costs of the personal and background investigation are independent of and in addition to fingerprinting fees and, except for a service permit, any license or permit issuance fees.

3. The administrative costs associated with performing the background investigation of a particular facility operator or supplier permit applicant and any individual required to be investigated will vary depending on the:

a. Complexity of the investigation;

b. Time necessary to properly conduct the investigation;

c. Type of license or permit sought; and

d. Types of activities the license or permit will authorize the applicant to undertake if the license or permit is granted.

4. When a preferred casino gaming operator submits its application for the facility operator's license, it shall send by wire transfer to the department a nonrefundable application and background investigation fee of $50,000 per principal.

5. When an applicant for a supplier permit submits its application to the department, it shall send by wire transfer:

a. A nonrefundable application fee of $5,000; and

b. A background investigation fee of $50,000 per principal.

6. When an applicant for a service permit submits its application to the department, it shall send by wire transfer $500 as a nonrefundable fee to cover the administrative costs of conducting the personal and background check and issuing the permit.

7. In addition to other fees set out in this subsection, the forms submitted in compliance with this regulation shall be accompanied by the:

a. Fee for access to Virginia criminal history record information;

b. Mandatory processing fee required by the Federal Bureau of Investigation for a national criminal history records check; and

c. Mandatory processing fee required by Interpol for an international criminal history records check for an applicant who is a citizen of any country other than the United States.

G. An applicant for a facility operator license or supplier permit shall ensure that all principals, key managers, and other required individuals have submitted appropriate and complete applications.

H. The director may require initial and additional deposits from an applicant for the administrative costs of conducting the applicant's background investigation.

I. Promptly upon receipt of an invoice from the department, an applicant for a license or permit shall reimburse the department for:

1. The additional administrative costs associated with performing background investigations of the applicant and any individual required to provide information under this chapter; and

2. Any payments made by the director to a person approved by the director to conduct the background investigation.

J. Failure to reimburse the department shall be grounds for disqualification of the applicant.

K. Unless otherwise specified, the director shall refund to an applicant for a license or permit any unused portion of an advance deposit required to offset the additional costs of conducting the applicant's background investigation and submitted under subsection H of this section.

L. Personal and background information.

1. Except as otherwise provided by the department, application documents shall include the information under subdivision 2 of this subsection, for an individual who is:

a. The applicant;

b. A director, officer, or key manager employed by the applicant;

c. A partner of the applicant;

d. An owner of an interest of 5.0% or more in the applicant; or

e. A principal.

2. An individual listed under subdivision 1 of this subsection shall furnish the following:

a. Full name and any previous names or aliases;

b. Date of birth;

c. Physical description;

d. Home and business addresses and telephone numbers;

e. Driver's license number and state of issuance;

f. Social Security number;

g. Passport or identification photo;

h. Fingerprints for a criminal records check:

(1) For a Virginia resident, from an electronic fingerprinting service approved by the board; or

(2) For a resident from outside Virginia, one Federal Bureau of Investigation and one local fingerprint card, taken within the previous 45 days before submission to the department; and

i. Any other document or information required by the department.

3. If the applicant is a corporation, the application documents shall state the:

a. State in which the applicant is incorporated; and

b. Name and address of the applicant's agent for service of process in Virginia.

4. If an applicant is a nonprofit corporation, only an individual who is a director or officer of the applicant shall

provide the information required under subdivision 2 of this subsection.

5. The department may require an applicant to furnish the information listed in subdivision 2 of this subsection with regard to the applicant's family and associates.

6. Inadvertent, nonsubstantive errors that might be made in furnishing the information required by this regulation may not be used as a reason by the board for disqualifying the applicant.

M. Information for background investigation. An individual required to provide information under this section shall complete a background form supplied by the department that includes a statement disclosing whether the individual has ever been:

1. Arrested;

2. Convicted of, pled nolo contendere to, or received probation before judgment for a felony or misdemeanor, other than a misdemeanor traffic offense;

3. Sanctioned by a government agency related to gaming;

4. Found liable in connection with a civil action related to gaming;

5. A debtor in a bankruptcy proceeding; or

6. Denied a bond.

N. If the applicant for a facility operator's license or a supplier permit is a corporation, the application shall include a:

1. Statement of when the corporation was organized;

2. Copy of the articles of incorporation and bylaws of the corporation;

3. Statement and documentation of whether the corporation has been reorganized or reincorporated during the five-year period preceding the date on which the application is submitted to the director;

4. Statement and documentation of whether the corporation has filed restated articles of incorporation; and

5. List identifying each person who:

a. Exercises voting rights in the corporation; and

b. Directly or indirectly owns 5.0% or more of the corporation.

O. If the applicant for a facility operator's license or a supplier permit is an unincorporated business association, the application shall include a:

1. Copy of each organizational document of the applicant, including any partnership agreement;

2. Description of any oral agreements involving the organization of the applicant; and

3. List identifying each person who:

a. Exercises voting rights in the applicant; or

b. Directly or indirectly owns 5.0% or more of the business association.

P. If the applicant for a facility operator's license or a supplier permit is authorized to issue capital stock, the applicant shall state, for each class of stock authorized, the:

1. Total number of shares;

2. Par value, if any;

3. Voting rights;

4. Current rate of dividend;

5. Number of shares outstanding and the market value of each share on the date of the application; and

6. Existence of any voting trust or voting agreement in which capital stock of the applicant is held, and the:

a. Name and address of each stockholder participating in the trust or agreement;

b. Class of stock involved; and

c. Total number of shares held by the trust or agreement.

Q. The application for a facility operator's license or a supplier permit shall include a certified copy of each voting trust or voting agreement in which capital stock is held.

R. The application for a facility operator's license or a supplier permit shall describe the terms of any proxy by which any capital stock may be voted and shall state the:

1. Name and address of the person holding the proxy;

2. Name and address of the stockholder who granted the proxy;

3. Class of stock for which the proxy may vote; and

4. Total number of shares voted by the proxy.

S. The application for a facility operator's license or a supplier permit shall state any provisions and the procedures by which these provisions may be modified for the redemption, repurchase, retirement, conversion, or exchange of an ownership interest.

T. The application for a facility operator's license or a supplier permit shall state whether the applicant's stock may be traded through options and whether the corporation or a stockholder has executed an agreement or contract to convey any of the corporation's or the stockholder's stock at a future date.

U. The application for a facility operator's license or a supplier permit shall include a copy or a description of each agreement or contract disclosed under subsection T of this section.

V. The application for a facility operator's license or a supplier permit shall include a copy of each prospectus, pro forma, or other promotional material given to potential investors about the permit holder applicant's operation.

W. The application for a facility operator's license or a supplier permit shall provide full disclosure for any stock options that may exist or have been granted.

X. If the applicant is not an individual, the application for a facility operator's license or a supplier permit shall include a list of the individuals who are serving, or who are designated to serve, during the first year after the date the application is submitted to the Executive Director of the Virginia Lottery, as a director, officer, partner, or principal as defined in this chapter and provide:

1. The individual's name and address;

2. Each position or office of the applicant held by the individual;

3. The individual's primary occupation during the five-year period preceding the date on which the application is submitted to the director; and

4. The nature and extent of any ownership interest that the individual has in the applicant.

Y. The application for a facility operator's license or a supplier permit shall:

1. Disclose all individuals and entities that have an ownership interest of 5.0% or more in the applicant, including any beneficial ownership as defined in Article 1 (§ 13.1-1200 et seq.) of Chapter 14 of Title 13.1 of the Code of Virginia;

2. Describe the:

a. Nature of the ownership, and

b. Extent of control exercised by the owner;

3. Include information and documents required by this chapter as to each owner; and

4. If the applicant is the subsidiary of another entity, include an explicit statement that the parent organization will fully and absolutely guarantee the performance and regulatory compliance of the subsidiary during the term of the subsidiary's license or permit.

Z. Outside interests.

1. The application documents for a facility operator's license or a supplier permit shall state whether the applicant, a director, an officer, a partner of the applicant, or an owner of 5.0% or more of an interest in the applicant:

(a) Has ever held an ownership interest personally or in an entity holding a license or permit issued by the board or the department; or

(b) Is currently engaged in the business of gaming in another state, and the nature and extent of that involvement.

2. The applicant shall describe the nature of participation stated under subdivision 1 of this subsection.

AA. Approval of institutional investors.

1. An institutional investor that holds or proposes to hold an ownership interest in a facility or supplier that would require a background investigation may request the director to waive the requirement of conducting a full background investigation of the institutional investor.

2. The board may approve the institutional investor's request for a waiver if it satisfactorily completes and submits an institutional investor waiver application as required by the department.

3. An entity for which the director has approved a waiver request is an approved institutional investor.

4. An institutional investor can maintain its approved status by:

a. Maintaining an ownership interest in an applicant, licensee, or permit holder; and

b. Providing the department with the statement of ownership percentage it reported to the Securities and Exchange Commission or a foreign equivalent approved for such reporting by the department:

(1) Annually, before the last day of April; or

(2) As otherwise directed by the department.

5. If an approved institutional investor complies with subdivision 4 of this subsection, the department's approval is valid for five years from the date of approval, and:

a. The waiver may apply to one or more applicants, licensees, or permit holders in which the entity is an institutional investor; and

b. The institutional investor shall submit an institutional waiver application every five years from the date of the department's last approval.

6. If an approved institutional investor does not meet the requirements of subdivision 4 of this subsection with respect to one or more applicants, licensees, or permit holders:

a. The approved institutional investor shall notify the department in writing if the institutional investor's ownership interest falls below 5.0%; and

b. The department may require the institutional investor to submit a new waiver application if the institutional investor acquires an ownership interest of 5.0% or greater in any applicant, licensee, or permit holder.

11VAC5-90-60. Applications for and issuance of facility operator's license.

A. In addition to the processes and requirements set out in 11VAC5-90-40 and 11VAC5-90-50, the requirements set out in this section shall apply to the applications for a facility operator's license and the applicant's related entities and individuals.

B. Who may apply.

1. Only a preferred casino gaming operator may apply for a facility operator's license.

2. Unless approved in advance by the host city and otherwise consistent with the casino gaming law, this chapter, and any other law, regulation, or condition of the department related to casino gaming, the preferred casino gaming operator may not deviate substantively from the plan it submitted to the host city and the department during the certification process set out in §§ 58.1-4107 F and 58.1-4109 of the Code of Virginia.

C. An applicant for a facility operator license shall submit with its application all required fees for:

1. The applicant itself;

2. Its owners, principals, directors, and officers;

3. Any supplier that is expected to provide casino management for the applicant; and

4. All known key managers.

D. Evaluation.

1.The department shall review an application for a facility operator's license to determine whether the applicant is qualified to hold an operator's license.

2. An applicant for a facility operator's license shall present in its application sufficient information, documentation, and assurances to establish the following qualification criteria by clear and convincing evidence:

a. Substantiation that the applicant has made or will make prior to the issuance of an operation license for a permanent casino facility or at the end of any period of operation of casino gaming in an approved temporary facility, a capital investment of at least $300 million, including the value of the real property upon which the facility is located and all furnishings, fixtures, and other improvements;

b. Substantiation that the applicant possesses an equity interest of at least 20% in the facility;

c. For an applicant that is a Virginia Indian tribe, certification that the material terms of all relevant development agreements between the Virginia Indian tribe and any development partner have been determined in the opinion of the Office of General Counsel of the National Indian Gaming Commission after review not to deprive the Virginia Indian tribe of the sole proprietor interest in the facility's gaming operations for the purposes of federal Indian gaming law;

d. Existence of an adequate plan for addressing responsible gaming issues, including the goals of the plan, procedures, and deadlines for implementation of the plan;

e. Establishment of a policy requiring that everyone who interacts directly with the public in the facility has completed a course approved by the department in how to recognize and report suspected human trafficking;

f. Substantiation that the applicant's proposed permanent facility is or will be appropriate for gaming operations consistent with the purposes of the casino gaming law and this chapter;

g. Certification from the city where the facility will be located that the proposed project complies with all applicable land use ordinances pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2 of the Code of Virginia;

h. Substantiation that any required local infrastructure or site improvements, including necessary sewerage, water, drainage facilities, or traffic flow, are to be paid exclusively by the applicant without state or local financial assistance;

i. If the applicant is an entity, demonstration that its securities are fully paid and, in the case of stock, nonassessable and have been subscribed and will be paid for only in cash or property to the exclusion of past services;

j. Uncontested and enforceable written agreement that all principals meet the criteria of this chapter and have submitted to the jurisdiction of the Virginia courts, and that all nonresident principals have designated the director as their agent for receipt of process;

k. If the applicant is an entity, substantiation that it has the right to purchase at fair market value the securities of, and require the resignation of, any person who is or becomes disqualified under subsection E of this section;

l. Substantiation that the applicant meets any other criteria established by the casino gaming law and this chapter for the granting of an operator's license, including submission to the department of adequate plans for operation of casino gaming and on-premises mobile casino gaming as required by this chapter;

m. Substantiation that the applicant is qualified to do business in Virginia or is subject to the jurisdiction of the courts of the Commonwealth;

n. Substantiation that the applicant or its principals have not previously been denied a license pursuant to subsection E of this section;

o. Substantiation of the financial responsibility of the applicant and the applicant's ability to fulfill the

requirements of the casino gaming law, this chapter, or any other law, regulation, or condition of the department related to casino gaming, including the applicant's financing plan for the casino gaming establishment; and

p. Where "minority individual" and "minority-owned business" mean the same as those terms are defined in § 2.2-1604 of the Code of Virginia, submission of:

(1) A minority investment plan disclosing any equity interest owned by a minority individual or minority-owned business or the applicant's efforts to seek equity investment from minority individuals or minority-owned businesses, and

(2) A plan for the participation of minority individuals or minority-owned businesses in the applicant's purchase of goods and services related to the casino gaming establishment.

E. Required denials.

1. The board shall deny a facility operator's license to an applicant if the board finds that for any reason the issuance of a license to the applicant would reflect adversely on the honesty and integrity of the casino gaming industry in the Commonwealth or that the applicant, or any officer, principal, manager, or director of the applicant:

a. Has failed to prove by clear and convincing evidence that the applicant and each person who owns or controls the applicant are qualified under subsection D of this section;

b. Is under current prosecution for or has been found guilty of any illegal act, conduct, or practice in connection with gaming operations in this or any other state or has been convicted of a felony, provided that, at the request of the applicant, the board may defer its decision on the application during the pendency of the charge;

c. Has had a license or permit to hold or conduct a gaming operation denied for cause, suspended, or revoked, in this or any other state or country, unless the license or permit was subsequently granted or reinstated;

d. Has at any time during the previous five years knowingly failed to comply with the provisions of the casino gaming law, this chapter, or any other law, regulation, or condition of the department related to casino gaming;

e. Has knowingly made a false statement of material fact to the department or has deliberately failed to disclose any information requested by the department;

f. Has willfully defied a legislative investigatory body or other official investigatory body of the United States, or a jurisdiction within the United States, when the body is engaged in the investigation of crimes relating to gambling, official corruption, or organized crime activity;

g. Has defaulted in the payment of any obligation or debt due to the Commonwealth and has not cured such default; or

h. Has operated or caused to be operated a casino gaming establishment for which a license is required under this chapter without obtaining such license.

F. Issuance term and conditions.

1. As a condition of accepting a facility operator's license to an applicant, the licensee expressly acknowledges its duty to adhere to its application, the plan it submitted to the host city and the department during the certification process set out in §§ 58.1-4107 F and 58.1-4109 of the Code of Virginia, all requirements of the casino gaming law, this chapter, and any other law, regulation, or condition of the department related to casino gaming.

2. The term of a facility operator's license begins on the day of issuance and continues for 10 years, subject to annual review consistent with § 58.1-4111 of the Code of Virginia.

3. A casino may not begin operations before the board has issued the facility operator's license.

4. The department may issue a facility operator's license subject to conditions.

5. No portion of any structure developed with the assistance of grants or loans provided by a redevelopment and housing authority created by § 36-4 of the Code of Virginia may be used as a casino gaming establishment.

6. The facility operator shall submit a nonrefundable issuance fee of $15 million before the operation license is issued and upon any approved transfer of the license

7. The board may issue a facility operator's license only after determining that:

a. The facility complies with the casino gaming law, this chapter, and any other law, regulation, or condition of the department related to casino gaming;

b. All gaming machines and associated equipment have been tested and comply with the casino gaming law, this chapter, and any other law, regulation, or condition of the department related to casino gaming;

c. The gaming floor plan complies with the casino gaming law, this chapter, and any other law, regulation, or condition of the department related to casino gaming;

d. The facility operator's internal controls comply with the casino gaming law, this chapter, and any other law, regulation, or condition of the department related to casino gaming;

e. The facility operator is prepared to implement the internal controls, surveillance, and security procedures that are necessary to ensure that the operation of all casino gaming is conducted safely and legally;

f. The facility operator's employees are:

(1) Properly permitted by the department; and

(2) Trained in the performance of their responsibilities;

g. The facility is prepared in all respects to receive the public;

h. The facility operator has complied with any additional pre-opening conditions imposed by the department; and

i. The facility operator has successfully completed a test period.

8. A licensed casino gaming facility operator is not prohibited from operating:

a. An online sports betting operation licensed by the Lottery under the Virginia Lottery Law (§ 58.1-4000 et seq. of the Code of Virginia) and the Sports Betting regulation (11VAC5-70); or

b. A sports betting facility for individuals to participate in sports betting activities in the casino gaming establishment, including in-person sports betting where a player places a wager directly with a gaming employee of the casino or the sports betting permit holder, or through a kiosk or device.

G. Temporary facility.

1. The holder of, or applicant for, a facility operator's license may ask the department to authorize casino gaming to occur in a temporary facility.

2. Gaming may be conducted in a temporary facility for one year.

3. Gaming in a temporary facility does not extend the 10-year term of the facility operator's license.

4. Approval to conduct casino gaming in a temporary facility shall be conditioned upon:

a. The applicant's having been issued a facility operator's license;

b. Approval by the host city and the department of the facility operator's construction schedule for the permanent facility;

c. Using the same site for the temporary facility as was approved by the host city's voters in the referendum held pursuant to § 58.1-4123 of the Code of Virginia;

d. The facility operator having secured suppliers and employees holding the permits required and sufficient for the routine operations of the site where the temporary gaming will be authorized; and

e. Posting of a performance bond in an amount acceptable to the department.

5. The department may extend the authorization to conduct casino gaming in a temporary facility for an additional year if it determines that the licensee has made a good faith effort to comply with the approved construction schedule.

H. Suspension, civil penalties, revocation, and nonrenewal.

1. In addition to any other sanctions or civil penalties, including those set out in 11VAC5-90-90, the director may impose a civil penalty or suspend, revoke, or refuse to renew a facility operator's license for:

a. Failure to comply with, or violation of, any provision of the casino gaming law, this chapter, or any other law, regulation, or condition of the department related to casino gaming;

b. Failure to disclose facts during the application process that indicate that the operation license should not have been issued;

c. Conviction of a felony under the laws of the Commonwealth of Virginia or any other state, or of the United States subsequent to issuance of the facility operator's license;

d. Failure to file any return or report, keep any record, or pay any fee or other charges required by the casino gaming law, this chapter, or any other law, regulation, or condition of the department related to casino gaming;

e. Any act of fraud, deceit, misrepresentation, or conduct prejudicial to public confidence in the integrity of gaming operations; or

f. A material change, since issuance of the facility operator's license, with respect to any matters required to be considered by the director under the casino gaming law, this chapter, or any other law, regulation, or condition of the department related to casino gaming.

2. The director may temporarily suspend a facility operator's license without notice pending any prosecution, hearing, or investigation, whether by a third party or by the director.

3. Disputes related to a suspension, revocation, or refusal to renew a facility operator's license shall be conducted pursuant to the procedures set out in 11VAC5-90-40 F.

I. Renewal.

1. A license may be renewed for additional 10-year terms.

2. The criteria and procedures for license renewal shall be the same for successive renewal terms as for the initial term of licensure, including the application fees for background and other investigations, unless the facility operator's operational and capital investment plans have been approved for amendment by the department.

3. A facility operator shall notify the department 18 months before the expiration of its license term if it does not intend to seek renewal.

4. A facility operator shall submit a completed renewal application, for itself and its principals and employees, along with any required fees, between 15 and 12 months before the expiration of its current license.

5. A facility operator shall submit a nonrefundable renewal fee of $15 million before the operation license is re-issued.

6. A license renewal request shall not be unreasonably refused by the board.

11VAC5-90-70. Applications for and issuance of supplier permits.

A. In addition to the processes and requirements set out in 11VAC5-90-40 and 11VAC5-90-50, the requirements set out in this section shall apply to the applications for a supplier permit and the applicant's related entities and individuals.

B. There are four categories of suppliers:

1. Contractor;

2. Key manager;

3. Manufacturer; and

4. Slot machine management system provider.

C. An applicant for a supplier permit shall submit with its application all required fees and applications for:

1. The applicant itself;

2. If applicable, its principals; and

3. All known key managers.

D. The fee for each supplier applicant shall be a:

1. Nonrefundable $5,000 application fee for the supplier; and

2. Unless such fee has been submitted in behalf of the same applicant pursuant to another related or contemporaneously filed application, $50,000 background investigation fee for any principal, including any applicable key manager.

E. Following a successful background investigation and prior to issuance of a supplier permit, the supplier shall submit a $5,000 annual permit fee.

F. A person is ineligible to receive a supplier's permit if:

1. The person has been convicted of a felony under the laws of the Commonwealth or any other state or of the United States;

2. The person has submitted an application for a license under this chapter that contains false information;

3. The person is a board member, employee of the department, or a member of the immediate household of a board member or department employee;

4. The person is an entity in which a person described in subdivision 1, 2, or 3 of this subsection is an officer, director, principal, or managerial employee;

5. The firm or corporation employs a person who participates in the management or operation of casino gaming authorized under this chapter;

6. A prior license or permit issued to such person to own or operate casino gaming establishments or supply goods or services to a gaming operation under this chapter or any laws of any other jurisdiction has been revoked; or

7. A. period of five years has not elapsed since the date of final action on a denial of an earlier application for a supplier permit, unless the director in the director's sole and unappealable discretion has made an exception to that waiting period.

G. Issuance.

1. The department shall consider all information submitted in the supplier permit application and any information discovered as a result of the department's background investigation.

2. As a condition of accepting a supplier permit, permit holders shall expressly acknowledge their duty to adhere to all requirements of the casino gaming law, this chapter, and any other law, regulation, or condition of the department related to casino gaming.

3. Upon request of an applicant, the director may in his sole discretion issue a temporary or conditional supplier permit to an apparently-qualified applicant pending final board approval of the permit.

4. An applicant for a supplier permit may not be considered to be apparently-qualified if:

a. The applicant has an immediately known present or prior activity, criminal record, reputation, habit, or association that would disqualify the applicant from holding a permit or license under the casino gaming law or this chapter;

b. The applicant poses a serious imminent risk of harm to the integrity, security, or profitability of the Commonwealth of Virginia's casino gaming program; or

c. There are reasonable grounds to believe that the applicant will not be able to establish the applicant's qualifications by clear and convincing evidence under this chapter.

5. A temporary or conditional supplier permit holder whose permanent supplier permit is denied shall not receive a refund of any fees paid toward the application and the costs of the department's background investigation.

6. A temporary or conditional supplier permit:

a. May not be issued until the applicant has acknowledged in writing that the Commonwealth of Virginia is not financially responsible for any consequences resulting from termination of a temporary or conditional supplier permit, or a denial of the application;

b. Expires 60 days after the date of issuance; and

c. May be extended by the director for one period of up to 60 days.

7. When the board changes a temporary or conditional supplier permit into permanent status, the date of issuance of the permanent supplier permit shall be deemed to be the date that the director issued the temporary supplier permit.

8. If, during the course of conducting an applicant's background investigation, department staff reasonably believes that there is a basis for recommending denial of a permanent supplier permit to a temporary or conditional supplier permit holder, department staff shall:

a. Notify the director and the temporary or conditional supplier permit holder; and

b. If the board has not yet issued a final decision on the application, allow the application to be withdrawn.

9. By written notice to a temporary or conditional supplier permit holder, the director may terminate, without a hearing and without following the denial process under 11VAC5-90-40, the temporary or conditional supplier permit of an applicant for:

a. Failure to pay a required fee;

b. Failure to submit required information and documentation to department staff within 15 days of responding to a request for additional information or documents;

c. Failure to comply with any other request of department staff;

d. Engaging in conduct that obstructs department staff from completing the applicant's background investigation;

e. Failure to comply with the conditions imposed by the director; or

f. Violating any provision of the casino gaming law, this chapter, or any other law, regulation, or condition of the department related to casino gaming.

10. Unless the applicant withdraws the application within seven days of the notice issued under subdivision 8 or 9 of this subsection, the director's written notice of termination of a temporary or conditional supplier permit shall be deemed a denial and referred to the board for completion of the process set out in 11VAC5-90-40 F.

11. A decision by the department not to issue or renew a temporary or conditional supplier license is not appealable.

H. Suspension, civil penalties, revocation, and nonrenewal.

1. In addition to any other sanctions or civil penalties, including those set out in 11VAC5-90-90, the director may impose a civil penalty or suspend, revoke, or refuse to renew a supplier permit for:

a. Failure to comply with, or violation of, any provision of the casino gaming law, this chapter, or any other law, regulation, or condition of the department related to casino gaming;

b. Failure to disclose facts during the application process that indicate that the supplier permit should not have been issued;

c. Conviction of a felony under the laws of the Commonwealth of Virginia or any other state, or of the United States subsequent to issuance of the supplier permit;

d. Failure to file any return or report, keep any record, or pay any fee or other charges required by the casino gaming law, this chapter, or any other law, regulation, or condition of the department related to casino gaming;

e. Any act of fraud, deceit, misrepresentation, or conduct prejudicial to public confidence in the integrity of gaming operations; or

f. A material change, since issuance of the supplier permit, with respect to any matters required to be considered by the director under the casino gaming law, this chapter, or any other law, regulation, or condition of the department related to casino gaming.

2. The director may temporarily suspend a supplier permit without notice pending any prosecution, hearing, or investigation, whether by a third party or by the director.

3. Disputes related to a suspension, revocation, or refusal to renew a supplier permit shall be conducted pursuant to the procedures set out in 11VAC5-90-40 F.

I. Portability.

1. A supplier permit holder who wishes to perform the functions approved by the department pursuant to its initial permit application at a different location or for a different licensee or permit holder shall inform the department in advance.

2. The department shall freely authorize transfers requested pursuant to subdivision 1 of this subsection.

3. The permit holder shall comply with the requirements set out in 11VAC5-90-40 for the replacement of identification cards.

J. Renewal term.

1. Unless otherwise required by law, a permit shall be automatically renewed each year after the first year for four additional successive annual terms.

2. A permit holder shall submit to the department an annual permit fee of $5,000 before the start of the next annual term.

3. The department need not conduct a new background investigation of the permit holder during the four renewal terms.

4. Every five years, a permit holder shall:

a. Submit a renewal application six to three months before the expiration date of the permit term, and

b. Pay any fees associated with the application and background investigation as directed by the department.

11VAC5-90-80. Application for and issuance of service permits.

A. In addition to the processes and requirements set out in 11VAC5-90-40 and 11VAC5-90-50, the requirements set out in this section shall apply to the applications for a service permit and the applicant's related entities and individuals.

B. There are four categories of service permits:

1. Gaming employee;

2. Nongaming employee;

3. Vendor-major; and

4. Vendor-minor.

C. The two categories of vendor described in subsection B of this section are meant to incorporate the types of concessionaires for which service permits are required under § 58.1-4118 of the Code of Virginia.

D. An applicant for a service permit shall submit with its application all required fees and applications for:

1. The applicant itself;

2. Any employees who require a service permit under this chapter; and

3. If applicable, all principals and key managers.

E. The fee for each service applicant shall be a:

1. Nonrefundable $500 application fee for the service permit applicant, plus any applicable fingerprinting fees; and

2. Unless such fee has been submitted on behalf of the same applicant pursuant to another related or contemporaneously filed application, $50,000 background investigation fee for any principal not the holder of or applicant for a supplier permit, including any applicable key manager.

F. The director shall deny a service permit if the director finds that:

1. The issuance of the service permit would not be in the best interests of the Commonwealth or would reflect negatively on the honesty and integrity of casino gaming in the Commonwealth;

2. The granting of the service permit is not consistent with the provisions of the casino gaming law or this chapter, the department's responsibilities, or any regulations promulgated by any other agency of the Commonwealth; or

3. That the applicant:

a. Has knowingly made a false statement of a material fact in the application or has deliberately failed to disclose any information requested by the department;

b. Is or has been guilty of any corrupt or fraudulent practice or conduct in connection with gaming operations in the Commonwealth or any other state;

c. Has knowingly failed to comply with the provisions of the casino gaming law, this chapter, or any other law, regulation, or condition of the department related to casino gaming;

d. Has had a service permit or license to engage in activity related to casino gaming denied for cause, suspended, or revoked in the Commonwealth or any other state, and such denial, suspension, or revocation is still in effect;

e. Is unqualified to perform the duties required for the service permit sought; or

f. Has been convicted of a misdemeanor or felony involving unlawful conduct of wagering, fraudulent use of a gaming credential, unlawful transmission of information, touting, bribery, embezzlement, distribution or possession of drugs, or any crime considered by the director to be detrimental to the honesty and integrity of casino gaming in the Commonwealth.

G. Issuance.

1. The department shall consider all information submitted in the service permit application and any information discovered as a result of the department's background investigation.

2. As a condition of accepting a service permit, permit holders shall expressly acknowledge their duty to adhere to all requirements of the casino gaming law, this chapter, and any other law, regulation, or condition of the department related to casino gaming.

3. Upon request of an applicant, the director may in his sole discretion issue a temporary or conditional service permit to an apparently-qualified applicant pending final board approval of the permit.

4. An applicant for a service permit may not be considered to be apparently-qualified if:

a. The applicant has an immediately known present or prior activity, criminal record, reputation, habit, or association that would disqualify the applicant from holding a permit or license under the casino gaming law or this chapter;

b. The applicant poses a serious imminent risk of harm to the integrity, security, or profitability of the Commonwealth of Virginia's casino gaming program; or

c. There are reasonable grounds to believe that the applicant will not be able to establish the applicant's qualifications by clear and convincing evidence under this chapter.

5. A temporary or conditional service permit holder whose permanent service permit is denied shall not receive a refund

of any fees paid toward the application and the costs of the department's background investigation.

6. A temporary or conditional service permit:

a. May not be issued until the applicant has acknowledged in writing that the Commonwealth of Virginia is not financially responsible for any consequences resulting from termination of a temporary or conditional service permit, or a denial of the application;

b. Expires 60 days after the date of issuance; and

c. May be extended by the director for one period of up to 60 days.

7. When the board changes a temporary or conditional service permit into permanent status, the date of issuance of the permanent service permit shall be deemed to be the date that the director issued the temporary service permit.

8. If, during the course of conducting an applicant's background investigation, department staff reasonably believes that there is a basis for recommending denial of a permanent service permit to a temporary or conditional service permit holder, department staff shall:

a. Notify the director and the temporary or conditional service permit holder; and

b. If the board has not yet issued a final decision on the application, allow the application to be withdrawn.

9. By written notice to a temporary or conditional service permit holder, the director may terminate, without a hearing and without following the denial process under 11VAC5-90-40, the temporary or conditional service permit of an applicant for:

a. Failure to pay a required fee;

b. Failure to submit required information and documentation to department staff within 15 days of responding to a request for additional information or documents;

c. Failure to comply with any other request of department staff;

d. Engaging in conduct that obstructs department staff from completing the applicant's background investigation;

e. Failure to comply with the conditions imposed by the director, or

f. Violating any provision of the casino gaming law or this chapter, or any other law, regulation, or condition of the department related to casino gaming.

10. Unless the applicant withdraws the application within seven days of the notice provided under subdivision 8 or 9 of this subsection, the director's written notice of termination of a temporary or conditional service permit shall be deemed a denial and referred to the board for completion of the process set out in 11VAC5-90-40 F.

11. A decision by the department not to issue or renew a temporary or conditional service license is not appealable.

H. Suspension, civil penalties, revocation, and nonrenewal.

1. In addition to any other sanctions or civil penalties, including those set out in 11VAC5-90-90, the director may impose a civil penalty or suspend, revoke, or refuse to renew a service permit for:

a. Failure to comply with, or violation of, any provision of the casino gaming law, this chapter, or any other law, regulation, or condition of the department related to casino gaming;

b. Failure to disclose facts during the application process that indicate that the service permit should not have been issued;

c. Conviction of a felony under the laws of the Commonwealth of Virginia or any other state, or of the United States subsequent to issuance of the service permit;

d. Failure to file any return or report, keep any record, or pay any fee or other charges required by the casino gaming law, this chapter, or any other law, regulation, or condition of the department related to casino gaming;

e. Any act of fraud, deceit, misrepresentation, or conduct prejudicial to public confidence in the integrity of gaming operations; or

f. A material change, since issuance of the service permit, with respect to any matters required to be considered by the director under the casino gaming law, this chapter, or any other law, regulation, or condition of the department related to casino gaming.

2. The director may temporarily suspend a service permit without notice pending any prosecution, hearing, or investigation, whether by a third party or by the director.

3. Disputes related to a suspension, revocation, or refusal to renew a service permit shall be conducted pursuant to the procedures set out in 11VAC5-90-40 F.

I. Portability.

1. A service permit holder who wishes to perform the functions approved by the department pursuant to its initial permit application at a different location or for a different licensee or permit holder shall inform the department in advance.

2. The department shall freely authorize transfers requested pursuant to subdivision 1 of this subsection.

3. The permit holder shall comply with the requirements set out in 11VAC5-90-40 for the replacement of identification cards.

J. Renewal term.

1. The term of a service permit shall be five years.

2. A holder of a service permit who wishes to renew the permit shall:

a. Submit a renewal application three to two months before the expiration date of the permit term; and

b. Pay any fees associated with the application and background investigation as required by the director.

11VAC5-90-90. Enforcement.

A. Inspections.

1. A licensee or permit holder is subject to unannounced inspections conducted by the department to evaluate and verify the entity's compliance with the casino gaming law, this chapter, and any other law, regulation, or condition of the department related to casino gaming.

2. The department may conduct an unannounced inspection without a warrant and take any of the following actions:

a. Conduct an inspection of premises in which:

(1) Casino gaming is conducted;

(2) Authorized casino games, table game equipment, a central monitor and control system, or associated equipment and software are:

(a) Designed;

(b) Built;

(c) Constructed;

(d) Assembled;

(e) Manufactured;

(f) Sold;

(g) Distributed; or

(h) Serviced; or

(3) Records are prepared or maintained for activities referenced in subdivisions 2 a (1) and 2 a (2) of this subsection;

b. Conduct an inspection of a casino game, table game equipment, a central monitor control system, or associated equipment and software in, about, on, or around the premises specified in subdivision 2 a of this subsection;

c. From the premises specified in subdivision 2 a of this subsection, summarily seize, remove, impound, or assume physical control of, for the purposes of examination and inspection:

(1) A casino game;

(2) Table game equipment;

(3) A central monitor and control system; or

(4) Associated equipment and software;

d. Inspect, examine, and audit books, records, and documents concerning a licensee's or permit holder's casino gaming operations, including the financial records of a:

(1) Parent corporation;

(2) Subsidiary corporation; or

(3) Similar business entity; or

e. Seize, impound, or assume physical control of:

(1) Books;

(2) Records;

(3) Ledgers;

(4) Cash boxes and their contents;

(5) A counting room or its equipment;

(6) Other physical objects relating to casino gaming operations; or

(7) Any record or object that a licensee or permit holder is required by law or license and permit terms to maintain.

3. During an inspection, a licensee or permit holder and their employees, agents, and representatives:

a. Shall:

(1) Make available for inspection, copying, or physical control a record that a licensee or permit holder is required to maintain;

(2) Authorize any person having financial records relating to the licensee or permit holder to provide those records to the department; and

(3) Otherwise cooperate with the activities of the department described in this chapter; and

b. May not knowingly interfere with the authorized activity of the department during an unannounced inspection.

4. An unannounced inspection may be conducted:

a. Any time during reasonable business hours; and

b. Periodically, as determined by the department.

5. The refusal of a licensee or permit holder or their employees or agents to provide the department with the access necessary to perform an unannounced inspection may be the basis for enforcement action under this section.

6. In addition to subdivisions 1 through 5 of this subsection, department staff, along with agents of the Department of State Police and local law-enforcement or fire departments, may enter any casino gaming facility at any time to determine compliance with the casino gaming law, this chapter, and applicable fire prevention and safety laws.

B. Records and reports.

1. Within a reasonable time after the conclusion of the unannounced inspection, the department's inspectors shall submit a written report of the inspection to the director and the licensee or permit holder that was the subject of the unannounced inspection.

2. A written report of an unannounced inspection shall be considered a public record to the extent allowable under the

Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia).

C. A licensee or permit holder may not:

1. Violate a provision of the casino gaming law, this chapter, or any other law, regulation, or condition of the department related to casino gaming;

2. Take, or attempt to take, any action that is intended to:

a. Change or influence the outcome of a casino game;

b. Influence any person or unit of government that is involved in implementing or enforcing the casino gaming law;

c. Interfere with the regular operation of:

(1) The central monitor and control system;

(2) A slot machine;

(3) Associated equipment or software; or

(4) A casino game;

3. Fail to:

a. Conform to the information contained in a license or permit application;

b. Meet a licensing or permit requirement;

c. Promptly submit to the department any change in the information contained in a license or permit application, including a subsequent conviction of a felony under the laws of Virginia, any other state, or the United States; or

d. Adequately remedy a deficiency of which the licensee or permit holder has received notice under this chapter.

D. Notice of violation.

1. After receiving a report of an alleged violation of subsection C of this section by a licensee or permit holder, the director shall notify the licensee or permit holder of the alleged violation and investigate the report.

2. The director may designate staff to serve on a review committee that:

a. Reviews the investigation into the alleged violation conducted under subdivision 1 of this subsection; and

b. Makes a recommendation to the director for addressing the alleged violation.

3. The review committee's recommendation to the director may include:

a. Requiring the licensee or permit holder to implement a corrective action plan;

b. Issuing the licensee or permit holder a warning letter;

c. Entering into a settlement agreement with the licensee or permit holder;

d. Recommending that the director initiate proceedings to impose a sanction or civil penalty on the licensee or permit holder; or

e. Any other appropriate action.

4. After considering the review committee's recommendation, the director may:

a. Initiate proceedings to impose a sanction or civil penalty on the licensee or permit holder;

b. Direct staff to:

(1) Implement the review committee's recommendation; or

(2) Take other appropriate action.

5. Department staff shall provide a licensee or permit holder with notice of the violations that describes the statute, regulation, or directive allegedly violated, along with [investigative findings and] the director's recommendation for addressing the alleged violation.

6. Nothing in this subsection shall be construed to require that:

a. The licensee or permit holder receive an opportunity to meet with staff or the director to discuss an informal settlement of a violation; or

b. The department undertake development of a corrective action plan or attempt to reach a settlement with the licensee or permit holder before the director initiates proceeding for imposition of a sanction or civil penalty against the licensee or permit holder.

7. If the report received under this subsection contains a credible complaint of an alleged criminal violation of the casino gaming law, the director shall immediately forward the report to the Office of the Attorney General and the Department of State Police for appropriate action.

E. Corrective action plan.

1. If the director instructs staff to initiate a corrective action plan with a licensee or permit holder, department staff shall give written notice to the licensee or permit holder that includes:

a. A description of the alleged violation;

b. A description of the sanctions and civil penalties that are possible because of the alleged violation; and

c. The requirement that the licensee or permit holder submit a corrective action plan to the department.

2. A corrective action plan shall include:

a. Periodic monitoring or progress reports;

b. Timelines for completing corrective action;

c. Implementation of measures to guard against recurrence of the alleged violation; and

d. Any other measures necessary to resolve the alleged violation.

3. Timeframe for implementing a corrective action plan.

a. Within 10 days of receipt of a notice under subdivision 1 of this subsection, the licensee or permit holder shall submit a corrective action plan to the director or the director's designee.

b. The director or the director's designee shall review the corrective action plan and inform the licensee or permit holder whether the corrective action plan is acceptable.

c. If the corrective action plan is acceptable, the licensee or permit holder shall implement it immediately.

d. If the corrective action plan is not acceptable, the licensee or permit holder shall submit a revised plan immediately.

4. If a licensee or permit holder fails to submit an acceptable corrective action plan within the timeframe described in this subsection, the director may:

a. Provide the licensee or permit holder additional time within which to submit an acceptable corrective action plan within five days; or

b. Initiate proceedings for imposition of a sanction or civil penalty.

5. Corrective plan outcome.

a. After a licensee or permit holder has completed, to the satisfaction of the director or the director's designee, a corrective action plan, the alleged violation is resolved, except that the alleged violation may be:

(1) The basis of a subsequent corrective action plan, settlement, sanction, or civil penalty if a similar violation occurs; or

(2) Raised during a board hearing as part of the department's enforcement record for the licensee or permit holder.

b. If, at any time during the corrective action period, the director or the director's designee determines that the licensee or permit holder has made insufficient progress toward fulfilling a requirement of the corrective action plan, the director may:

(1) For good cause, extend the time for completion of a correction action plan; or

(2) Initiate proceedings for imposition of a sanction or civil penalty.

c. If, at the end of the corrective action period, the licensee or permit holder has failed to satisfactorily complete the corrective action plan, the director may initiate proceedings for imposition of a sanction or civil penalty.

F. Settlement.

1. The director may provide a licensee or permit holder with the opportunity to discuss with staff a means of entering into a voluntary settlement agreement between the licensee or permit holder and the department by which the violation is settled without a sanction or civil penalty.

2. A settlement may involve elements of corrective action and may also include a remittance of funds to the department from the licensee or permit holder.

3. A settlement agreement shall be signed by an authorized representative of the licensee or permit holder and the director or director's designee.

4. If a licensee or permit holder violates a term of a settlement agreement, nothing in this subsection shall be construed to prevent the director or board from imposing a sanction or civil penalty against the licensee or permit holder for that, or the underlying violation.

G. Emergency suspension.

1. The director may emergently suspend a license or permit if the director determines that suspension is necessary to protect the Commonwealth's casino gaming program against a serious and imminent risk of harm to its integrity, security, or profitability.

2. If the director emergently suspends a license or permit, the director shall:

a. Promptly schedule a board hearing on the emergency suspension;

b. Provide the licensee or permit holder the written notice required under subsection E of this section,

c. Order the licensee or permit holder to immediately cease performing the functions otherwise authorized by the license or permit; and

d. Inform the licensee or permit holder that failure to comply with the director's order constitutes a separate violation for which an additional sanction or civil penalty may be imposed.

3. An emergency suspension may be resolved through a voluntary settlement agreement pursuant to subsection F of this section.

H. Imposition of sanctions and civil penalties.

1. For a violation of subsection C of this section, the director may impose:

a. A civil penalty:

(1) For a facility operator or a supplier, in an amount not to exceed $100,000; and

(2) For a holder of service permit, in an amount not to exceed $10,000; or

b. A sanction, including:

(1) Revocation of a license or permit;

(2) Suspension of a license or period for a period of time;

(3) Reprimand; or

(4) Condition that must be met within a specified time as to:

(a) Training;

(b) Staffing;

(c) Supervision;

(d) Compliance with internal controls;

(e) Probationary periods; or

(f) Any other directive to address the violation.

2. The imposition of a civil penalty or a sanction may be appealed to the board for a hearing under 11VAC5-20-180.

3. To determine the amount of a civil penalty to impose on a licensee or permit holder, the board shall consider:

a. The seriousness of the violation;

b. The harm caused by the violation; and

c. Whether the person who committed the violation acted in good faith.

4. To determine the appropriate sanction to impose on a licensee or permit holder, the board may consider the factors in subdivision 2 of this subsection, and:

a. Whether a violation was willful;

b. Whether the licensee or permit holder had, or should have had, control of the situation;

c. Whether the violation may have occurred in connection with unclear or insufficient:

(1) Information;

(2) Training;

(3) Communication; or

(4) Requirements;

d. Any extraordinary circumstances;

e. Prior disciplinary history with the board;

f. Profit that resulted, or may have resulted, from the violation;

g. Harm that resulted, or may have resulted, from the violation;

h. How the violation was detected;

i. Tailoring the discipline to address the violation;

j. Action taken by the licensee or permit holder to prevent recurrence of the violation;

k. Action taken by the department to address similar violations; and

l. Any other information that the board finds relevant.

5. Because a licensee and a permit holder is presumed to be familiar with applicable statutes and regulations governing Virginia's casino gaming program, a claim of ignorance of the law or this chapter may not be used as a defense to a finding of a violation or to the imposition of a sanction or civil penalty.

6. A sanction and a civil penalty may be imposed for each violation.

I. Board action.

1. Board action against a licensee or permit holder for a violation of subsection C of this section shall be conducted in accordance with 11VAC5-90-180, and the board shall:

a. Make a finding whether the licensee or permit holder violated a provision of subsection C of this section; and

b. If the licensee or permit holder violated a provision of subsection C of this section, decide whether, and to what extent, to impose a sanction or civil penalty.

2. A licensee or permit holder may seek judicial review of the board's decision.

3. A licensee or permit holder against whom the board ordered the imposition of suspension or revocation of a license or permit shall immediately comply with the board's order.

4. A licensee or permit against whom the board imposed a civil penalty shall remit to the board payment in full of the civil penalty within 30 calendar days.

11VAC5-90-100. General facility operator requirements.

A. Purpose.

1. The requirements of this section are in addition to any other requirements for licensees and permit holders.

2. The purposes of the casino gaming law and this chapter are to assist economic development, promote tourism, and provide for the implementation of casino gaming operations of the highest quality, honesty, and integrity and free of any corrupt, incompetent, dishonest, or unprincipled practices.

3. An application for a facility operator's license shall:

a. Be complete before it is fully evaluated by the department;

b. Shall include such information about the facility and its location as required by the department; and

c. Be evaluated as to whether:

(1) The application complies with the minimum standards provided in the casino gaming law and this chapter; and

(2) Gaming operations at the proposed location will be in furtherance of the purposes of the casino gaming law and this chapter.

B. Board and director responsibility.

1. No member of the board shall:

a. Have any direct or indirect financial, ownership, or management interest in any casino gaming operation.

b. Receive or share in, directly or indirectly, the receipts or proceeds of any casino gaming operation.

c. Have an interest in any contract for the manufacture or sale of gaming devices, the conduct of any gaming activity, or the provision of independent consulting

services in connection with any gaming establishment or gaming activity.

2. The board may issue subpoenas for the attendance of witnesses before the board, administer oaths, and compel production of records or other documents and testimony of such witnesses whenever in the judgment of the board it is necessary to do so for the effectual discharge of its duties.

3. In addition to any other audits provided for under this chapter, the board may order such audits as it deems necessary and desirable.

4. The director shall have the authority to:

a. Inspect and investigate and have free access to the offices, facilities, or other places of business of any licensee or permit holder and may compel the production of any of the books, documents, records, or memoranda of any licensee or permit holder for the purpose of ensuring compliance with the casino gaming law, this chapter, and any other law, regulation, or condition of the department related to casino gaming.

b. Compel any person holding a license or permit to file with the department such information as shall appear to the director to be necessary for the performance of the department's functions, including financial statements and information relative to principals and all others with any pecuniary interest in such person.

c. Apply to the appropriate circuit court for an injunction against any person who has violated or may violate any provision of this chapter or any regulation or final decision of the department, and the order granting or refusing such injunction shall be subject to appeal as in other cases in equity.

d. In addition to and not limited by any action taken against a regulated entity, licensee, or permit holder, impose a fine or penalty not to exceed $1 million upon any person determined in proceedings commenced pursuant to § 58.1-4105 of the Code of Virginia to have violated any of the provisions of the casino gaming law, this chapter, any other regulation promulgated by the board, or any other law, regulation, or condition of the department related to casino gaming.

C. License or permit required.

1. A person may not operate a casino gaming establishment without having obtained an operator's license in accordance with the provisions of the casino gaming law and this chapter.

2. Only the holder of a supplier's permit may sell or lease, or contract to sell or lease, casino gaming equipment and supplies, or provide management services, to any licensee involved in the ownership or management of gaming operations to the extent provided in the permit.

3. Any person that supplies any casino gaming equipment, devices, or supplies to a licensed gaming operation or manages any operation, including a computerized network of a casino gaming establishment shall first obtain a supplier's permit.

4. A supplier shall:

a. Furnish to the department a list of all management services, equipment, devices, and supplies offered for sale or lease in connection with the games authorized under the casino gaming law, this chapter, and any other law, regulation, or condition of the department related to casino gaming;

b. Keep books and records for the furnishing of casino gaming equipment, devices, and supplies to gaming operations separate and distinct from any other business that the supplier might operate;

c. File a quarterly return with the department listing all sales and leases for which a permit is required; and

d. Permanently affix its name to all its equipment, devices, and supplies for gaming operations.

5. Gaming equipment, devices, and supplies may not be distributed unless the equipment, devices, and supplies conform to standards adopted by the department.

6. A supplier's equipment, devices, or supplies that are used by any person in an unauthorized gaming operation shall be forfeited to the Commonwealth.

7. No person shall participate in any gaming operation as a casino gaming employee or concessionaire or employee of either or in any other occupation that has determined necessary to regulate in order to ensure the integrity of casino gaming in the Commonwealth unless such person possesses a service permit.

8. A person who conducts a gaming operation without first obtaining a license to do so, or who continues to conduct such games after revocation of the person's license, in addition to other penalties provided, shall be subject to a civil penalty assessed by the board equal to the amount of gross receipts derived from wagering on games, whether unauthorized or authorized, conducted on the day, as well as confiscation and forfeiture of all casino gaming equipment, devices, and supplies used in the conduct of unauthorized games. Any civil penalties collected pursuant to this subdivision shall be payable to the State Treasurer for deposit to the general fund.

D. Facility operator requirements.

1. A facility operator shall be the person primarily responsible for the gaming operations under the facility operator's license and compliance of such operations, and the compliance of the facility operator's affiliates and contractors, with the provisions of the casino gaming law,

this chapter, and any other law, regulation, or condition of the department related to casino gaming.

2. A facility operator shall submit to the department any updates or revisions to the capital investment plan the facility operator provided with its initial license application pursuant to subdivision B 4 of § 58.1-4109 of the Code of Virginia.

3. A facility operator may operate its own equipment, devices, and supplies and may utilize casino gaming equipment, devices, and supplies at such locations as may be approved by the department for the purpose of training enrollees in a school operated by the licensee and approved by the department to train individuals who desire to become qualified for employment or promotion in gaming operations.

4. A facility operator shall be subject to review by the department on an ongoing basis and annually to determine compliance with the casino gaming law, this chapter, and any other law, regulation, or condition of the department related to casino gaming.

5. Annual reviews under subdivision 4 of this subsection shall include a certification from the host city of the status of the operator's compliance with local ordinances and regulations.

6. If the certification under subdivision 5 of this subsection states that the facility operator is not in compliance, the department shall require the operator to submit a plan of compliance, corrective action, or request for variance consistent with this chapter.

7. Department staff may be present in any facilities under the control of a licensee.

8. A facility operator shall file an annual report with the department listing its inventories of casino gaming equipment, devices, and supplies related to its operations in the Commonwealth of Virginia.

9. Within 90 days after the end of each fiscal year, a facility operator shall transmit to the department a third-party, independent audit of the financial transactions and condition of the licensee's total operations.

10. Every five years, a facility operator shall submit to the department for review and approval a reinvestment projection related to the facility to cover the succeeding five-year period of operations.

11. Consistent with requirements of the casino gaming law and the contract between a host city and its preferred casino gaming operator, a facility operator shall submit to the department evidence that:

a. Any contractor hired for construction at the facility has:

(1) Paid the local prevailing wage rate as determined by the U.S. Secretary of Labor under the provisions of the Davis-Bacon Act, 40 USC § 276 et seq., to each laborer, workman, and mechanic the contractor employs on the site;

(2) Participated in apprenticeship programs that have been certified by the Department of Labor and Industry or the U.S. Department of Labor;

(3) Established preferences for hiring residents of the eligible host city and adjacent localities, veterans, women, and minorities for work performed on the site;

(4) Provided health insurance and retirement benefits for all full-time employees performing work on the site; and

(5) Required that the provisions of subdivisions 11 a (1) through 11 a (4) of this subsection are included in every subcontract; and

b. The facility operator has:

(1) Paid its full-time employees performing work at the facility an hourly wage or a salary, including tips, that equates to an hourly rate no less than 125% of the federal minimum wage;

(2) Established preferences for hiring residents of the host city and adjacent localities, veterans, women, and minorities for work performed at the facility in compliance with any applicable federal law;

(3) Provided access to health insurance and retirement savings benefit opportunities for all full-time employees of the facility operator performing work at the facility; and

(4) Required that any contract for goods or services performed at the facility, other than construction, with projected annual services fees exceeding $500,000, meet the requirements of subdivisions 11 b (1), 11 b (2), and 11 b (3) of this subsection with regard to full-time personnel of the subcontractor who performed services at the facility.

E. Junkets.

1. Junket agreements and final reports

a. A facility operator shall ensure that:

(1) A junket agreement between a facility operator and a junket enterprise, or junket representative, is in writing; and

(2) An executed copy of the junket agreement is submitted to the department before a junket arrives at the facility.

b. A junket agreement shall include at least the following provisions:

(1) If the department disapproves a term of the junket agreement or determines that a junket enterprise or junket representative has engaged in an activity prohibited under the casino gaming law, this chapter, or any other law, regulation, or condition of the department related to casino gaming:

(a) The department shall notify the facility operator that is a party to the junket agreement of the disapproval or determination; and

(b) The operations under the agreement shall be suspended as of the date of the department's disapproval until it is amended by the parties to the satisfaction of the department;

(2) The junket enterprise or junket representative shall:

(a) Maintain good standing with the Commonwealth of Virginia; and

(b) Obtain and maintain all required business licenses and permits; and

(3) The services of the junket enterprise and junket representative will comply with all applicable laws.

c. Junket final reports shall:

(1) Be prepared by a facility operator for a junket engaged in or on its property and shall include:

(a) The origin of a junket and its date and time of arrival and departure;

(b) The name of all junket enterprises and junket representatives involved in the junket;

(c) A junket manifest that lists the names and addresses of the junket participants;

(d) The nature, amount, and value of complimentary services, accommodations, and other items provided by the facility to a junket participant; and

(e) The total amount of services or other items of value provided to or for the benefit of a player participating in a junket that was paid for by the junket enterprise, a junket representative, or an agent or employee of a junket enterprise or junket representative;

(2) Be prepared and signed by an employee of the facility operator;

(3) Be prepared at the beginning of the month following completion of the junket; and

(4) Be submitted to the department by the 15th day of the month following completion of the junket.

2. Prohibited activities. A facility operator shall ensure that a junket enterprise or a junket representative or an agent or employee of a junket enterprise or a junket representative does not:

a. Unless approved in writing by the department, accept compensation on any basis other than theoretical win;

b. Engage in collection efforts;

c. Solicit, receive, or accept any fee or gratuity from a player for the privilege of participating in a junket or for performance of any function for which the junket enterprise or junket representative is licensed;

d. Unless disclosed in writing to the facility operator for which the junket was arranged, pay for transportation or any other service or item of value that is provided to or for the benefit of a player participating in a junket;

e. Extend credit to or grant credit on behalf of a facility operator to a player participating in a junket;

f. Accept an advance of money or a loan from a player participating in a junket;

g. Engage in conduct that would bring the Commonwealth of Virginia into disrepute;

h. Pursue economic gain in an occupational manner or context that is in violation of the laws of the Virginia, if the pursuit creates a reasonable belief that participation of the junket enterprise or junket representative would be inimical to the policies of the laws of the Commonwealth, including the casino gaming law, this chapter, and any other law, regulation, or condition of the department related to casino gaming;

i. Engage in activities that create a reasonable belief that the junket enterprise or junket representative is or is an associate of a criminal or criminal enterprise; or

j. Perform junket services under an agreement that has not been reduced to writing.

F. Central monitor and control system.

1. Each casino game that operates electronically shall be connected to a central monitor and control system established and operated by the department.

2. In addition to complying with the minimum design standards of 11VAC5-90-150 V, the central monitor and control system shall:

a. Provide the ability to audit and account for casino revenues and distributions in real time; and

b. Collect the following information from each electronically operated casino game, as applicable:

(1) Cash in;

(2) Cash out;

(3) Points played;

(4) Points won;

(5) Gross gaming income;

(6) Net gaming income;

(7) The number of plays of the game;

(8) The amounts [~~paid to play the game~~ wagered];

(9) Door openings;

(10) Power failures;

(11) Remote activations and disabling; and

(12) Any other information required by the department.

G. Conduct of casino gaming; prohibited acts.

1. A person licensed or holding a permit under this chapter shall allow no form of wagering that is not authorized by the casino gaming law and this chapter.

2. A facility operator may accept wagers only from an individual present at the facility.

3. A person present at a facility may not place or attempt to place a wager on behalf of another person who is not present at the facility.

4. No person younger than 21 years of age shall be permitted to make a wager or be present where casino gaming is being conducted.

5. No person shall place or accept a wager on youth sports.

6. No licensee or permit holder shall accept postdated checks in payment for participation in any gaming operation.

7. No licensee, permit holder, or any person on the premises of a casino gaming establishment shall extend lines of credit or accept any credit card [~~or other electronic fund transfer in payment~~] for participation in any gaming operation.

8. Casino gaming wagers shall be conducted only with tokens, chips, or electronic tickets or cards purchased from the facility operator.

9. Tokens, chips, or electronic tickets or cards may be used only for the purpose of:

a. Making wagers on casino games;

b. Converting to cash; or

c. Making a donation to a charitable entity granted tax-exempt status under § 501(c)(3) of the Internal Revenue Code, provided that the donated tokens, chips, or electronic tickets or cards are redeemed by the same charitable entity accepting the donation.

10. No person shall:

a. Operate casino gaming where wagering is used or to be used without a license issued by the department;

b. Operate casino gaming where wagering is permitted in a manner other than as specified by the casino gaming law, this chapter, or any other law, regulation, or condition of the department related to casino gaming;

c. Offer, promise, or give anything of value or benefit to a person who is connected with a gaming operation, including an officer or employee of a licensed operator or permit holder, pursuant to an agreement or arrangement or with the intent that the promise or thing of value or benefit will influence the actions of the person to whom the offer, promise, or gift was made in order to affect or attempt to affect the outcome of a game, or to influence official action of a member of the board, the director, a department employee, or a local governing body;

d. Solicit or knowingly accept a promise of anything of value or benefit while the person is connected with a gaming operation, including an officer or employee of a licensed operator or permit holder, pursuant to an understanding or arrangement or with the intent that the promise or thing of value or benefit will influence the actions of the person to affect or attempt to affect the outcome of a game, or to influence official action of a member of the board, the director, a department employee, or a local governing body;

e. Use or possess with the intent to use a device to assist in:

(1) Projecting the outcome of a game;

(2) Keeping track of the cards played;

(3) Analyzing the probability of the occurrence of an event relating to a game; or

(4) Analyzing the strategy for playing or betting to be used in a game except as permitted by department regulation;

f. Cheat at gaming;

g. Manufacture, sell, or distribute any card, chip, dice, game, or device that is intended to be used to violate any provision of the casino gaming law, this chapter, or any other law, regulation, or condition of the department related to casino gaming;

h. Alter or misrepresent the outcome of a game on which wagers have been made after the outcome is made sure but before it is revealed to the players;

i. Place a bet after acquiring knowledge not available to all players of the outcome of the game that is the subject of the bet or to aid a person in acquiring the knowledge for the purpose of placing a bet contingent on that outcome;

j. Claim, collect, or take, or attempt to claim, collect, or take money or anything of value in or from a game with intent to defraud, without having made a wager contingent on winning the game or claim, collect, or take an amount of money or thing of value of greater value than the amount won;

k. Use counterfeit chips or tokens in a game; or

l. Except for a permit holder or licensee authorized by the facility operator, possess any key or device designed for the purpose of opening, entering, or affecting the operation of a game, drop box, or electronic or mechanical device connected with the game or for removing coins, tokens, chips, or other contents of a game.

H. In addition to any criminal actions brought against the person, a person convicted of a violation of the activities listed in subsection G of this section shall be barred for life from gaming operations under the jurisdiction of the board.

I. Any credential, license, or permit issued by the department if used by the holder thereof for a purpose other than identification and in the performance of legitimate duties in a casino gaming establishment, shall be automatically revoked.

J. Voluntary exclusion; responsible gaming.

1. In addition to the requirements of 11VAC5-90-60, a facility operator shall comply with the requirements of this subsection.

2. A facility operator may disclose information about an individual on the voluntary exclusion list to:

a. The department;

b. The facility's:

(1) Manager;

(2) Security department;

(3) Surveillance department; or

(4) Employees who are directly responsible for excluding unauthorized individuals from the facility; and

c. If the facility operator pursues criminal charges against an individual on the voluntary exclusion list who is suspected of trespassing at a facility, to:

(1) A law enforcement officer; or

(2) A person who is legally authorized to be involved in the criminal prosecution of an individual on the voluntary exclusion list who is suspected of trespassing at a facility.

3. If an individual on the voluntary exclusion list is found on the premises of a facility, the facility operator:

a. Shall immediately notify the department; and

b. May pursue criminal charges against the individual for trespassing or any other appropriate criminal charge.

4. A facility operator may not:

a. Permit an individual on the voluntary exclusion list to:

(1) Enter the facility; or

(2) Play a casino game;

b. Knowingly fail to exclude from the premises an individual on the voluntary list; or

c. Disclose information about individuals on the voluntary exclusion list beyond the disclosures that are authorized by subdivision 2 of this subsection.

5. Responsible gaming plan.

a. A facility shall establish a responsible gaming plan that sets forth the facility's plan for addressing problem gambling at the facility.

b. The responsible gaming plan shall include at least the following elements:

(1) Goals;

(2) Procedures and deadlines for implementation;

(3) Identification of facility personnel responsible for implementation;

(4) Responsibilities of facility personnel identified as responsible for implementation;

(5) Training for facility personnel on problem gambling and voluntary exclusion;

(6) Means of controlling access to records pertaining to voluntary exclusion;

(7) Means of educating players about:

(a) Problem gambling;

(b) Problem gambling treatment resources; and

(c) Voluntary exclusion;

(8) Placement of responsible gambling awareness materials in the facility;

(9) Procedures for ensuring that an individual in the voluntary exclusion program is not permitted to:

(a) Enter the facility;

(b) Play a casino game; or

(c) Claim a jackpot;

(10) The facility's response to the discovery of an individual who is enrolled in the voluntary exclusion program on facility property, which may include pursuing criminal charges against the individual; and

(11) Any other element required by the department.

c. A facility operator shall submit to the department its responsible gaming plan at least 60 days before operations are to commence.

d. A facility operator shall submit any amendments to its responsible gaming plan to the department prior to implementation.

e. A facility operator shall submit to the department an annual report describing the facility's responsible gaming plan.

6. A facility operator shall:

a. Post signage that prominently bears the gambling assistance message and the underage warning message approved by the department at each customer entrance to the gaming floor;

b. Ensure that the gambling assistance message approved by the department is included in an advertisement that is intended to encourage casino game play at its facility, including advertisements that are:

(1) In print medium;

(2) On a billboard;

(3) Broadcast on radio, television, or other means, including social media;

(4) Printed on a paper product that is associated with player consumption of food or beverage if the paper product is:

(a) Special ordered; and

(b) Branded with the facility's logo; or

(5) Printed on ticket stock; and

c. Place in the facility responsible gambling awareness materials according to its responsible gaming plan.

K. Mandatory exclusion.

1. This subsection establishes a mechanism by which the department:

a. Maintains a list of individuals who are to be mandatorily excluded or ejected from a facility; and

b. Establishes standards that require a facility operator to:

(1) Exclude or eject an individual from the premises of the facility; and

(2) Ensure that intoxicated individuals and individuals younger than 21 years of age are not allowed:

(a) To play casino games, engage in sports betting, participate in on-premises mobile casino gaming; or

(b) To be in areas of the facility where casino games, sports betting facilities, are located or onsite mobile casino gaming is conducted.

2. The department shall establish and maintain a mandatory exclusion list that identifies individuals whom the department has directed be mandatorily excluded or ejected by a facility operator.

3. The director may place on the mandatory exclusion list an individual who:

a. Has exhibited behavior:

(1) In an occupational manner or context for the purpose of economic gain; and

(2) Utilizes methods that are deemed by the department as criminal violations inimical to the interest of the Commonwealth;

b. Has been convicted of a criminal offense under the laws of the United States or any jurisdiction within the United States that is a criminal offense involving moral turpitude or a gambling offense;

c. Would adversely affect the interests of the Commonwealth, the licensee, or the individual if the individual were to be present at a facility;

d. Is the subject of any administrative or judicial order directing the individual to stay away from a casino or other gaming facility;

e. Presents a threat to the safety of any individual on the premises of a facility;

f. Engages in, or has a documented history of engaging in, [disturbance of players or] disruption of casino game play;

g. The director or a facility operator has a reasonable belief that such individual has cheated, or attempted to cheat at a facility by engaging in conduct including:

(1) Altering or misrepresenting the outcome of a game or event on which bets have been placed;

(2) Placing, canceling, increasing, or decreasing a bet based on knowledge that is not available to other players;

(3) Claiming or collecting a prize from a facility that the individual did not win or earn or that the individual was not otherwise authorized to claim or collect;

(4) Manipulating a casino game, a central monitor and control system, or associated equipment or software to affect the outcome of a game or bet; or

(5) Altering the elements of chance or methods of selection or criteria that determine the outcome of a game or bet;

h. Has been banned for life from casino play or operations pursuant to the gaming law or this chapter; or

i. Engages in any conduct that may adversely affect public confidence in, or perception of, casino gaming operations in the Commonwealth.

4. In evaluating whether to place an individual on the mandatory exclusion list related to an incident or series of incidents, the director may specify monetary amounts and circumstances, including:

a. The nature of the incident;

b. Whether the individual was an employee of a licensee or permit holder at the time of the incident;

c. If the individual was a licensee or the holder of a permit, whether the individual was working at a facility while the individual engaged in conduct described in subdivision 3 of this subsection;

d. Whether the incident or incidents had a direct impact on:

(1) A facility;

(2) A player;

(3) A licensee; or

(4) The amount or type of loss to:

(a) A facility;

(b) A player; or

(c) A licensee or permit holder;

e. Whether the individual made restitution;

f. Whether the individual was involved in a prior incident that meets the criteria of subdivision 3 of this subsection;

g. Whether a facility has other information the director finds relevant; and

h. Any other information the director finds relevant.

5. The entry of an individual on the mandatory exclusion list shall include sufficient information to identify the excluded individual.

6. The mandatory exclusion list shall be subject to disclosure under the Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia).

7. Inclusion on mandatory exclusion list

a. Upon receipt of information that reasonably indicates that an individual meets any criteria under subdivision 3 of this subsection, and after making any considerations

described in subdivision 3 of this subsection, the director shall:

(1) Evaluate the information;

(2) Ensure that the information sufficiently identifies the individual; and

(3) Decide whether to place the individual on the mandatory exclusion list.

b. Prior to placing an individual on the mandatory exclusion list, the director or the director's designee may provide a facility with:

(1) Information used to identify an individual who may be excluded;

(2) The factual basis for placing an individual on the mandatory exclusion list; and

(3) An opportunity to provide the director with information identified in subdivision 3 of this subsection.

c. If the director decides to place an individual on the mandatory exclusion list, department staff shall deliver to the individual via U.S. Postal Service mail, a written notice explaining:

(1) The factual basis for placing the individual on the mandatory exclusion list;

(2) The availability of a reconsideration meeting with the director or the director's designee;

(3) The requirements for submitting a request for a reconsideration meeting;

(4) That if a timely request for a reconsideration meeting is not submitted, the individual's name shall be:

(a) Placed on a mandatory exclusion list;

(b) Distributed to all Virginia facility operators; and

(c) Made publicly available; and

(5) That the excluded individual shall be:

(a) Prohibited from entering any facility and from playing any casino game in the Commonwealth of Virginia;

(b) Subject to criminal charges for trespassing or any other appropriate criminal charge; and

(c) Required to redeem or liquidate an unredeemed item with monetary value that the individual has received since being placed on the mandatory exclusion list and surrender those redeemed or liquidated sums to the Problem Gambling Treatment and Support Fund established under § 37.2-314.2 of the Code of Virginia.

8. Reconsideration meeting.

a. An individual may submit to the director a written request for a reconsideration meeting within 15 days of the date of the individual's receipt of the notice described in subdivision 7 of this subsection.

b. If an individual fails to timely submit a request for a reconsideration meeting, the individual shall be placed on the mandatory exclusion list.

c. A reconsideration meeting may be held by the director or the director's designee.

d. During a reconsideration meeting, an individual may:

(1) Be represented by counsel; and

(2) Present evidence as to why the individual does not meet the criteria for mandatory exclusion.

e. The director or the director's designee shall deliver to the individual via U.S. Postal Service mail, a written notice of the decision following the reconsideration meeting.

f. An individual dissatisfied with the result of a reconsideration meeting may submit a written request to the board for an appeal hearing.

g. The request for an appeal hearing shall:

(1) Be submitted within 15 days of the date of the individual's receipt of the written notice of the decision following the reconsideration meeting; and

(2) Describe the individual's legal and factual bases for disagreeing with placement on the mandatory exclusion list.

h. If an individual fails to timely submit a written request for an appeal hearing, the individual shall be placed on the mandatory exclusion list.

i. Upon receipt of a timely written request for an appeal hearing, the board shall provide the individual with a notice for the appeal hearing.

9. Appeal hearing.

a. If after an appeal hearing the board decides that the excluded individual does not meet any criteria under subdivision 3 of this subsection, the individual's name may not be placed on the mandatory exclusion list.

b. If after an appeal hearing, the board decides that the excluded individual meets any criteria under subdivision 3 of this subsection:

(1) The individual's name shall remain on the mandatory exclusion list;

(2) The department shall notify all facility operators of the individual's addition to the mandatory exclusion list;

(3) The individual may seek judicial review of the board's decision; and

(4) The individual may request to be removed from the mandatory exclusion list only as provided in subdivision 10.

10. Removal from mandatory exclusion list

a. After an excluded individual has been on the mandatory exclusion list for at least five years, the individual may request removal from the mandatory exclusion list.

b. An excluded individual's request for removal shall be submitted to the director in writing and shall include a detailed statement about why there is:

(1) Good cause for removal of the individual from the list; and

(2) A material change in the individual's circumstances since the individual's name was placed on the list.

c. The director or the director's designee shall investigate the request and make a recommendation to the department whether to grant or deny the request.

d. If the director or the director's designee recommends removing the individual from the list, the department may approve the recommendation without a hearing, and department staff shall:

(1) Remove the individual from the mandatory exclusion list;

(2) Deliver to the individual via U.S. Postal Service mail a notice of removal from the mandatory exclusion list; and

(3) Notify all facility operators of the individual's removal from the mandatory exclusion list.

e. If the director or the director's designee recommends continued inclusion on the mandatory exclusion list, the excluded individual may submit to the board a written request for an appeal hearing.

11. Appeal hearing.

a. The request for an appeal hearing shall:

(1) Be submitted within 15 days of the date of the individual's receipt of the written notice of the recommendation of the director or the director's designee; and

(2) Describe the individual's legal and factual bases for disagreeing with the recommendation.

b. If an individual fails to timely submit a written request for an appeal hearing, the individual shall remain on the mandatory exclusion list.

c. Upon receipt of a timely written request for an appeal hearing, the director shall provide the individual with notice for a hearing.

12. If after a hearing the board denies the individual's request for removal, the board shall deliver to the individual via U.S. Postal Service mail a notice that the:

a. Request was denied; and

b. Individual shall remain on the mandatory exclusion list.

13. Separate from the individual's ability to request removal from the mandatory exclusion list, the director shall periodically review the mandatory exclusion list and may consider the following in order to determine if an individual should be removed:

a. Whether the individual is living;

b. Whether there are changed circumstances; or

c. Any other relevant information.

14. Judicial review. The board's decision under subdivisions 9 and 11 of this subsection may be subject to judicial review.

L. Enforcement. A facility operator may not:

1. Knowingly fail to exclude or eject from the facility premises an excluded individual;

2. Fail to notify the department if an excluded individual is excluded or ejected from the facility;

3. Permit an intoxicated individual or individual younger than 21 years of age to:

a. Play a casino game; or

b. Be in areas of the facility where casino games are located;

4. Knowingly allow the following individuals to collect a jackpot:

a. An excluded individual; or

b. An individual younger than 21 years of age; or

5. Fail to obtain any unredeemed items and prizes in the possession of an excluded individual and transfer them to the Problem Gambling Treatment and Support Fund established under § 37.2-314.2 of the Code of Virginia.

M. Facility exclusion plan.

1. A facility operator shall establish a plan for identifying and:

a. Excluding or ejecting from a facility:

(1) Excluded individuals; and

(2) Individuals who may be eligible for placement on the mandatory exclusion list; and

b. Ensuring that intoxicated individuals and individuals younger than 21 years of age are not allowed:

(1) To play casino games; and

(2) In areas of the facility where casino games are located.

2. The plan required under subdivision 1 of this subsection shall include at least the following elements:

a. Goals;

b. Procedures and deadlines for implementation;

c. Identification of facility personnel responsible for implementation;

d. Responsibilities of facility personnel identified as responsible for implementation;

e. Training for facility personnel on the requirements of this chapter;

f. Regular monitoring of the mandatory exclusion list;

g. Prompt reports to the department about the presence on facility premises of an individual who:

(1) Is included on the mandatory exclusion list; and

(2) Is required to be prevented from playing casino games;

h. Prompt reports to the department about an individual who is permanently excluded from the facility;

i. The facility's response to the discovery of an individual who is on the mandatory exclusion list on facility property, which may include pursuing criminal charges against the individual; and

j. Any other element required by the department.

3. A facility operator shall submit to the department for its approval:

a. The exclusion plan required under subdivision 1 of this subsection at least 60 days before operations are to commence;

b. Any amendments to a facility's exclusion plan prior to implementation; and

c. An annual report describing the operation of the facility's exclusion plan.

N. Collection of taxes, fees, and civil penalties.

1. A tax on the adjusted gross receipts of each facility operator received from games authorized under this chapter other than for sports betting shall be imposed as required by § 58.1-4124 of the Code of Virginia.

2. A tax on adjusted gross revenue of each facility received from sports betting shall be imposed as required by § 58.1-4037 of the Code of Virginia.

3. The department shall send to facility operators an invoice for slot machine adjusted gross receipts on the first workday of each month, where "workday" means when Commonwealth of Virginia government offices are open for business.

4. A facility operator shall certify its adjusted gross receipts from gaming sources other than slot machines and submit the certification to the department on a monthly basis.

5. The taxes imposed on a facility operator for adjusted gross receipts as described in this subsection shall be paid by wire transfer to the department by a facility operator no later than the fifth day of each month for the month preceding when the adjusted gross receipts were received and shall be accompanied by any additional forms and returns required by the department, including the certification required by subdivision 3 of this subsection.

6. Funds received from an applicant, licensee, or permit holder for taxes, fees, or civil penalties shall be paid to the appropriate fund as established by the Code of Virginia.

7. For a fee or civil penalty:

a. The department shall issue an invoice or other order to pay; and

b. The applicant, licensee, or permit holder shall remit payment to the department within 30 days after the date of the invoice or order to pay by wire transfer or other method specified by the department.

8. The department may suspend or revoke a license or permit for willful failure to submit payments in full within the specified time.

9. The department may recover from an applicant or licensee whose payment of taxes, fees, or penalties is overdue:

a. The unpaid amount of the taxes, fees, or penalties;

b. Revenues lost to the Commonwealth as the result of the nonpayment;

c. Attorney fees; and

d. Any other penalty, interest, cost, and expense allowable by law.

10. The failure of a licensee or permit holder to timely pay a tax, fee, or penalty is a violation of an order of the department.

11. The department's election to seek recovery under subdivision 9 of this subsection does not preclude the department or the Commonwealth from enforcing other rights, or seeking other remedies, for the same failure to pay.

11VAC5-90-110. Casino gaming facility internal control standards.

A. Accounting records.

1. A facility operator shall maintain complete, accurate, and legible records of all transactions pertaining to the revenues and expenses of the facility.

2. General ledger records shall be maintained on a double entry system of accounting with transactions recorded on a basis consistent with generally accepted accounting principles in the United States.

3. Subsidiary ledgers and records supporting general ledger records shall be prepared in accordance with generally accepted accounting principles in the United States.

4. Subsidiary ledgers and records shall include, at a minimum, documents that:

a. Support the financial statements and all transactions impacting the financial statements including contracts or agreements with manufacturers, contractors, and management companies;

b. Pertain to proceeds including generation of, accounting for, and transmission into the Gaming Proceeds Fund (§ 58.1-4125 of the Code of Virginia);

c. Identify for each casino game on a week-to-date, month-to-date, and year-to-date basis, the:

(1) Handle;

(2) Payout;

(3) Win amount;

(4) Win percentage; and

(5) Average payout percentage;

d. Identify all costs and expenses associated with the operation of a facility;

e. Are prepared in compliance with the internal controls approved by the department under this chapter; and

f. Relate to:

(1) Loans and other amounts payable by a facility operator;

(2) Player disputes including player complaint forms filed with the department under this section;

(3) Negotiable instruments accepted, deposited, returned as uncollected or ultimately written-off by a facility operator under this chapter; and

(4) Investments in property and equipment for the benefit of a facility.

B. Forms and documents.

1. A form or document required by this chapter, including stored data, shall have:

a. All information placed on the form or document recorded in ink or another permanent form; and

b. The title of the form or document and the name of the facility imprinted or preprinted on it.

2. If under this section multiple copies are required of a form or document, all copies shall have the name of the recipient receiving the copy preprinted on the bottom of the copy in order to differentiate between the copies.

3. If under this section a form or document is required to be accounted for by series number or copies of a form or document are required to be compared for agreement, the responsible department shall report exceptions in writing to the facility's internal audit department not later than two days after identification of the exception.

4. A facility operator may prepare more copies of a form or document than required by this section.

C. Content of internal controls

1. A facility operator shall develop a written description of its administrative and accounting procedures, including the system of internal controls over casino gaming operations.

2. A facility operator's internal controls are subject to review and approval by the department.

3. Internal controls shall, at a minimum, include:

a. Administrative controls and recordkeeping that document the authorization of transactions;

b. Accounting controls that provide reasonable assurance that:

(1) Transactions or financial events that occur in connection with the operation of a casino game are:

(a) Executed in accordance with the facility operator's authorization protocols;

(b) Recorded to permit preparation of financial statements in conformance with generally accepted accounting principles in the United States and the requirements of this chapter; and

(c) Recorded to permit proper and timely reporting and calculation of proceeds and to maintain accountability for assets;

(2) Access to assets is permitted only in accordance with the facility operator's authorization protocols; and

(3) The recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with regard to a discrepancy;

c. Procedures and controls for ensuring:

(1) That a slot machine accurately and timely communicates all required activities and financial details to the:

(a) Department's central monitor and control system; and

(b) Casino management system;

(2) That all functions, duties, and responsibilities are segregated and performed in accordance with sound financial practices by qualified personnel; and

(3) Through the use of a surveillance and a security department, that the facility is secure at all times during normal operation and during any emergency due to malfunctioning equipment, loss of power, natural disaster, or any other cause;

(4) Access controls that address, at a minimum, the:

(a) Content of, and administrative responsibility over, the manual or computerized access control matrix governing employee access to restricted areas;

(b) Issuance of a temporary access credential; and

(c) Comprehensive key controls;

(5) A record retention policy in accordance with this chapter;

(6) Procedures and controls over the movement of cash and the count room;

(7) Procedures and standards for conducting internal audits; and

(8) Other procedures and controls the department may require to be included in a facility operator's internal controls.

4. A facility operator shall make available a current edition of its department-approved internal controls, in hard copy or through secure computer access, to:

a. All mandatory departments required under this section; and

b. The department's onsite office.

5. A facility operator shall maintain, in hard copy or electronic form, all superseded internal controls together with the written representations required under this section for at least five years after the date the internal controls were superseded.

D. Review of internal controls.

1. At least 60 days before casino gaming operations are to commence, a facility operator shall submit its internal controls to the department for review and written approval.

2. The internal controls shall be accompanied by:

a. A certification by the facility operator's [~~chief executive officer~~ facility general manager] or chief legal officer that, to the best of their knowledge, the submitted internal controls conform to the requirements of the casino gaming law, this chapter, and any other law, regulation, or condition of the department related to casino gaming;

b. A certification by the facility operator's director of finance that the submitted internal controls:

(1) Establish a consistent overall system of internal controls;

(2) Provide reasonable assurance that financial reporting conforms to generally accepted accounting principles in the United States; and

(3) Conform to the requirements of the casino gaming law, this chapter, and any other law, regulation, or condition of the department related to casino gaming; and

c. An opinion letter by an independent certified public accountant expressing an opinion as to:

(1) The effectiveness of the design of the submitted system of internal controls over financial reporting;

(2) Whether the submitted system of internal controls conforms to the requirements of the casino gaming law, this chapter, and any other law, regulation, or condition of the department related to casino gaming; and

(3) If applicable, whether a deviation from the requirements of the casino gaming law, this chapter, or any other law, regulation, or condition of the department related to casino gaming identified by the independent certified public accountant in the course of its review of the submitted system of internal controls is material.

3. A facility operator may not commence operations until its internal controls are approved in writing by the director.

4. If the director determines that a submitted internal control is deficient, the:

a. Department shall provide the facility operator with written notice of the deficiency; and

b. Facility operator shall revise the internal control as appropriate and resubmit to the director for review.

5. A facility operator may not implement a change or amendment in its approved internal controls without the prior written approval of the director.

6. A facility operator's initial internal controls submission and a change or amendment to its approved internal controls shall be reviewed and approved in accordance with a process and timeframe developed and implemented by the department.

7. The process developed by the department under subdivision 6 of this subsection shall, at a minimum, require the facility operator to:

a. Submit a redlined copy of any section of the approved internal controls to be changed or amended with added text underlined and deleted text lined out;

b. Document on the redlined copy the date the director approved the section to be changed or amended and the date the revision was submitted to the director for review;

c. Submit a narrative explaining the reason for the change or amendment that includes the facility operator's target date for implementation;

d. Submit the written representations required in subdivision 2 of this subsection with regard to the proposed change or amendment;

e. Maintain a log of all changes or amendments in approved internal controls that includes the initial approval date and the effective date of any change or amendment approved by the director; and

f. Mark each page of approved internal controls with the date on which it was approved by the director.

E. Standard financial and statistical reports.

1. The department may require a facility operator to submit daily, weekly, monthly, quarterly, and annual reports of financial and statistical data.

2. Reports required under this chapter shall be in a form and submitted in accordance with a timeframe specified by the department.

3. Unless otherwise specified by the department, reports to the department shall be signed by the:

a. [~~Chief executive officer~~ Facility general manager] if the facility operator is a corporation;

b. General partner if the facility operator is a partnership;

c. Manager if the facility operator is a limited liability company;

d. [~~Chief executive officer~~ Facility general manager] or functional equivalent if the facility operator is any other form of business association; or

e. Owner if the facility operator is a sole proprietorship.

4. A facility operator shall submit a report to the department on the due date specified by the department unless an extension has been approved in writing by the director.

5. The department, on written notice to a facility operator, may require an interim report to be submitted in a form and in accordance with a timeframe specified by the director.

F. Annual audit and other regulatory reports.

1. A facility operator shall cause its annual financial statements to be audited in accordance with generally accepted auditing standards by an independent certified public accountant.

2. The annual financial statements shall be prepared on a comparative basis for the current and prior fiscal year and present financial position and results of operations in conformity with generally accepted accounting principles in the United States.

3. The audited financial statements shall include a footnote reconciling and explaining any difference between the financial statements included in any report submitted to the department under subsection E of this section and the audited financial statements.

4. A facility operator shall with regard to adjustments resulting from the annual audit:

a. Disclose to the department all adjustments whether or not recorded in the accounting records; and

b. Record the adjustment in the accounting records of the year to which the adjustment relates.

5. No later than 90 days after the end of its fiscal year, a facility operator shall submit to the department:

a. A copy of its audited financial statements; and

b. Any management letter or report prepared with regard to the financial statements by its independent certified public accountant.

6. A facility operator shall require the independent certified public accountant auditing its financial statements or other qualified entity approved by the department to render the following additional reports:

a. A report identifying:

(1) Material weaknesses or significant deficiencies in the facility operator's department-approved internal controls noted in the course of the examination of the financial statements; and

(2) Recommendations as to how to eliminate each material weakness or significant deficiency identified; and

b. A report assessing the adequacy and effectiveness of the facility operator's information technology security controls and system configurations with recommendations as to how to eliminate each material weakness or significant deficiency identified.

7. A facility operator shall prepare a written response to the reports required by subdivision 6 of this subsection that includes details as to any corrective action taken.

8. No later than 120 days after the end of its fiscal year, a facility operator shall submit to the department a copy of:

a. The reports required under subdivision 6 of this subsection;

b. The response required under subdivision 7 of this subsection; and

c. Any other report on internal controls or other matters relative to its accounting or operating procedures rendered by its independent certified public accountant.

9. If a facility operator or any of its affiliates are publicly held, the facility operator shall submit to the department a copy of:

a. Any report required to be filed with the Securities and Exchange Department.

b. Any other report required to be filed with a domestic or foreign securities regulatory agency.

10. A report required to be filed under subdivision 9 of this subsection shall be submitted to the department no later than 10 days after the date of filing with the applicable agency.

11. A facility operator shall submit a written report to the department if an independent certified public accountant who is engaged as the principal accountant to audit its financial statements:

a. Resigns;

b. Is dismissed as the facility operator's principal accountant; or

c. Is replaced by another independent certified public accountant as principal accountant.

12. A report required to be filed under subdivision 11 of this subsection shall include:

a. The date of the resignation, dismissal, or new engagement;

b. Whether in connection with the audits of the two most recent years preceding a resignation, dismissal, or new engagement there were any disagreements, resolved or unresolved, with the former accountant on:

(1) Accounting principles or practices;

(2) Financial statement disclosure; or

(3) Auditing scope or procedure;

c. The nature of any disagreement disclosed in subdivision 12 b of this subsection;

d. Whether the principal accountant's report on the financial statements for either of the past two years contained an adverse opinion or disclaimer of opinion or was qualified;

e. The nature of any adverse opinion, disclaimer of opinion, or qualification; and

f. A letter from the former principal accountant addressed to the director stating whether the principal accountant concurs with the statements made by the facility operator in the report to the department submitted under this subsection.

13. A report required to be filed under subdivision 11 of this subsection shall be submitted to the department no later than 10 days after the end of the month in which the resignation, dismissal, or new engagement occurred.

14. No later than seven days after the date of filing with the applicable agency, a facility operator shall file with the department a copy of each Suspicious Activity Report-Casino filed under 31 CFR § 103.21.

15. A facility operator or a director, officer, employee, or agent of a facility operator who reports suspicious activity under 31 CFR § 103.21 may not notify an individual involved in the suspicious activity that the suspicious activity has been reported.

16. No later than seven days after the date of filing with the applicable agency, a facility operator shall file with the department a copy of each Currency Transaction Report by Casino filed under 31 CFR § 103.22.

17. At least 30 days before casino gaming operations are to commence, a facility operator shall submit to the department a copy of its compliance program required under 31 CFR § 103.64.

18. On or before its effective date, a facility operator shall submit to the department any change or amendment to its compliance program required under 31 CFR § 103.64.

G. Record retention.

1. All original books and records shall be:

a. Prepared and maintained in a complete, accurate, and legible form;

b. Stored in a format that ensures readability, regardless of whether the technology or software that created or maintains it has become obsolete;

c. Retained in a secure location equipped with a fire notification system:

(1) At the facility; or

(2) An off-site location approved by the department for the express purpose of document storage;

d. Kept immediately available for inspection by the department during all hours of operation;

e. Organized and indexed in a manner designed to provide immediate accessibility to the department; and

f. Destroyed only after expiration of the minimum retention period required under this section.

2. The department may, on submission of a written request or alternate record retention schedule by a facility operator, authorize destruction prior to the expiration of the minimum retention period required by this chapter.

3. Unless a request for destruction or alternate record retention schedule is submitted in writing and approved in writing by the department, a facility operator shall retain indefinitely original books and records documenting:

a. Ownership of the facility;

b. Internally initiated investigations and due diligence;

c. Personnel matters;

d. Signature cards of current employees; and

e. Destruction of documents including:

(1) The identity of the document;

(2) Period of retention; and

(3) Date of destruction.

4. Unless a request for destruction or alternate record retention schedule is submitted in writing and approved in writing by the department, a facility operator shall retain for a minimum of five years all original books and records not:

a. Identified for indefinite retention under subdivision 3 of this subsection; or

b Subject to an exemption under subdivision 5 of this subsection.

5. Exceptions. The following exceptions apply to the retention period in subdivision 3 of this subsection:

a. A minimum retention period of four years shall apply to documentation pertaining to cashiers' cage transactions;

b. A minimum retention period of three years shall apply to:

(1) Signature cards of terminated employees;

(2) Insurance records relating to claims by players;

(3) Surveillance and security department:

(a) Employee duty logs;

(b) Visitor logs;

(c) Incident logs;

(d) Recording logs; and

(e) Equipment malfunction reports; and

(4) Documentation pertaining to gaming tickets or promotional play instruments reported to the department as possibly counterfeit, altered, or tampered with;

c. A minimum retention period of 30 days shall apply to:

(1) Canceled promotional play instruments for which all reconciliations required by the facility operator's approved internal controls have been conducted and resolved;

(2) Voided gaming tickets; and

(3) Gaming tickets redeemed at a location other than a casino gaming machine or ticket redemption unit; and

d. A minimum retention period of seven days shall apply to gaming tickets redeemed at a casino gaming machine or ticket redemption unit.

6. On submission of a written request by the facility operator, the department may approve a location outside the facility to store original books and records.

7. A facility operator requesting to store original books and records outside the facility shall submit to the department:

a. A description of the proposed location, including details with regard to security and fire notification systems;

b. Details with regard to the ownership of the proposed storage facility; and

c. Procedures for department access to original books and records retained at the proposed location.

8. A facility operator may not store books and records outside the facility without the prior written approval of the director.

9. On submission of a written request by a facility operator, the department may approve a microfilm, microfiche, or other suitable media system for the copying and storage of original books and records.

10 A facility operator submitting a system for the copying and storage of original books and records shall demonstrate to the satisfaction of the director that the:

a. Processing, preservation, and maintenance methods to be utilized will make books and records readily available for review and reproduction;

b. Inspection and quality control methods to be utilized will ensure that when books and records are viewed or reproduced they will exhibit a high degree of legibility and readability;

c. Equipment necessary to readily locate, read, and reproduce books and records is available to the department at the facility or approved off-site storage location; and

d Detailed index of all microfilmed, microfiched, or other stored data maintained and arranged to facilitate the immediate location of particular books and records is available to the department at the facility or approved off-site storage location.

11. A facility operator may not utilize a microfilm, microfiche, or other suitable media system for the copying and storage of original books and records without the prior written approval of the department.

12. A facility operator may utilize the services of a contractor for the destruction of books and records permitted to be destroyed under this section.

13. Nothing in this section shall be construed as relieving a facility operator of any obligation to prepare or maintain books and records required by any other federal, state, or local governmental entity.

H. Table of organization.

1. For the purposes of this subsection, the title used to describe a department head is intended to indicate responsibility for the functions of the enumerated department and does not obligate the facility operator to use that particular title.

2. Subject to the requirements of this subsection, a facility operator shall tailor its table of organization to meet its needs and policies.

3. At least 30 days before casino game operations begin, a facility operator shall submit to the department for review and written approval a table of organization depicting all direct and indirect reporting lines for:

a. The [~~chief executive officer~~ facility general manager] required by this subsection;

b. Mandatory departments required by this subsection; and

c. The cashiers' cage manager required by this subsection.

4. A facility operator may not commence operations until the table of organization submitted under subsection is approved in writing by the director.

5. A facility operator's table of organization shall include:

a. A system of personnel and chain of command that permits management and supervisory personnel to be held accountable for actions or omissions within their areas of responsibility;

b. The segregation of incompatible functions, duties, and responsibilities so that no individual is in a position to both:

(1) Commit an error or to perpetrate a fraud; and

(2) Conceal the error or fraud in the normal course of the individual's duties;

c. All functions, duties, and responsibilities of qualified personnel;

d. Areas of responsibility that are not so extensive as to be impractical for one individual to monitor;

e. A [~~chief executive officer who is:~~

~~(1) Based for employment purposes at the facility;~~

~~(2) The holder of a supplier permit as key manager; and~~

~~(3) Ultimately responsible for the daily conduct of all operations at the~~] facility [general manager]; and

f. The following mandatory departments and supervisors:

(1) A surveillance department supervised by a director of surveillance who is:

(a) Based for employment purposes at the facility;

(b) Subject to the reporting requirements of this section;

(c) The holder of a supplier permit as a key manager; and

(d) Responsible for the surveillance of all aspects of casino game operations;

(2) An internal audit department supervised by a director of internal audit who is:

(a) Responsible for managing the internal audit function and internal audit employees based at the facility;

(b) Subject to the reporting requirements of section;

(c) The holder of a supplier permit as a key manager; and

(d) Responsible for assessing compliance with approved internal controls, applicable laws and regulations, the reliability of financial reporting, deterring and investigating fraud, and the safeguarding of assets;

(3) An information technology department supervised by a director of information technology who is:

(a) Based for employment purposes at the facility;

(b) The holder of a supplier permit as a key manager; and

(c) Responsible for the quality, reliability, accuracy, and security of all casino and casino management systems and associated equipment and software utilized by the facility operator regardless of whether the data, software, or systems are located in or outside the facility;

(4) A security department supervised by a director of security who is:

(a) Based for employment purposes at the facility;

(b) The holder of a supplier permit as a key manager; and

(c) Responsible for the overall security of the facility;

(5) An accounting department supervised by a director of finance who is:

(a) Based for employment purposes at the facility;

(b) The holder of a supplier permit as a key manager; and

(c) Responsible for all accounting and finance functions, including the control and supervision of cashiers' cage, satellite cages, and count room; and

(6) A gaming operations department supervised by a director of gaming operations who is:

(a) Based for employment purposes at the facility;

(b) The holder of a supplier permit as a key manager; and

(c) Responsible for the operation and conduct of casino games.

6. Nothing in this section shall preclude a facility operator from establishing a casino games department supervised by a director of casino gaming machine operations and a director of table games operations.

7. The director of surveillance and the director of internal audit required by this subsection shall be independent of the [~~chief executive officer~~ facility general manager] regarding matters of policy, purpose, responsibility, and authority and shall report to an:

a. Individual based for employment purposes at the facility with no incompatible functions; or

b. Audit committee of:

(1) The facility operator; or

(2) A department-authorized licensed affiliate of the facility operator.

8. The individual or audit committee to whom the director of surveillance and the director of internal audit report under subdivision 7 of this subsection shall also control the hiring, termination, and salary of those directors.

9. The director of surveillance and the director of internal audit may report to the [~~chief executive officer~~ facility general manager] with regard to daily operations.

10. Mandatory departments and the supervisors over them shall cooperate with, yet perform independently of, all other mandatory departments and supervisory positions.

11. A facility operator may designate more than one individual to serve jointly as the director of a mandatory department required by this section.

12. A joint director of a mandatory department under subdivision 11 of this subsection shall be:

a. Based for employment purposes at the facility; and

b. Individually and jointly accountable and responsible for the operation of the department.

13. A department that is not mandatory may operate under, or in conjunction with, a mandatory department where the table of organization is consistent with the requirements of this section.

14. A facility operator's cashiers' cage manager shall hold a supplier's permit as a key manager.

15. Unless another key manager required by this section is present at the facility, on any shift for which the cashiers' cage manager is not present in the facility, the cashiers' cage shift manager responsible for the cashiers' cage shall hold a supplier's permit as a key manager.

16. A facility operator may not implement a change in the table of organization approved by the department without the prior written approval of the department.

17. A facility operator shall ensure that an individual employed at the facility is trained in the policies, procedures, and internal controls relevant to the individual's function.

18. If there is a vacancy in the [~~chief executive officer~~ facility general manager] position or any mandatory department director position required by this subsection, the following shall apply:

a. No later than five days after the date of a vacancy, a facility operator shall notify the department in writing of:

(1) The vacant position;

(2) The date on which the position will become or became vacant; and

(3) The date on which the facility operator anticipates that the vacancy will be filled on a permanent basis;

b. No later than 30 days after the date of a vacancy, a facility operator shall fill the vacant position on a temporary basis;

c. No later than 120 days after the original date of the vacancy, a facility operator shall fill the vacant position on a permanent basis; and

d. No later than five days after filling a vacancy, a facility operator shall notify the department in writing of:

(1) The vacant position filled;

(2) The name of the individual designated to fill the position;

(3) The date that the vacancy was filled; and

(4) Whether the vacancy has been filled on a temporary or permanent basis.

I. Surveillance system design standards.

1. A facility operator shall install in its facility a surveillance system that complies with the requirements of this subsection and is reviewed and approved by the department.

2. A facility operator's surveillance system shall include:

a. Light sensitive cameras enabled by:

(1) Lenses of sufficient magnification to read a casino gaming machine's reel strip and credit meter;

(2) Lighting that is continuous and of sufficient quality to produce clear video recordings and still pictures; and

(3) 360-degree pan, tilt, and zoom capability, without camera stops, configured to clandestinely monitor and record:

(a) Play and transactions conducted at casino games;

(b) Transactions conducted in the cashiers' cage and any satellite cage, including the face of each individual transacting business with a cashier;

(c) Transactions conducted at ticket redemption units, automated jackpot payout machines, and automated teller machines;

(d) Activity in the count room;

(e) Movement of cash and cash storage boxes within the facility;

(f) Entrances and exits to the facility and the gaming floor;

(g) Activities in all other restricted areas; and

(h) Other areas and events designated by the director;

b. A monitor room located in the facility:

(1) Staffed by employees of the facility operator's surveillance department 24 hours per day; and

(2) Equipped with:

(a) A communication system capable of monitoring all security department communications;

(b) Connections, direct or through a documented communication protocol with the security department, to all facility alarm systems;

(c) A surveillance failure notification system that provides an audible, as well as a visual, notification of any failure in the surveillance system or the digital video recording media storage system;

(d) An emergency power system, tested by the facility operator in the presence of the department at least once a year, that can be used to operate the surveillance system in the event of a power failure;

(e) Computer terminals permitting event notification to, and read only access by authorized surveillance department employees to, the casino management system;

(f) An updated photo library, consisting of photographs that are no more than five years old, of all current employees of the facility;

(g) A copy of the facility operator's gaming floor plan;

(h) A copy of the procedures addressing the evacuation of the facility in the event of fire or other emergency; and

(i) Copies of the surveillance system contingency plans;

c. Digital video recording capability equipped to:

(1) Superimpose the date and time on all monitoring and recording;

(2) Identify and locate, through the use of a meter, counter, or other device or method, a particular event that was recorded;

(3) Identify on video recording disks or other storage media the type of media player and software prerequisite to viewing the digital images; and

(4) Be authenticated through use of an embedded video verification encryption code or watermark;

d. Audio recording capability in the count room that is installed and disclosed to employees of the facility; and

e. An access system that:

(1) Controls:

(a) Physical and logical access to the surveillance system; and

(b) Physical access to the surveillance monitor room; and

(2) Restricts access to the security administration capabilities of the system.

3. A facility operator shall configure its surveillance system to record all areas and transactions required by subdivision 2 a (3) of this subsection to no less than the minimum specifications required by the department.

4. With the approval of the department, a facility operator may configure its surveillance system to record activity in areas of the facility not covered by subdivision 2 a (3) of this subsection at lower specifications than that required by subdivision 3 of this subsection.

5. Except as provided in subdivision 6 of this subsection, a facility operator shall retain surveillance recordings:

a. For a minimum of 14 days for transactions or event in the areas covered by subdivision 3 of this subsection.

b. For a minimum of seven days for transactions or events in the areas covered by subdivision 4 of this subsection; and

6. Upon the request of the department or a law enforcement agency that has proper jurisdiction over the facility, a recording shall be retained and stored in accordance with the directives of the department or law enforcement agency pertaining to that recording.

7. Except as provided in this subsection, the surveillance system shall be under the exclusive control of the facility operator's surveillance department.

8. A facility operator shall provide the department with timely and unfettered access to its surveillance monitor room, surveillance system, and all transmissions.

9. A facility operator shall timely comply with a request from the department to:

a. Use, as necessary, any monitor room in the facility;

b. Display on the monitors in its monitor room or in the department's onsite monitor room any event capable of being captured by the surveillance system;

c. Relinquish control of a camera or monitor;

d. Discontinue monitoring a particular camera or recording activity captured by it;

e. Make a video recording or photograph of any event capable of being captured by the surveillance system; and

f. Restrict or deny access to a recording or photograph.

10. A surveillance system may not be remotely accessed from a location outside the surveillance monitor room without the prior written approval of the department.

11. An entrance to a surveillance monitor room may not be visible from the gaming floor.

J. Surveillance department operating procedures

1. At least 60 days before casino gaming operations commence, a facility operator shall submit to the department for review and written approval:

a. A surveillance system meeting the requirements of subsection J of this section, at a minimum, details pertaining to:

(1) Camera configuration inside and outside the facility;

(2) Monitor room configuration;

(3) Video recording format and configuration specifications;

(4) Authentication of digital recordings, including department access to the system's video verification encryption code or watermark;

(5) Audio recording format; and

(6) System access controls; and

b. Surveillance department operating procedures conforming to this section.

2. A facility operator may not commence operations until its surveillance system and surveillance department operating procedures are approved in writing by the department.

3. A facility operator's surveillance department operating procedures shall, at a minimum, require:

a. Coverage of all areas and transactions enumerated in subsection J of this section;

b. Contingency plans addressing:

(1) Full and partial failure of the surveillance system including:

(a) A contact list with telephone numbers for individuals required to be notified in the event of a failure; and

(b) Facility closure protocols; and

(2) Planned shutdown of the surveillance system;

c. A surveillance incident log:

(1) Maintained by monitor room employees in:

(a) A book with bound numbered pages that cannot be readily removed; or

(b) An electronic format equipped with software [~~that prevents~~ designed to provide evidentiary and leadership access controls on] modification of an entry after it has been [~~initially~~] entered into the system; and

(2) Documenting the scheduled coverage in subdivision 3 of this subsection and all other nonroutine surveillance activity, including:

(a) Date and time surveillance is commenced;

(b) Name and department identification license or permit number of the individual initiating, performing, or supervising the surveillance;

(c) Reason for the surveillance;

(d) Whether the suspicious activity involves an alleged regulatory violation or criminal activity;

(e) Name, if known, alias, or description of an individual being monitored;

(f) Description of the activity in which the individual being monitored is engaged;

(g) Reading on a meter, counter, or device that identifies the point on the video recording at which the event was recorded;

(h) Time at which a video recording is commenced and terminated if different than when surveillance is commenced or terminated;

(i) Date and time surveillance is terminated;

(j) Summary of the results of the surveillance; and

(k) Description of the time, date, and cause of any equipment or camera malfunction that occurred during the conduct of surveillance;

d. A surveillance room entry log:

(1) To be signed by an individual entering the surveillance monitor room who is not a surveillance department employee assigned to the monitor room's work shift at the time of entry;

(2) Maintained by monitor room employees in:

(a) A book with bound numbered pages that cannot be readily removed; or

(b) An electronic format equipped with software that prevents modification of an entry after it has been initially entered into the system; and

(3) Documenting the:

(a) Date and time of entering the monitor room;

(b) Entering individual's name and department or affiliation;

(c) Reason for entering the monitor room;

(d) Name of the individual authorizing the individual's entry into the monitor room; and

(e) Date and time of exiting the monitor room;

e. That surveillance monitor room employees notify:

(1) Security department supervisory personnel within five minutes of an incident of equipment failure affecting coverage of the facility; and

(2) The department within 30 minutes of an incident of equipment failure affecting coverage of the facility citing:

(a) Date and time;

(b) Cause of the malfunction; and

(c) Time the facility operator's security department was notified of the malfunction;

f. That the facility operator confirms in writing a notice given verbally to the department under subdivision 3 e of this subsection; and

g. That, on a daily basis, the facility operator synchronizes the date and time on the surveillance system to the date and time on the central monitor and control system and the casino management system.

4. A facility operator may not implement a change or amendment in its surveillance system or surveillance department operating procedures approved by the department without the prior written approval of the department.

5. Surveillance department employees shall be reasonably segregated and independent of all other departments at the facility.

6. A surveillance department employee may not transfer to any other department in the facility without the prior written approval of the department.

K. Surveillance department minimum staffing.

1. At least 60 days before casino gaming operations are to commence, a facility operator shall submit its surveillance department minimum staffing plan to the department for review and written approval.

2. A facility operator may not commence operations until its surveillance department minimum staffing plan is approved in writing by the department.

3. A surveillance department minimum staffing plan shall assess, on a per-shift basis, the minimum number of on duty surveillance department employees necessary to:

a. Provide adequate and effective surveillance of all activities in and outside the facility;

b. Ensure the physical safety of employees of and invitees to the facility;

c. Comply with all applicable laws, regulations, and directives of the department and director, including department-approved internal controls and operating procedures;

d. Monitor the facility to ensure that the following individuals are identified, prohibited from entering the facility, and, if necessary, immediately removed from the facility:

(1) An intoxicated individual;

(2) An individual who is mandatorily excluded; and

(3) An individual who is voluntarily excluded;

e. Monitor the gaming floor to ensure that an individual younger than 21 years of age is identified, prohibited from accessing the gaming floor, and, if necessary, immediately removed from the gaming floor; and

f. Monitor the facility to identify potential victims of human trafficking and respond appropriately.

4. A facility operator's proposed surveillance department minimum staffing plan shall consider:

a. Square footage and layout of the facility;

b. Number and configuration of casino gaming machines and other casino gaming activities;

c. Use of fixed and roving security posts;

d. Activity level on a per-shift basis and identify it as slow, normal, or peak;

e. Department supervisory needs; and

f. A limit of one employee per monitor station.

5. A facility operator may not implement a change or amendment in the surveillance department minimum staffing plan approved by the department under subdivision 2 of this subsection without the prior written approval of the department.

L. Security department operating procedures.

1. At least 60 days before casino gaming operations are to commence, a facility operator shall submit to the department for review and written approval its security department operating procedures.

2. A facility operator may not commence operations until its security department operating procedures are approved in writing by the department.

3. A facility operator's security department operating procedures shall, at a minimum, include:

a. A security zone plan for the facility, employing fixed security posts and roving security officers designed to ensure:

(1) The physical safety of employees of and invitees to the facility;

(2) The safeguarding of assets;

(3) Compliance with all applicable laws, regulations, and directives of the department, including department-approved internal controls and operating procedures;

(4) That the following individuals are identified, prohibited from entering the facility, and, if necessary, immediately removed from the [~~facility~~ gaming floor]:

(a) An intoxicated individual;

(b) An individual who is mandatorily excluded; and

(c) An individual who is voluntarily excluded;

(5) That an individual younger than 21 years of age is identified, prohibited from accessing the gaming floor, and, if necessary, immediately removed from the gaming floor; and

(6) That potential victims of human trafficking are identified and an appropriate response is made.

b. Procedures and controls addressing:

(1) Facility access controls, including:

(a) An access badge system;

(b) If utilized, specifications pertaining to a computerized access control system; and

(c) Administrative responsibility over a manual or computerized access control system;

(2) A temporary access credential;

(3) Key controls;

(4) Emergency alarm and fire command responsibilities, including communication protocols with the surveillance department;

(5) Evacuation of the facility in the event of fire or other emergency;

(6) The identification and immediate removal of an intoxicated individual, an individual younger than 21 years of age, an individual who is mandatorily excluded, and an individual who is voluntarily excluded;

(7) Player disputes; and

(8) The notice requirements of subdivision 3 d of this subsection;

c. A security department incident log:

(1) Maintained by security department employees in:

(a) A book with bound numbered pages that cannot be readily removed; or

(b) An electronic format equipped with software that prevents modification of an entry after it has been initially entered into the system; and

(2) Documenting the following:

(a) Assignment number of the incident;

(b) Date and time;

(c) Name and department identification license of the individual covering the incident;

(d) Nature of the incident; and

(e) Resolution of the incident; and

d. A requirement that a facility operator notify in the department upon detection of:

(1) An individual engaged in, attempting to engage in, or suspected of cheating, theft, embezzlement, or other illegal activities;

(2) An individual possessing a firearm, electronic control device, dangerous weapon, or other device or object prohibited under this chapter; or

(3) An individual who is:

(a) Younger than 21 years of age;

(b) Intoxicated;

(c) Mandatorily excluded;

(d) Voluntarily excluded; or

(e) A victim of human trafficking.

M. Security department minimum staffing

1. At least 60 days before casino gaming operations are to commence, a facility operator shall submit its security department minimum staffing plan to the department for review and written approval.

2. A facility operator may not commence operations until its security department minimum staffing plan is approved in writing by the department.

3. A security department minimum staffing plan shall assess, on a per-shift basis, the minimum number of on-duty security department employees necessary to:

a. Ensure the physical safety of employees of and invitees to the facility;

b. Effectively safeguard assets;

c. Comply with all applicable laws and regulations, including department-approved internal controls and operating procedures;

d. Monitor the facility to ensure that the following individuals are identified, prohibited from entering the facility, and, if necessary, immediately removed from the facility:

(1) An intoxicated individual;

(2) An individual who is mandatorily excluded; and

(3) An individual who is voluntarily excluded; and

e. Monitor the gaming floor to identify any individual younger than 21 years of age, prohibit them from accessing the gaming floor, and if necessary, immediately remove them from the gaming floor.

4. A facility operator's proposed security department minimum staffing plan shall consider the:

a. Square footage and layout of the facility;

b. Number and configuration of casino gaming activity;

c. Use of fixed and roving security posts;

d. Activity level on a per-shift basis and identify it as slow, normal, or peak; and

e. Department's supervisory needs.

5. A facility operator may not implement a change or amendment in the security department minimum staffing plan approved by the department without the prior written approval of the department.

N. Internal audit department standards.

1. At least 60 days before casino gaming operations are set to commence, a facility operator shall submit to the department for review and approval internal audit department operating standards and procedures that:

a. Meet the requirements of the casino gaming law, this chapter, and any other law, regulation, or condition of the department related to casino gaming;

b. Conform to this section; and

c. Direct that an internal audit be conducted in accordance with generally accepted auditing standards in the United States.

2. A facility operator's internal audit department operating procedures and standards shall, at a minimum, require the internal audit department to:

a. Work independently of the departments of the facility that are subject to audit;

b. Assess whether the facility's internal controls comply with applicable law and department directives;

c. Test the facility's compliance with its internal controls;

d. Timely report a deficiency in, or noncompliance with, the facility's internal controls to:

(1) The audit committee [(material deficiency only)];

(2) The [~~chief executive officer~~ facility general manager (material change only)];

(3) Management; and

(4) The department;

e. Recommend resolution for eliminating a deficiency in, or noncompliance with, the facility's internal control system;

f. Meet periodically with the audit committee or director of internal audit;

g. Perform audits of:

(1) Unless an alternate risk assessment and audit plan is submitted in writing and approved in writing by the department, all departments of the facility that are designated under subdivisions 3 and 4 of this subsection; and

(2) Any component of the facility designated by the department;

h. Prepare an audit report for each audit conducted;

i. Accurately document the audit process and results in an audit report that, at a minimum, shall include:

(1) Audit objectives;

(2) Audit procedures and scope;

(3) Findings and conclusions;

(4) A recommendation for addressing a deficiency in, or noncompliance with, the facility's internal controls;

(5) Resolution of all exceptions; and

(6) Management's response;

j. Submit audit reports to the department on a schedule specified by the department; and

k. Within 90 days of the issuance of an audit report, verify that:

(1) A deficiency or noncompliance revealed during an audit has been corrected; and

(2) An exception disclosed during an audit has been resolved.

3. The audit department shall audit at least semiannually the functions and operations of the facility's:

a. Cashiers' cage;

b. Main bank;

c. Collection of cash storage boxes;

d. Cash count;

e. Revenue audit;

f. Operations department;

g. Key control; and

h. Table game operations.

4. The audit department shall audit at least annually:

a. Responsible gaming program;

b. Security department;

c. Currency transaction reporting;

d. Suspicious activity reporting;

e. Information technology controls;

f. Accounts payable;

g. Purchasing;

h. Player tracking system; and

i. Surveillance department.

5. The internal audit department shall conduct an audit on an unannounced basis when possible.

O. Access to central monitor and control system equipment

1. Central monitor and control system equipment shall reside in an area physically segregated from other systems and equipment utilized by the facility operator and shall conform to the requirements of the department.

2. At least 10 days before casino gaming operations are to commence, the department shall issue to the facility operator a list of individuals that it has approved to have access to the central monitor and control system equipment.

3. A facility operator may not implement a change or amendment in its approved access list without the prior written approval of the department.

4. A facility operator shall develop and include in the internal controls submitted to and approved by the department under subsection E of this section procedures that address physical access to central monitor and control system equipment located in the facility.

5. Central monitor and control system equipment may be accessed by:

a. An individual on the list described in subdivision 2 of this subsection;

b. A compliance agent of the department; and

c. Department staff authorized by the director.

6. The facility operator's internal controls shall require:

a. All keys that access the segregated area where the central monitor and control system equipment resides to be maintained by representatives of the:

(1) Department; and

(2) Central monitor and control system operator; and

b. An individual requiring access to the segregated area where the central monitor and control system equipment resides who is not included on the department-approved access list maintained under subdivision 2 of this subsection to be:

(1) Authorized by the department; and

(2) At all times, escorted by a department compliance agent, or department staff authorized by the director; and

(3) Reported in the entry log maintained in accordance with subdivision 7 of this subsection.

7. The department shall maintain an entry log for the segregated area where the central monitor and control system equipment resides that is:

a. Kept inside the segregated area in a book with bound numbered pages that cannot be readily removed; and

b. Utilized by an individual entering the segregated area to record:

(1) Date and time of entering;

(2) Entering individual's name and department or affiliation;

(3) Reason for entering;

(4) Name of the individual authorizing the individual's entry into the segregated area; and

(5) Date and time of exiting.

P. Cashiers' cage design standards.

1. A facility operator shall have on, adjacent, or proximate to the gaming floor a physical structure known as a cashiers' cage to house the cashiers and to serve as the central location in the facility for:

a. The custody of the cash, accounting records, and forms and documents required under this chapter to conduct casino gaming operations;

b. The initial financial consolidation of all transactions pertaining to casino gaming activity; and

c. Other functions normally associated with the operation of a cashiers' cage.

2. A cashiers' cage shall include the following design features:

a. A manually triggered silent alarm system connected:

(1) Directly to the security department; or

(2) Directly, or through a documented communication protocol, to the monitor room of the surveillance department;

b. A double door entry and exit system that will not permit an individual to pass through the second door until the first door is securely locked, as follows:

(1) The first door leading from the gaming floor shall be controlled by the security department, the surveillance department, or a department-approved computerized access control system;

(2) The second door leading into the cashiers' cage shall be controlled by the cashiers' cage or a department-approved computerized access control system;

(3) The double door entry and exit system shall be equipped with surveillance capability sufficient to allow monitoring of:

(a) All ingress and egress; and

(b) The interior compartment; and

(4) Both doors of the double door entry and exit system shall be equipped with:

(a) Separate locks with a key or release mechanism that is different on each door; and

(b) Locks that are operational in the event of a power failure; and

c. Any entrance to the cashiers' cage that is not a double door entry and exit system shall be equipped as an alarmed emergency exit door.

3. As approved by the department, a facility may have one or more satellite cages physically separate from the cashiers' cage that:

a. May perform all of the functions of a cashiers' cage; and

b. Shall be equipped with an alarm system.

4. A facility operator shall make readily available to the department:

a. An access control matrix indicating which employee job descriptions are authorized to have access to the cashiers' cage and any satellite cage; and

b. A list of employees, with department identification number, who are authorized:

(1) To have access to the:

(a) Cashiers' cage and any satellite cage;

(b) Keys to the manual locks securing the double door entry and exit system; and

(c) Release button on magnetic locks securing the double door entry and exit system;

(2) To activate or deactivate alarm systems for the cashiers' cage and any satellite cage; and

(3) To grant access to the cashiers' cage and any satellite cage through the access control matrix or a computerized access control system.

Q. Accounting controls for a cashiers' cage.

1. A facility operator may only conduct [gaming-related] transactions with individuals at its cashiers' cage and any satellite cage during the hours of operation approved by the department for the facility.

2. A facility operator shall at all times maintain in its cashiers' cage a reserve cash bankroll sufficient to pay all winning wagers.

3. A facility operator shall:

a. Compute its reserve cash bankroll requirement based on a calendar year; and

b. Submit its computation to the department:

(1) At least 30 days prior to the commencement of casino gaming operations; and

(2) On or before January 30 of each year subsequent to the year in which operations are commenced.

4. A facility operator shall develop and include in the internal controls submitted to and approved by the department procedures that address the segregation of the cashiers' cage and the general conduct of cashiers' cage transactions.

5. A facility operator's internal controls shall require:

a. The cashiers' cage and any satellite cage to be physically segregated by personnel and function as follows:

(1) General cashiers shall be responsible for:

(a) An individual imprest inventory of cash;

(b) Receipt and payout of cash, negotiable instruments, gaming tickets, and other documentation from and to players subject to the limitations imposed under this chapter;

(c) Preparation of jackpot documents; and

(d) Other functions designated by the facility operator that are not incompatible with the functions of a general cashier; and

(2) Main bank cashiers shall be responsible for:

(a) Receipt of cash, negotiable instruments, gaming tickets, jackpot, and other documentation from general cashiers in exchange for cash or documentation;

(b) Replenishment of ticket redemption units and automated jackpot payout machines;

(c) Receipt of unsecured cash and unsecured gaming tickets;

(d) Receipt of cash and documentation from the count room;

(e) Preparation of the overall cashiers' cage reconciliation;

(f) Preparation of bank deposits;

(g) Compliance with reserve cash bankroll requirements; and

(h) Other functions designated by the facility operator that are not incompatible with the functions of a main bank cashier;

b. Each general cashier and main bank cashier to prepare a cashier count sheet on each shift:

(1) Recording the amount of the inventory in the window or bank;

(2) Reconciling the total closing inventory with the total opening inventory; and

(3) Including the signature of the:

(a) Outgoing general or main bank cashier; and

(b) Incoming general or main bank cashier;

c. At the end of the gaming day, the cashiers' cage is to forward a copy of each cashiers' count sheet and related documentation to the accounting department for:

(1) Agreement of opening and closing inventories; and

(2) Comparison of forms or documents; and

d. No more than 48 hours after the discovery of an employee's unresolved cage or count room overage or shortage of $500 or more, a facility operator shall submit a written report to the department describing:

(1) The reason for the overage or shortage and corrective action taken or adjustment made; or

(2) That a notice of investigation is ongoing and the written report will be submitted within the following 48 hours.

R. Checks accepted from a player.

1. A facility operator may accept a negotiable instrument in the form of a check meeting the requirements of this regulation from a player to enable the player to take part in gaming.

2. A facility operator may accept a check only during the hours of operation approved by the department for the facility.

3. A facility operator may accept a personal check that is:

a. Made payable to the facility operator;

b. Drawn on a bank, savings and loan association, or credit union subject to federal or State banking regulation;

c. Drawn for a specific amount;

d. Currently dated, not postdated; and

e. Payable on demand.

4. Subject to the requirements of subdivision 5 of this subsection, a facility operator may accept a check issued by a:

a. Facility operator; or

b. Person that:

(1) Is an affiliate of the facility operator; and

(2) Holds a valid gaming license in another jurisdiction.

5. A facility operator shall only accept a check under subdivision 4 of this subsection that has been issued to an individual as:

a. Employment compensation; or

b. A payout in connection with casino gaming activity.

6. A facility operator may not:

a. Except as provided under subdivision 3 of this subsection, accept a check that is payable to an individual, including:

(1) A Social Security check;

(2) An unemployment insurance check;

(3) A disability payment check; or

(4) A public assistance check; or

b. Except for a check issued under subdivision 5 of this subsection, accept from a player a check or multiple checks that in the aggregate exceed $50,000 during a gaming day.

7. For a personal check equaling or exceeding $5,000, a facility operator shall confirm the availability of funds by:

a. Directly contacting the bank, savings and loan association, or credit union upon which the check is drawn;

b. Obtaining an authorization and guarantee of the check from a check verification and warranty service holding a service permit as a contractor under this chapter; or

c. Alternating procedures addressing acceptance and verification of personal checks submitted in writing and approved by the department.

8. A facility operator shall develop and include in the internal controls submitted to and approved by the department procedures addressing the acceptance and verification of checks meeting the requirements of this subsection.

9. A facility operator's internal controls shall require a check accepted from a player by a general cashier to be:

a. If a personal check other than an electronic check, restrictively endorsed "for deposit only" to the bank account designated for this purpose by the facility operator and:

(1) Initialed by the accepting general cashier;

(2) Date and time stamped;

(3) Documented on the face of the check the number on the player's government-issued photographic identification; and

(4) If a personal check equaling or exceeding $5,000, confirmed for availability of funds under subdivision 7 of this subsection;

b. Verified for signature authenticity by a general cashier who shall:

(1) Obtain from the player one form of identification that is a valid, unexpired government-issued photographic identification; and

(2) Satisfactorily compare the:

(a) Signature of the player on the personal check or endorsing the payroll or payout check with the signature on an identification credential; and

(b) Player's physical appearance with the photograph contained on the valid, unexpired government-issued photographic identification presented by the player;

c. If presented by a player as a payroll or payout check under subdivision 5 of this subsection, confirmed to have been issued as employment compensation or as a payout in connection with casino gaming activity; and

d. Immediately exchanged for:

(1) Cash;

(2) If the facility operator has the capability, a gaming ticket;

(3) A chip or plaque;

(4) A player account in accordance with this chapter; or

(5) At the request of the individual, a combination of subdivisions 9 d (1), 9 d (2), and 9 d (3) of this subsection.

S. Wire transfers.

1. A facility operator may accept a negotiable instrument in the form of a wire transfer from a player to enable the player to take part in gaming.

2. A facility operator shall record in its cashiers' cage accountability any funds accepted by wire transfer with no documented business purpose other than to enable a player to take part in gaming within 24 hours of receipt of the wire transfer.

3. A facility operator shall develop and include in the internal controls submitted to and approved by the department procedures addressing the acceptance, verification, and sending of wire transfers meeting the requirements of this subsection.

4. A facility operator's internal controls shall:

a. Require preparation of a cashiers' cage wire transfer log to record the following information pertaining to a wire transfer accepted by a facility operator on behalf of a player:

(1) A sequential number assigned by the facility operator to the wire transfer accepted;

(2) Date and time notice of the wire transfer was received;

(3) Name of the financial institution to which the funds were sent;

(4) Amount transferred;

(5) Name of the player for whose benefit the funds were accepted;

(6) The name of the financial institution from which the funds were transferred;

(7) The method by which the facility operator was notified of the receipt of the wire transfer;

(8) If noticed by telephone, the name and title of the individual providing notice;

(9) The signature of the cashiers' cage employee receiving and recording the information required by this section; and

(10) If applicable, a notation that the wire transfer has been returned under subdivision 5 of this subsection;

b. Require that a cashiers' cage supervisor other than the cashiers' cage employee who initially documented acceptance of the wire transfer:

(1) Independently confirm:

(a) Date, time, and method by which the facility operator was notified of the wire transfer; and

(b) If noticed by telephone, the name and title of the individual providing notice;

(2) Record the date and time of confirmation in the wire transfer log; and

(3) Sign the wire transfer log as completing the confirmation process;

c. Document the procedures used to:

(1) Establish, verify, and document the identity of a player sending a wire transfer;

(2) Make the wire transfer proceeds available to a player at the cashiers' cage; and

(3) Adjust the cashiers' cage accountability;

d. Require preparation of a cashiers' cage wire transfer log to record the following information pertaining to a wire transfer sent by a facility operator on behalf of a player:

(1) A sequential number assigned by the facility operator to the wire transfer sent;

(2) Name of the player;

(3) Date of the transaction;

(4) Amount wired;

(5) Source of funds;

(6) The name and address of the financial institution to which the funds were wired;

(7) Account number to which the funds are credited;

(8) If the request to send a wire transfer is made in person at the cashiers' cage, the signature of the player;

(9) If the request to send a wire transfer is not made in person at the cashiers' cage, documentation supporting the receipt of a request by the facility operator to send a wire transfer on behalf of a player;

(10) The signature of the cashiers' cage employee receiving and recording the information required by this regulation; and

(11) The signature of the cashiers' cage supervisor or accounting department supervisor authorizing the wire transfer; and

e. Document the procedures used to:

(1) Establish, verify, and document the identity of a player requesting that a wire transfer be sent;

(2) Send the wire transfer; and

(3) Adjust the cashiers' cage accountability.

5. A facility operator shall take immediate action to return to a player by wire transfer funds initially accepted by wire transfer under the following circumstances:

a. The wired funds received by the facility operator have no documented business purpose other than to enable a player to take part in gaming;

b. All or a substantial portion of the wired funds remain in the facility operator's cashiers' cage accountability more than 14 days following transfer to that accountability; and

c. The player has engaged in minimal or no casino gaming play since receipt of the wire transfer.

6. A wire transfer returned in accordance with subdivision 5 of this subsection shall be sent to the same individual, financial institution, and account number from which the funds were debited.

7. Return of a wire transfer shall be recorded in the wire transfer log maintained under subdivision 4 of this subsection.

T. Cash equivalents.

1. A facility operator may accept a negotiable instrument in the form of a cash equivalent from a player to enable the player to take part in gaming.

2. A facility operator may accept a cash equivalent only during the hours of operation approved by the department for the facility.

3. A facility operator shall develop and include in the internal controls submitted to and approved by the department procedures addressing the acceptance and verification of cash equivalents meeting the requirements of this chapter.

4. A facility operator's internal controls shall:

a. Enumerate the type of cash equivalents complying with this chapter to be accepted;

b. Detail the specific verification procedures required by each issuer;

c. Require that a general cashier:

(1) Perform the specific verification procedures required by each issuer;

(2) Prepare and maintain documentation evidencing the verification of a cash equivalent accepted; and

(3) Examine a cash equivalent for counterfeiting, forgery, or alteration;

d. Detail the criteria for cashiers' cage supervisor involvement in the verification process; and

e. Include procedures for verifying the authenticity of a player's signature on a cash equivalent in conformance with the signature authentication procedures in subdivision R 9 of this section.

U. Player accounts.

1. In this subsection, "on-premises player account transactions" includes transactions that occur at an off-site customer service location approved by the department under subsection OO of this section.

2. A facility operator may establish a player account to enable the player to take part in gaming, which shall be subject to the following requirements:

a. The information necessary to initiate a player account shall be recorded and maintained for a period of five years and shall include at least:

(1) Player's legal name;

(2) Player's date of birth;

(3) Player's residential address (other than a post office box) and mailing address if different;

(4) Player's phone number;

(5) Player's active email address; [and]

[~~(6) Player's social security number (SSN) or equivalent for a foreign player who intends to place a wager within the Commonwealth of Virginia, such as a passport or taxpayer identification number. The player may enter only the last four digits of a SSN if other factors are sufficient to determine the entire nine-digit SSN within a reasonable time;~~

~~(7)~~ (6)] Verification that the player is not prohibited by the gaming law or this chapter from participating in casino gaming [~~; and~~].

[~~(8) Documentation of the government issued identification credentials entered or other methodology for remote, multi-source authentication, which may include third party and governmental databases as approved by the director.~~]

b. A facility operator shall record the player's acceptance of the terms and conditions and privacy policy and acknowledgment that the information provided is accurate and the player is prohibited from allowing any other person to access or use the player's account.

[~~c. If a facility operator determines that the information provided by a player to make a deposit or process a withdrawal is inaccurate or incapable of verification; fails to verify the identity of the player; or the player violates the policies and procedures of the facility operator, the facility operator shall, within 21 days, require the submission of additional information from the player that can be used to remedy any violation or failure to verify the identity or funds deposit or withdrawal information of the player. If such information is not provided or does not result in verification of the player's identity or deposit or withdrawal information, the facility operator shall:~~

~~(1) Immediately suspend the player account and not allow the player to place wagers;~~

~~(2) Submit any winnings attributable to the player to the director for distribution to the Commonwealth's Problem Gambling Treatment and Support Fund;~~

~~(3) Refund the balance of deposits made to the account to the source of such deposit or by issuance of a check; and~~

~~(4) Deactivate the account.~~

~~d. A facility operator shall notify a player of the establishment of the player account by email, text message, or first class mail. When a player account is created, a secure personal identification (e.g., a unique username and password) for the player authorized to use the player account shall be established that is reasonably designed to prevent unauthorized access to or use of the player account by any individual other than the player for whom the player account is established.~~

~~e.~~ c.] A player may have only one player account for each facility operator.

3. A facility operator shall perform all procedures required by this subsection before depositing funds accepted by means of check, wire transfer, cash equivalent, or other negotiable instrument into a player account. A player account may also be funded using:

a. A debit card;

b. An electronic bank transfer, including a transfer through third parties;

c. An online or mobile payment systems that supports online money transfers;

d. Winnings or payouts;

e. Bonuses and promotions;

f. A reloadable prepaid card that has been verified as being issued to the player and is nontransferable; or

g. Any other means approved by the department.

4. A facility operator may accept an on-premises player account transaction only during the hours of operation approved by the department.

5. A facility operator shall develop and include in the internal controls submitted to and approved by the department procedures addressing the acceptance of player account transactions meeting the requirements of this subsection.

6. A facility operator's internal controls shall:

a. Address player account set-up and administration, including:

(1) The procedures utilized to create a unique access code to, and a unique player identification number for, a player account; and

(2) The controls employed to secure a player's access code;

b. Require on-premises acceptance of player account deposits at:

(1) The cashiers' cage; or

(2) An off-site customer service location;

c. Require preparation of a receipt documenting the:

(1) Amount deposited;

(2) Date of the deposit; and

(3) Signature of the general cashier accepting the player account deposit;

d. Provide for full or partial on-premises withdrawal from a player account:

(1) By a player at the cashiers' cage; or

(2) Upon receipt by the facility operator of a written request for withdrawal for which validity has been established; and

e. Include procedures for documenting on-premises acceptance of and withdrawal from a player account including a verification of the authenticity of a player's signature on a player account transaction document in conformance with the signature authentication procedures in subdivision R 9 of this section.

7. Funds may be withdrawn from a player account through:

a. Wagers;

b. [~~Cashier's~~ Checks drawn on the facility operator's account cashier's] check, wire transfer, or money order by the facility operator made payable to the player and issued directly or delivered to the player's address on file with the facility operator;

c. Credits to the player's debit card;

d. Electronic bank transfers, including transfers through third parties;

e. Online or mobile payment systems that support online money transfers;

f. Reloadable prepaid card, which has been verified as being issued to the player and is nontransferable; or

g. Any other means approved by the department.

8. A player's request for withdrawal of funds (i.e., deposited and cleared funds or funds won) in the individual's player account shall be completed within 10 days unless there is a pending unresolved player dispute or investigation prompted by a player dispute or the director. Funds for withdrawal may be withheld from withdrawal until the funding transaction clears or the chargeback period ends.

9. All adjustments to a player account for individual amounts of $500 or less shall be periodically reviewed by the facility operator consistent with the facility operator's internal control standards. All other adjustments shall be authorized by the facility operator's management before being entered.

10. A facility operator shall not allow the transfer of funds or credits between players.

11. Each transaction with respect to a player account between a player and facility operator shall be confirmed by email, telephone, text message, or other means agreed upon by the player and facility operator.

12. A facility operator shall provide an account statement to a player on demand. An account statement shall include detailed account activity for at least six months preceding the 24-hour period before the request. In addition, facility operators shall, upon request, be capable of providing to a player a summary statement of all player activity during the previous 12 months.

13. A facility operator shall provide an account statement of player account activity shall upon:

a. Submission of a signed request for the statement at the cashiers' cage or off-site customer service location; and

b. Establishing the authenticity of the player's identity or signature on the request for the statement in accordance with the identity or signature authentication procedures in the internal controls submitted to and approved by the department.

14. The statement of player account activity required under this subsection shall summarize, at a minimum, a player's activity during the month prior to the date of the request for a statement and include the:

a. Player's beginning credit balance;

b. Credits earned during the month;

c. Credits transferred to a casino game;

d. Credits transferred from a casino game to a player account; and

e. Player's ending credit balance.

15. The statement of player account activity required under this subsection need not include promotional play credits transferred to a player without regard to the identity of the player.

16. A facility operator shall suspend wagers from being made and immediately re-verify a player's identification upon reasonable suspicion that the player's identification or player account has been compromised.

17. A facility operator shall offer an easily accessible method for a player to close the player's account. Any balance remaining in an account closed by a player shall be refunded pursuant to the facility operator's internal control standards within 10 days of notice from the player.

18. A facility operator shall suspend a player account if:

a. The player asks for suspension for a specified period not less than 72 hours as a self-limiting measure;

b. Required by the director; or

c. The facility operator knows or has reason to know of:

(1) Illegal activity related to the account;

(2) A negative account balance;

(3) Five failed Automated Clearing House deposit attempts within a 24-hour period; or

(4) A violation of the terms and conditions that has taken place on the player's account.

19. When a player account is suspended, the player shall be prevented from:

a. Wagering;

b. Depositing funds, unless the reason for the deposit is to clear a negative balance that resulted in the suspension;

c. Withdrawing funds, unless the reason for the suspension would not prohibit a withdrawal;

d. Making changes to the player account; or

e. Removing the player account from the facility operator.

20. A suspended player account may be restored:

a. Upon expiration of the time period established by the player;

b. When permission is granted by the director; or

c. When the facility operator has lifted the suspended status.

21. If a player account is inactive or dormant for five years:

a. The facility operator shall attempt to contact the account holder by mail, phone, and electronic mail;

b. If the account holder does not respond to the facility operator; the facility operator shall close the account; and

c. Any funds remaining in the account at the time of closing shall be paid 50% to the facility operator and 50% to the Commonwealth's general fund.

22. A facility operator shall ensure that account holders are made aware of the provisions of this subsection prior to opening a player account.

V. Returned checks.

1. All checks returned after deposit shall be:

a. Returned directly to an accounting department employee with no incompatible functions; and

b. Maintained by a check bank cashier with no incompatible functions.

2. A facility operator shall:

a. Limit collection efforts pertaining to a returned check to the following persons:

(1) A gaming employee or key manager of the accounting department with no incompatible functions; or

(2) An attorney representing the facility operator;

b. Inform the employee or attorney authorized to conduct collection efforts of any verbal or written communication with a player regarding collection efforts;

c. Document all collection efforts in the player's account file; and

d. Send a statement to a player at reasonable intervals.

3. After reasonable collection efforts, returned checks may be considered uncollectible for accounting purposes if the write off is authorized by the:

a. [~~Chief executive officer~~ Facility general manager]; [~~and~~]

b. Director of finance or other designated key manager approved by the department [; and

c. Committee of employees with no incompatible functions].

W. Accounting controls in a check bank.

1. A facility operator shall record in a player's account file all transactions related to the player, including:

a. Transactions recorded in chronological order;

b. Documentation of:

(1) For counter checks, the date, amount, and series number;

(2) For each substitution check:

(a) The date, amount, and check number of the substitute check; and

(b) The series number of the counter check or check number of the replacement check returned to the player;

(3) For each consolidation check:

(a) The date, amount, and check number of the consolidation check; and

(b) The series numbers of the counter check or check number of the replacement check returned to the player;

(4) For each redemption check:

(a) The date, amount, and check number of the redemption check;

(b) An indication as to whether the redemption was partial or full; and

(c) The series number of the counter check or check number of the replacement check returned to the player;

(5) Date, amount, and series or check number of each check:

(a) Deposited; and

(b) Returned;

(6) If a check has been returned, the reason for its return;

(7) Player's account balance after each transaction;

(8) Date, amount, and series or check number of a check that has been partially or completely written off by the facility operator; and

(9) If a write off, the reason for the write off.

2. A facility operator shall maintain original copies of counter checks and replacement checks accepted in substitution, consolidation, and redemption transactions in its check bank.

3. A facility operator's check bank shall prepare and maintain for each shift, manually or by computer, a log of all counter checks exchanged and of all replacement checks received in substitution, consolidation, and redemption transactions that includes the following:

a. The balance of the checks on hand in the check bank at the beginning of each shift;

b. For counter checks accepted and for replacement checks received in substitution, consolidation, or redemption on the shift:

(1) Date of the check;

(2) Name of the drawer of the check;

(3) Amount of the check;

(4) If a counter check, the series number;

(5) If a replacement check, the check number; and

(6) If applicable, an indication that the check was accepted in a substitution, consolidation, or redemption transaction;

c. For checks deposited, substituted, consolidated, or redeemed by a player on the shift:

(1) Date on which the check was deposited, substituted, consolidated, or redeemed;

(2) Name of the drawer of the check;

(3) Amount of the check;

(4) If a counter check, the series number;

(5) If a replacement check, the check number; and

(6) An indication as to whether the check was deposited, substituted, consolidated, or redeemed; and

d. The balance of the checks on hand in the check bank at the end of each shift.

4. A facility operator shall develop and include in the internal controls submitted to and approved by the department procedures addressing the facility operator's

accounting controls over the check bank, including end of shift and end of gaming day deposits and reconciliations.

X. Prohibition on the wagering with cash, credit cards, or debit cards.

1. A casino game may not be played or activated in any way by insertion, directly or indirectly, or use of:

a: Cash;

b. Credit card;

c. Debit card; or

d. Electronic transfer of funds from a credit card or debit card.

2. A casino game may be played only with tokens, chips, or electronic tickets or cards purchased from the facility operator.

3. It shall not be considered a violation of this subdivision to:

a. Use cash, a credit card, a debit card, or an electronic transfer of funds from a credit card or debit card to purchase from the facility operator tokens, chips, or electronic tickets or cards;

b. Convert cash, promotional play instruments, or electronic tickets or cards to purchase tokens or chips at a table game; or

c. Use cash to engage in sports betting in a sports betting facility within the casino gaming facility.

Y. Player tracking system.

1. A facility operator shall utilize a player tracking system meeting the requirements of this subsection.

2. A facility operator may not collect or monitor the activity of an individual who it knows, suspects, or has reason to know or suspect is:

a. Younger than 21 years of age;

b. Mandatorily excluded; or

c. Voluntarily excluded.

3. A facility operator shall provide a player with a record of casino game spending levels if:

a. The player:

(1) Has registered with the facility for inclusion in the player tracking system; and

(2) Submits a signed request for the spending level documentation at:

(a) The cashiers' cage; or

(b) Other location at the facility approved by the department; and

b. The identification of the player and the authenticity of the player's signature on the request is established by an employee satisfactorily comparing the:

(1) Player's information recorded on the spending level request documentation with the information contained on the valid, unexpired government-issued photographic identification presented by the player; and

(2) Player's physical appearance with the photograph contained on the valid, unexpired government-issued photographic identification presented by the player.

Z. Gaming ticket.

1. A facility operator shall develop and include in the internal controls submitted to and approved by the department procedures addressing the issuance and redemption of a gaming ticket in compliance with this subsection and 11VAC5-90-150 W.

2. A facility operator's internal controls shall:

a. Include procedures and controls to maintain a record of all unredeemed gaming tickets for a minimum of [~~two years~~ one year] from the date of issuance of the gaming ticket unless a request to remove or relocate system records is submitted in writing and approved in writing by the department; and

b. Address the following events:

(1) Calculation and transmittal by the facility operator of its outstanding expired unredeemed gaming ticket balance to the Commonwealth of Virginia;

(2) An election by a facility operator to pay a gaming ticket when the gaming ticket system is inoperable or otherwise unable to verify the validity of the gaming ticket at the time of payment; and

(3) An election by a facility operator to pay a gaming ticket where the gaming ticket system fails to verify and electronically cancel the gaming ticket when it is presented by the player and scanned for verification.

3. A facility operator shall redeem at its cashiers' cage a gaming ticket of $5,000 or more by:

a. Cash or check; or

b. Check on the request of the player.

4. A facility operator shall immediately report to the department evidence that a gaming ticket has been counterfeited, tampered with, or altered in any way that would affect the integrity, fairness, or reliability of the gaming ticket.

5. A facility operator shall, in a form and in a timeframe specified by the department, submit a report to the department detailing any adjustment made to the amount of a gaming ticket.

AA. Promotional play.

1. A facility operator may:

a. Issue promotional play if it is not awarded as cashable credit; and

b. Utilize a promotional play system that has been tested, certified, and approved under this chapter.

2. A facility operator may not issue to a player promotional play equaling or exceeding $5,000 per gaming day without specific approval from the [~~chief executive or the chief executive's designee~~ facility general manager].

3. A facility operator shall fully and accurately disclose the material terms of all promotional play offers involving casino gaming at the time any such offer is advertised and provide full disclosure of the terms of and limitations on the offer before the player provides anything of value in exchange for the offer.

4. If the material terms of a promotional play offer cannot be fully and accurately disclosed within the constraints of a particular advertising medium, the material terms and conditions shall be accessed by hyperlink that takes the individual directly to the material terms or directs the individual to the site to access the offer or bonus terms and in reasonably prominent size.

5. No promotional play available to a player who sets up a new player account may contain terms that delay full implementation of the offer by the facility operator for a period of longer than 90 days, regardless of the number or amount of wagers in that period by the player.

6. A facility operator shall develop and include in the internal controls submitted to and approved by the department procedures addressing the requirements of this subsection and:

a. Methods utilized to:

(1) Issue promotional play; and

(2) Redeem promotional play; and

b. A promotion play instrument, including a requirement that it document:

(1) Name or trade name of the facility operator;

(2) Amount in noncashable credits;

(3) Unique series number automatically generated by the promotional play system;

(4) Locations where a promotional instrument may be redeemed and any restrictions applicable to redemption;

(5) A bar code or magnetic strip that enables the promotional play system to identify the numeric information required by this section; and

(6) Notice to the player of the terms of expiration.

7. A facility operator shall immediately report to the department evidence that a promotional play instrument has been counterfeited, tampered with, or altered in any way that would affect the integrity, fairness, or reliability of the promotional play instrument.

8. A facility operator shall submit to the department in a form and in accordance with a timeframe specified by the department a quarterly report summarizing:

a. Promotional play awarded for the period, including:

(1) Total amount in promotional play awarded in noncashable credits; and

(2) Other forms of promotional play; and

b. Promotional play redeemed by players for the period, including:

(1) Total amount in promotional play redeemed in noncashable credits; and

(2) Other forms of promotional play redeemed.

BB. Ticket redemption unit.

1. A facility operator may utilize a ticket redemption unit meeting the requirements of this section.

2. A facility operator shall locate a ticket redemption unit on the gaming floor subject to the surveillance coverage requirements of this section.

3. A facility operator shall develop and include in the internal controls submitted and approved by the department procedures addressing a ticket redemption unit.

4. A facility operator's internal controls shall address:

a. Distribution of cash to a ticket redemption unit;

b. Removal of gaming tickets and cash accepted by a ticket redemption unit;

c. Reconciliations associated with the replenishment process;

d. Directing a player attempting to redeem a gaming ticket of $5,000 or more to the cashiers' cage.

CC. Jackpot payout.

1. A facility operator shall utilize a multipurpose jackpot or credit meter payout document meeting the requirements of this subsection to pay:

a. A jackpot not totally and automatically paid by a casino gaming machine; or

b. Credits accumulated by a player on a casino gaming machine if:

(1) The number of accumulated credits exceeds the amount that may be paid utilizing a gaming ticket under this section;

(2) Due to malfunction, the credits cannot be paid by the casino gaming machine; or

(3) A single jackpot event requires the filing of IRS Form W-2G, Certain Gambling Winnings.

2. A facility operator shall:

a. Prepare and timely file IRS Form W-2G, Certain Gambling Winnings, in accordance with IRS rules and regulations; and

b. Immediately report to the department any incident in which a casino gaming machine fails to lock up and preclude play following a single jackpot event of $1,200 or more.

3. A facility operator shall pay a jackpot or credit meter payout of:

a. $50,000 or more by check; and

b. Less than $50,000 by:

(1) Cash or check; or

(2) On the request of a player, any combination of cash, gaming ticket, check, or other method of payment approved by the department.

4. A facility operator shall develop and include in the internal controls submitted to and approved by the department procedures addressing the payment of a jackpot or credit meter payout not totally and automatically paid by a casino gaming machine.

5. A facility operator's internal controls shall include:

a. The use of a two-part computer-generated jackpot or credit meter payout document initiated on the request of a gaming operations department attendant or gaming operations department supervisor or above after verifying the:

(1) Winning combination of characters on the casino game and the amount of the jackpot; or

(2) Number of accumulated credits;

b. [~~Unless a request for an~~ Its] alternate verification procedure [~~is submitted in writing and approved by the department, a requirement that if a~~ for] jackpot or credit meter [~~payout~~ payouts;] [~~is $1,200 or more but less than $15,000, a security department employee or a gaming operations department attendant or gaming operations department supervisor or above other than the preparer of the document sign the jackpot or credit meter payout document after verifying the payment of the jackpot or credit meter payout to the player and:~~

~~(1) Winning combination of characters on the casino gaming machine and the amount of the jackpot; or~~

~~(2) Number of accumulated credits;~~]

c. A provision that only the preparer is required to sign the jackpot or credit meter payout document if:

(1) A jackpot or credit meter payout is less than $10,000;

(2) A casino or casino management system can independently verify a jackpot or credit meter payout;

(3) The casino or casino management system and the central monitor and control system are fully operational; and

(4) Overrides or adjustments are not required;

d. A requirement that, if a jackpot or credit meter payout is $15,000 or more but less than $35,000, a security department employee or a gaming operations department supervisor or above other than the preparer of the document sign the jackpot or credit meter payout document after verifying the payment of the jackpot or credit meter payout to the player and:

(1) Winning combination of characters on the casino gaming machine and the amount of the jackpot; or

(2) Number of accumulated credits;

e. A provision that if a jackpot or credit meter payout document generated incompliance with this subsection is requested by a gaming operations department supervisor or above, the verification required by this subsection may be completed by a gaming operations department attendant, a gaming operations department supervisor or above, or a security department employee;

f. A requirement that if a jackpot or credit meter payout is $35,000 or more, an operations department shift manager or higher level operations department employee other than the preparer of the document sign the jackpot or credit meter payout document after verifying the payment of the jackpot or credit meter payout to the player and:

(1) Winning combination of characters on the casino gaming machine and amount of the jackpot; or

(2) Number of accumulated credits;

g. A provision that if a jackpot or credit meter payout document required in compliance with this subsection is requested by a gaming operations department shift manager or higher level gaming operations department employee, the verification required by this subsection may be completed by a gaming operations department attendant, a gaming operations department supervisor or above, or a security department employee;

h. A requirement that the following information be on a two-part computer-generated jackpot or credit meter payout document:

(1) Date and time;

(2) Asset number of the casino gaming machine or table game on which the jackpot was registered or credits accumulated;

(3) Winning combination of characters constituting the jackpot or a code corresponding to the winning combination of characters constituting the jackpot or an indication that a credit meter payout is to be made;

(4) Amount to be paid;

(5) Unique transaction number generated by the casino management system;

(6) Signature or identification code of the preparer of the document;

(7) If the payout is $1,200 or more, the signature or identification code of a verifying witness in accordance with this regulation; and

(8) Unless an automated jackpot payout machine or a cash wallet is utilized to affect the payment, the signature or identification code of the cashier issuing the funds;

i. If utilized, procedures and controls applicable to a jackpot or credit meter payout:

(1) Using an automated jackpot payout machine meeting the requirements of subsection EE of this section; and

(2) By a gaming operations department attendant from a cash wallet impressed with $10,000 or less;

j. If utilized, procedures and controls to be implemented if the facility operator resets the casino gaming machine or credit meter before the player is paid;

k. A requirement that the surveillance department:

(1) Be notified of a jackpot or credit meter payout of $25,000 or more;

(2) Log all notices regarding a jackpot or credit meter payout in the surveillance log required under this section; and

(3) Obtain and retain a photograph of the face of the player receiving the payout;

l. Details pertaining to:

(1) Payment of a jackpot or credit meter payout at the:

(a) Cashiers' cage;

(b) Casino gaming machine; and

(c) Table game;

(2) The use of an accounting drop box; and

(3) Audit procedures to be performed by the facility operator's accounting department at the conclusion of each gaming day;

m. Procedures addressing unclaimed jackpots or accumulated credits abandoned on a casino game;

n. Details that establish the ability of the casino or casino management system to:

(1) Ensure that a two-part computer-generated jackpot or credit meter payout document is not susceptible to change or deletion from the system after preparation;

(2) Process and document system overrides or adjustments to jackpot or credit meter payouts, including:

(a) Overrides or adjustments where the payout requested does not match the payout amount sent from the casino gaming machine to the casino or casino management system; and

(b) Identification of the level of employee having override authority; and

(3) Process voided jackpot or credit meter payout documents; and

o. Procedures utilized to issue a manual jackpot or credit meter payout document that:

(1) Are to be used only when the casino or casino management system is unable to generate a jackpot or credit meter payout document;

(2) Conform to the jackpot payout or credit meter payout verification and signature requirements of this regulation;

(3) Involve use of a three-part serially prenumbered manual jackpot or credit meter payout document residing in a book, wiz machine, or functional equivalent;

(4) Require manual jackpot or credit meter payout books or their functional equivalent to be maintained in a secured locked cabinet in the cashiers' cage; and

(5) Require the key to the cabinet to be:

(a) Controlled by the security department or the accounting department; and

(b) Limited to sign out by a gaming operations department supervisor or above.

DD. Annuity jackpot.

1. In this subsection, unless the context clearly indicates otherwise,

"Discount rate" means a discount rate equal to the United States Treasury constant maturity rate for 20-year United States government securities for the week ending prior to the date of the jackpot, as identified in the applicable H.15 Statistical Release issued by the Federal Reserve Board plus 0.5%.

2. A facility operator may not offer an annuity jackpot without the prior written approval of the department.

3. A facility operator submitting a request for approval of an annuity jackpot to the department shall submit details pertaining to the annuity jackpot, including:

a. The specific terms of:

(1) The annuity; and

(2) Any cash payout option;

b. The written trust agreement supporting the trust fund used to make future cash payments on the annuity jackpot, including details pertaining to:

(1) Administration and funding of the trust agreement;

(2) Liability for payments owed to a player; and

(3) Designation of a trustee;

c. Internal controls addressing the offer and award of an annuity jackpot; and

d. Documentation supporting that the average payout percentage on the casino gaming machine offering the annuity jackpot will comply with this subsection.

4. A facility operator that offers an annuity jackpot payable over 10 years or more may offer a player the option to be

paid in a single cash payout provided that payout is equal to the present value of the annuity jackpot as calculated in subdivision 5 of this subsection.

5. The present value of a cash payout option on an annuity jackpot shall be determined by:

a. Applying the discount rate to each of the future annuity jackpot payments;

b. Multiplying the number of years until each jackpot payment would otherwise have been received; and

c. Adding to that amount the amount of the first cash payment that would otherwise have been received.

6. A facility operator shall pay a cash payout requested by a player in lieu of an annuity jackpot in accordance with subsection DD of this section.

7. A facility operator shall develop and include in the internal controls submitted to and approved procedures addressing the offer and award of an annuity jackpot.

8. A facility operator's internal controls shall include:

a. Procedures to be followed by a player to exercise a cash payout option; and

b. Procedures utilized to document payment of an annuity jackpot.

EE. Merchandise jackpot.

1. A facility operator may not offer a merchandise jackpot without the prior written approval of the department.

2. A facility operator submitting a request for approval of a merchandise jackpot to the department shall submit details pertaining to the merchandise jackpot, including:

a. The specific terms of:

(1) The merchandise offer; and

(2) Any cash payout option;

b. Documentation supporting the acquisition of the merchandise and its cash equivalent value under subdivision 4 of this subsection;

c. Internal controls addressing the offer and award of a merchandise jackpot; and

d. Documentation supporting that the average payout percentage on the casino gaming machine offering the merchandise jackpot will comply with this subsection.

3. If a facility operator offers a merchandise jackpot consisting of merchandise or an optional cash payout, the optional cash payout shall equal the cash equivalent value of the merchandise determined in accordance with subdivision 5 of this subsection.

4. The cash equivalent value of merchandise shall be determined as follows:

a. Merchandise that the facility operator sells directly to the public in the normal course of business shall be valued at an amount equal to the full retail price normally charged for the merchandise;

b. Merchandise that the facility operator does not sell directly to the public in the normal course of business, but that is provided directly to a player by the facility operator, shall be valued at an amount equal to the actual cost to the facility operator of the merchandise;

c. Merchandise that is provided directly or indirectly to a player on behalf of a facility operator by a third party not related to the facility operator shall be valued at an amount equal to the actual cost to the facility operator of having the third party provide the merchandise; and

d. Merchandise that is provided directly or indirectly to a player on behalf of a facility operator by a third party who is related to the facility operator shall be valued as if the related party were the facility operator under subdivisions 4 a and 4 b of this subsection.

5. For the purpose of determining adjusted gross receipts, the cash equivalent value of any merchandise paid as, or as a portion of, a jackpot shall be included in total winnings paid.

6. A facility operator shall pay a cash payout portion of a merchandise jackpot and a cash payout requested by a player in lieu of a merchandise jackpot in accordance with subsection DD of this section.

7. A facility operator shall develop and include in the internal controls submitted to and approved by the department procedures addressing the offer and award of a merchandise jackpot.

8. A facility operator's internal controls shall include:

a. Procedures to be followed by a player to exercise a cash payout option; and

b. Procedures utilized to document payment of a merchandise jackpot.

FF. Automated jackpot payout machine.

1. A facility operator may utilize an automated jackpot payout machine meeting the requirements of this subsection.

2. A facility operator may locate an automated jackpot payout machine on the gaming floor subject to the surveillance coverage requirements of this section.

3. A facility operator shall configure an automated jackpot payout machine to process only a jackpot or credit meter payout of less than $50,000.

4. A facility operator shall develop and include in the internal controls submitted to and approved by the department procedures addressing the payment of a jackpot or credit meter payout utilizing an automated jackpot payout machine.

5. A facility operator's internal controls shall include procedures and controls documenting:

a. A jackpot or credit meter payout transaction at an automated jackpot payout machine; and

b. Reconciliation and replenishment of an automated jackpot payout machine.

GG. Access to bill validators, cash storage, and table game drop boxes.

1. Access.

a. A facility operator shall control access to a bill validator, a cash storage box housed in a slot machine, table game, or other casino game drop box in accordance with this subsection.

b. Access to a bill validator shall be controlled by:

(1) At least one lock; and

(2) A key to the lock that is required to be maintained by the security department.

c. The cash storage box shall be secured to a bill validator by two separate locks, the keys to which are different from each other, and, for the lock on the belly door or main door of the casino gaming machine:

(1) The key shall be controlled by the casino gaming machine department in:

(a) A manual key box; or

(b) An automated key tracking system;

(2) Immediately prior to the commencement of the drop, the casino gaming machine department may issue its belly door or main door key to the accounting department;

(3) A key transferred from the casino gaming machine department to the accounting department shall be returned immediately following the conclusion of the drop;

(4) The facility operator shall establish sign in and sign out procedures in its internal controls documenting the transfers; and

(5) If an automated key tracking system is used, a facility operator shall require dual access from the security department and accounting department to obtain keys.

d. The lock on the release mechanism securing the cash storage box to the bill validator shall be controlled by the security department.

e. Access to the contents of a cash storage box shall be controlled by:

(1) At least one lock; and

(2) A key to the lock that is required to be maintained by the accounting department.

2. Control. A facility operator shall either:

a. Assign to a cash storage box an asset number that:

(1) Is permanently imprinted or affixed to the outside of the cash storage box; and

(2) Corresponds to the asset number of the casino gaming machine in which the cash storage box is installed; or

b. With the written approval of the department, utilize a computerized system for:

(1) Assigning a unique identification number to a cash storage box; and

(2) Attributing it to the casino gaming machine in which the cash storage box is installed.

3. A facility operator shall ensure that an asset number or unique identification number on a cash storage box is clearly visible to:

a. An employee involved in removing or replacing a cash storage box; and

b. The surveillance department.

4. A facility operator may maintain an emergency cash storage box without an asset number or a unique identification number if:

a. The word "emergency" is permanently imprinted or affixed on the box; and

b. When put into use, the cash storage box is temporarily marked with the asset number of the casino gaming machine in which it is installed.

5. Table game drop box.

a. A table game shall have a secure tamper-resistant table game drop box attached to it in which the following shall be deposited:

(1) Copies of fill request slips, fill slips, and table inventory slips; and

(2) Other table game wagering instruments approved by the department.

b. A table game drop box shall have:

(1) One lock securing the contents deposited into it;

(2) A separate lock securing the table game drop box to the gaming table, the key to which must be different from the keys to the locks securing the contents of the table game drop box;

(3) A slot opening through which currency, value chips, or poker rake chips for nonbanking games, other table game wagering instruments approved by the department, and required instruments can be inserted into it;

(4) A mechanical device that automatically closes and locks the slot opening upon removal of the table game drop box from the gaming table; and

(5) Permanently imprinted or impressed thereon, and clearly visible to surveillance, either:

(a) A number corresponding to a unique permanent number on the gaming table to which the table game drop box is attached and at least one letter indicating the type of game; and

(b) The word "emergency".

c. In addition to the requirements of subdivision 5 b (5) of this subsection, a table game drop box may also be identified by a bar code label that is securely affixed to the table game drop box and shall be:

(1) At a minimum, encoded with the information required by subdivision 5 b (5) of this subsection; and

(2) Prepared in accordance with the facility operator's approved internal controls.

d. The security department shall control the key used to release a table game drop box from a table game in a manual key box or an automated key tracking system.

(1) Immediately prior to the commencement of the table game count process, the security department may issue its release key to the count room supervisor for the purpose of resetting the release mechanism on empty table game drop boxes;

(2) A key transferred by the security department shall be immediately returned after the conclusion of the table game drop box count;

(3) In its internal controls, a facility operator shall establish sign-in and sign-out procedures governing key transfers and control of a key during breaks taken by count room personnel; and

(4) If an automated key tracking system is used, a facility operator shall require dual access from the security department and accounting department to obtain keys.

e. The keys to the table game drop box locks required under subdivision 5 b (1) of this subsection shall be controlled by the accounting department.

f. Before using a table game drop box labeled "Emergency" for a table game, a facility manager shall:

(1) Obtain verbal approval of department compliance personnel; and

(2) Temporarily mark the emergency table game drop box with the number of the gaming table and at least one letter indicating the game type.

HH. Collection of cash storage and table game drop boxes.

1. At least 30 days before casino gaming operations are to commence, a facility operator shall submit to the department in writing a drop schedule setting forth:

a. Specific pick-up days and times for collection of cash storage and table game drop boxes and requirements that:

(1) Cash storage boxes may not be commingled with table game drop boxes;

(2) Unless a drop box is from a table game pit that was never opened for gaming on that gaming day, table game drop boxes shall be collected once each gaming day; and

(3) The facility operator shall notify the department by telephone and in writing one hour in advance of changes to the table game drop box collection schedule.

b. Specifications as to what areas of the gaming floor will be covered on each pick-up day; and

c. Specific transportation routes to be utilized from the gaming floor to the count room on each pick-up day.

2. A facility operator shall notify the department:

a. In writing of a permanent change in the drop schedule including a pick-up day or time, area of the floor to be dropped, or transportation route; and

b. Prior to any temporary deviation from the drop schedule.

3. A facility operator shall make readily available to the department:

a. An access control matrix indicating which employee job descriptions are authorized to participate in the cash storage and table game drop box collection process; and

b. A list of employees, with license numbers, who are authorized to participate in the cash storage and table game drop box collection process.

4. A facility operator shall develop and include in the internal controls submitted to and approved by the department procedures addressing the collection of cash storage and table game drop boxes.

5. A facility operator's internal controls shall:

a. Detail the actual procedures to be performed and documentation to be generated by drop team employees collecting cash storage and table game drop boxes:

(1) In accordance with the drop schedule; and

(2) On an emergency basis; and

b. Require:

(1) Cash storage and table game drop boxes to be transported directly to, and secured in:

(a) The count room; or

(b) A trolley storage area approved by the department;

(2) The cash storage and table game drop box collection process to involve the participation of at least three employees, at least one of whom is an employee of the [~~:~~ ~~(a) Security ; and~~

~~(b) Accounting~~ security] department [~~:~~.]

(3) Prior to the movement of a trolley containing cash storage boxes from the gaming floor into the count room, an accounting department supervisor to verify that the number of cash storage boxes being transported from the gaming floor equals the number of cash storage boxes scheduled for collection that day;

(4) Prior to the movement of a trolley containing table game drop boxes from the gaming floor into the count room, an accounting department supervisor or floorperson or above to verify that the number of table game drop boxes being transported from the gaming floor equals the

number of table game drop boxes scheduled for collection; and

(5) Prior to changing the type of table game offered or removing a casino gaming machine or table game from the gaming floor, that an emergency drop shall be conducted.

6. A facility operator shall transport cash storage and table game drop boxes in an enclosed trolley secured by one lock that has a key that is controlled by the security department.

7. A facility operator shall store cash storage and table game drop boxes not attached to a bill validator, including emergency cash storage and table game drop boxes that are not actively in use:

a. In the count room in an area approved by the department;

b. In a trolley storage area approved by the department; or

c. In another location at the facility approved by the department.

8. The cabinet or trolley used for storage under subdivision 7 of this subsection shall be secured by one lock that has a key which is controlled by the security department in:

a. A manual key box; or

b. An automated key tracking system.

9. Immediately prior to the commencement of the count process, the security department may issue its key to the storage cabinet or trolley required under subdivision 7 of this subsection to a count room supervisor for the purpose of allowing count room personnel to gain access to the cash storage or table game drop boxes to be counted.

10. A trolley storage area utilized to store cash storage or table game drop boxes prior to the count process shall meet the design standards for a count room under subsection JJ of this section.

II. Count room design standards.

1. A facility operator shall have a count room designated, designed, and used for counting the contents of cash storage and table game drop boxes at a location approved by the department.

2. A count room shall:

a. Be constructed of materials and have an interior design that provides maximum security over the assets stored, and the activities conducted in, the room;

b. Meet the surveillance requirements of subsection J of this section, including audio coverage of the count process; and

c. Be constructed with doors equipped with:

(1) An alarm system that tracks all ingress to and egress from the room and that:

(a) Directly alerts the security department; or

(b) Directly, or through a documented communications protocol, alerts the surveillance department; and

(2) A locking mechanism with key backup, or a key that is:

(a) Different from the key to any other door to the count room;

(b) Different from the keys to the locks securing each cash storage and table game drop box; and

(c) Controlled by the security department or the accounting department.

3. A facility operator shall install in its count room a table constructed of clear glass or similar transparent material to be used for the emptying, counting, and recording of the contents of cash storage and table game drop boxes.

JJ. Accounting controls for a count room.

1. At least 30 days before casino gaming operations are to commence, a facility operator shall submit to the department a count schedule setting forth the specific times during which cash storage and table game drop boxes are to be counted and recorded.

2. A facility operator shall notify the department in writing of any:

a. Permanent change in the count schedule; and

b. Temporary deviation from the count schedule.

3. Count frequency.

a. A facility operator shall count the contents of each cash storage box at least once every seven days unless an alternative count schedule is submitted in writing to and approved in writing by the department.

b. A facility operator shall count the contents of each table game drop box at least once each gaming day unless an alternative count schedule is submitted to, and approved in writing by, the department.

c. Unless no gaming is conducted or otherwise offered at the casino gaming facility, a facility operator shall count the contents of each table game drop box at least once each gaming day.

d. The following shall be counted and recorded separately:

(1) Table game drop boxes from banking games; and

(2) Table game drop boxes from nonbanking games.

4. A facility operator shall develop and include in the internal controls submitted to and approved by the department procedures to address the counting and recording of cash storage and table game drop boxes.

5. A facility operator's internal controls shall:

a. Detail all hardware, software, and related equipment utilized by the facility operator to conduct the count;

b. Detail the actual procedures to be performed and documentation to be generated by:

(1) Count team employees conducting the counting process; and

(2) The main bank cashier in verifying and accepting the count;

c. Require computerized equipment utilized to count and strap currency, gaming tickets, and promotional play instruments to:

(1) Conduct two separate counts;

(2) If the separate counts are not in agreement, document the discrepancy;

(3) Be capable of determining the amount of a gaming ticket or promotional play instrument by independently examining information printed on the gaming ticket or promotional play instrument and:

(a) Calculating the amount internally; or

(b) Obtaining the amount directly from a gaming ticket system or promotional play system in a secure manner; and

(4) If a gaming ticket system or promotional play system is utilized to obtain the amount of a gaming ticket or promotional play instrument, require the system to perform a calculation or integrity check to ensure that the amount of the gaming ticket or promotional play instrument has not been altered in the system in any manner since the time of issuance;

d. Require a count room employee to:

(1) Wear a one-piece, pocketless garment;

(2) Carry only a handbag or other container constructed of transparent material; and

(3) Remove the count room employee's hands from, or return them to, a position on or above the count table or counting equipment only after holding the backs and palms of the hands straight out and exposing them to the view of other employees of the count team and a surveillance camera; and

e. Prior to the commencement of the count, require a count room employee to notify the surveillance department and receive confirmation that recording of the count process has commenced.

6. Table game drop box count requirements.

a. The department may require that the table game drop box be conducted in the presence of a department compliance representative.

b. After the contents of each table game drop box from a banking table game are counted, a member of the count team shall record on a three-part Daily Banking Table Game Count Report or electronic equivalent prepared on a computer system, the:

(1) Value of each denomination of currency counted;

(2) Total value of all denominations of currency counted;

(3) Gaming date of the items being recorded;

(4) Total number of banking table game drop boxes opened and counted; and

(5) Current date.

c. After the contents of each table game drop box from a nonbanking table game are counted, a member of the count team shall record on a three-part Daily Nonbanking Table Game Count Report or electronic equivalent prepared on a computer system the:

(1) Value of poker rake chips counted;

(2) Value of value chips counted;

(3) Total value of poker rake chips and value chips counted;

(4) Gaming date of the items being recorded;

(5) Total number of nonbanking table game drop boxes opened and counted; and

(6) Current date.

d. After the preparation of the Daily Banking Table Game Count Report and the Daily Nonbanking Table Game Count Report, the count team members and the count room supervisor shall sign the reports attesting to the accuracy of the information recorded thereon.

e. After the contents of all table game drop boxes have been counted, all cash, value chips, and poker rake chips shall be presented in the count room by a count team member to a main bank cashier or cage supervisor who, prior to having access to the information recorded on the Daily Banking Table Game Count Report and Daily Nonbanking Table Game Count Report, and in the presence of the count team members and, if required, a department compliance representative, shall recount the currency, value chips, and poker rake chips as follows:

(1) The main bank cashier or cage supervisor may bulk count all strapped currency;

(2) The department compliance representative may direct that currency straps be recounted by the main bank cashier or cage supervisor if a discrepancy is discovered during the initial bulk recount; and

(3) All partial straps, loose currency, mutilated or torn currency, value chips, and poker rake chips shall be recounted by the main bank cashier or cage supervisor.

f. Upon completion of the recount, the main bank cashier or cage supervisor shall attest to the accuracy of the count by signature on the Daily Banking Table Game Count Report and Daily Nonbanking Table Game Count Report.

g. The Daily Banking Table Game Count Report and the Daily Nonbanking Table Game Count Report shall be distributed as follows:

(1) Immediately after leaving the count room, the count room supervisor shall deliver the original to revenue audit

or place it in a secure locked box controlled by revenue audit;

(2) The department compliance representative who observed the count shall retain the second copy; and

(3) The cage supervisor or main bank cashier shall retain the third copy.

h. Immediately after leaving the count room, the count room supervisor shall deliver any additional documents contained in the table game drop boxes to revenue audit or place the documents in a secured locked box controlled by revenue audit, including:

(1) Requests for fills;

(2) Fill slips; and

(3) Table inventory slips.

i. A count room employee shall conduct a thorough inspection of the count room and all counting equipment in the count room to verify that no currency, chips, checks, vouchers, coupons, or other documentation remains in the room.

7. A gaming ticket or promotional play instrument accepted by a cash storage or table game drop box shall be counted and included in the calculation of proceeds without regard to the validity of the gaming ticket or promotional play instrument.

8. A promotional play instrument that is not canceled upon acceptance or during the count process shall be canceled prior to the conclusion of the count.

9. A facility operator shall report in writing to the department within [~~72 hours~~ seven days] of the count:

a. Any variance between the actual count of cash, gaming tickets, and promotional play instruments in a cash storage box as determined in the count room and the amount for that particular cash storage box recorded on the:

(1) Facility operator's casino gaming machine; and

(2) If the data has been made available to the facility operator, the central monitor and control system;

b. The reason for the variance; and

c. Corrective action taken or adjustments made.

KK. Player complaints.

1. A facility operator shall attempt to timely resolve a dispute with a player concerning operation of a casino game, or payment of alleged winnings by establishing a process that includes:

a. Developing and publishing procedures by which a player may file a complaint with the facility operator in person, in writing, online, or by other means concerning operation of a casino game or payment of alleged winnings;

b. Responding to any such complaint in writing, via email, or via live chat within 15 days of the filing of the complaint, and if a player requests relief in a complaint and the requested relief or part thereof will not be granted, including in the response to the complaint the reasons for the denial of relief with specificity; and

c. If the response to a complaint is that additional information is needed, providing the player the form and nature of the information that is necessary, and when the additional information is received, responding to the complaint within seven days of receipt of the additional information.

2. A facility operator that is unable to [~~satisfactorily~~] resolve a dispute with a player within three days of notice of the dispute shall notify the department of the dispute.

3. On receipt of notice by the facility operator of the dispute, the department shall provide the player with a department player complaint form together with instructions for completing and submitting the form.

4. The department shall investigate a complaint submitted to the department and notify the player and facility operator of its determination.

5. The department may provide a player with a complaint form at any time upon request.

6. All complaints received by a facility operator from a player and the facility operator's responses to complaints, including email and live chat transcripts, shall be retained by the facility operator for at least four years and made available to the department within seven days of any request from the department.

LL. Possession of a weapon in a facility.

1. Except as otherwise provided in this subsection, an individual may not possess in a facility a firearm, stun weapon as defined in § 18.2-308.1 of the Code of Virginia; other dangerous weapon, including any defined in § 18.2-308 of the Code of Virginia; or other device or object designed to be used to inflict pain or cause injury.

2. The prohibition in subdivision 1 of this subsection:

a. Applies to all employees and contractors of the facility operator including security department employees; and

b. Does not apply to:

(1) An on-duty officer or agent of a local, state, or federal law-enforcement agency having proper jurisdiction over the facility when the officer or agent is acting in an official capacity;

(2) An individual who is employed by an armored car company or other entity that is under contract with the facility to transport cash or a cash equivalent; or

(3) An individual authorized by the department to possess a weapon or device identified in subdivision 1 of this subsection.

3. An individual requesting department authorization to possess a weapon identified in subdivision 1 of this subsection in a facility shall submit to the department in writing a request documenting:

a. A compelling need to possess a weapon in the facility;

b. That the individual is lawfully in possession of the weapon under applicable federal and state law; and

c. That the individual has received training in the possession and use of the weapon.

MM. Signs.

1. A facility operator shall construct all signs required under this chapter using a color scheme and font size reasonably expected to produce a sign that is readily visible to and readable by an individual entering the facility.

2. A facility operator shall post signs containing the following messages in a conspicuous location not more than 20 feet from each customer entrance to the facility: "An individual, including an off-duty officer or agent of a local, state or federal law enforcement agency, may not possess a weapon or other device designed to be used to inflict pain or cause injury in (name of facility) without the prior written approval of the Virginia Lottery."

NN. Acceptance of tips or gratuities.

1. Except as otherwise provided in this subsection:

a. A supervisory gaming employee of a facility is prohibited from soliciting or accepting a tip or gratuity directly from a player;

b. A gaming employee is prohibited from soliciting a tip or gratuity from a player; and

c. A facility operator may permit an employee who is authorized to accept a gratuity from a player to accept a gaming ticket if the gaming ticket is redeemed:

(1) At the cashiers' cage; and

(2) With approval of the employee's department supervisor, if the amount of the gaming ticket exceeds $100.

2. At least 30 days before table game operations are to commence, a facility operator shall submit to the department for approval internal controls relating to the acceptance of tips or gratuities by dealers at banking and nonbanking table games.

3. Except as provided in subdivision 7 of this subsection, a dealer shall immediately deposit all tips and gratuities into a transparent locked box reserved for tips and gratuities, and:

a. If roulette chips are received as a tips or gratuity, the marker button indicating the specific value of the roulette chips may not be removed until after the dealer, in the presence of a floorperson or above, has converted the roulette chips into value chips that shall then be immediately deposited in the transparent locked box reserved for tips and gratuities;

b. Tip and gratuities shall be:

(1) Collected and accounted for at least once each gaming day; and

(2) Placed in a common pool for distribution pro rata among all dealers in accordance with subdivision 5 of this subsection; and

c. A facility operator may include dealer supervisors in the common pool.

4. Upon receipt of a tip or gratuity from a player, the dealer shall extend the dealer's arm in an overt motion and deposit the tip or gratuity in the locked box reserved for tips and gratuities.

5. Tips and gratuities placed in a common pool shall be distributed pro rata among the dealers in the pool based on the number of hours worked and based on any standards for distribution established by a facility operator, which may include:

a. Hours of vacation time, personal leave time, or any other authorized leave of absence in the number of hours worked by each employee; and

b. Different full-time or part-time employees.

6. A distribution of tips and gratuities from a common pool shall occur no more than once every seven calendar days.

7. Notwithstanding the requirements of subdivision 3 of this subsection, a facility operator that offers the game of poker:

a. May establish a separate common pool for tips and gratuities received by its poker dealers; or

b. If it allows a poker dealer to retain the poker dealer's own tips and gratuities, shall require:

(1) Tips and gratuities received by a poker dealer to be deposited in a transparent locked box assigned to the particular dealer; and

(2) That the transparent locked box be moved from table to table with the dealer.

8. If a facility operator elects to follow the requirements of subdivision 7 b of this subsection, at the end of the poker dealer's shift:

a. The dealer shall take the transparent locked box assigned to the dealer to a cage cashier; and

b. The cage cashier shall open the container and count the tips and gratuities in the presence of the poker dealer, and record the total amount of the tips and gratuities received by the dealer, and:

(1) Return the tips and gratuities to the dealer; or

(2) Retain all or a portion of the tips and gratuities for inclusion in the dealer's paycheck.

9. If a facility operator elects to follow the requirements of subdivision 7 b of this subsection and has established a gaming industry tip and compliance agreement, subdivision 8 of this subsection does not apply.

10. A facility operator shall specify in its internal controls how dealer tips and gratuities will be reported to the Internal Revenue Service.

OO. Off-site customer service location.

1. A facility operator may establish an off-site customer service location for a player to create a player account and make a deposit under subsection U of this section.

2. A facility operator that uses an off-site customer service location shall have internal controls that require:

a. Establishment of a compliance program that is updated to include the off-site customer service location operation;

b. Identification of the:

(1) Address of the off-site customer service location;

(2) Date the off-site customer service location is expected to open;

(3) Name and contact information of the off-site customer service location manager;

(4) Off-site customer service location telephone numbers;

(5) Off-site customer service location normal hours of operation; and

(6) An organization chart listing all positions that will have responsibility over Virginia operations related to the off-site customer service location;

c. Commencement of operations at an off-site customer service location operation only after receiving department approval;

d. An Off-Site Customer Service Location Report to be maintained by the licensee and updated quarterly to include the following for each off-site customer service location:

(1) Address and telephone numbers;

(2) If applicable, opening and closing date;

(3) Name of the off-site customer service location manager;

(4) Off-site customer service location normal hours of operation; and

(5) Year-to-date and previous calendar year dollar amounts of the following Virginia-specific transactions received or disbursed and controlled by the off-site customer service location:

(a) Cash deposits, noncash deposits, and total deposits; and

(b) Cash withdrawals, noncash withdrawals, and total withdrawals;

e. An Off-Site Customer Service Location Report to be submitted to the department no later than 30 days after the end of the calendar year;

f. An off-site customer service location to maintain the following records for Virginia casino gaming operations:

(1) A separate monthly log, by day, of all funds deposited and withdrawn that includes:

(a) Player's name on an account to which the funds are being applied;

(b) Name of the individual making the payment;

(c) Date of deposit or withdrawal;

(d) Amount of deposit or withdrawal;

(e) Whether the transfer of funds was made by cash, check, or other financial instrument; and

(f) New ending account balance; and

(2) Monthly record of currency exchange rate gains and losses and money changer fees in conjunction with a player's transactions that includes:

(a) Player's name;

(b) Date of receipt; and

(c) Amount of payment; and

g. Any costs associated with the department's audit or review of an off-site customer service location operation to be reimbursed by the facility operator to the department.

3. An off-site customer service location may not open until the department approves:

a. The internal controls required by this subsection; and

b. An activation request submitted by the facility to the department.

11VAC5-90-120. Casino gaming facility standards.

A. Hours of operation.

1. A facility operator may not offer fewer hours of operation than provided for by law without the prior written approval of the director.

2. A facility operator that has received approval to offer fewer hours of operation may, upon written notice to the director, extend its hours of operation up to and including those allowable by law.

B. Facility design standards.

1. A facility operator shall, at its own expense, construct its facility in accordance with specifications established by the director, including:

a. Computer space for the central monitor and control system contractor that is:

(1) Equipped with heating, ventilation, and air conditioning;

(2) Supplied with power including an uninterruptible backup power supply;

(3) Secured with a key or alternative locking mechanism maintained and controlled by representatives of the department and the central monitor and control system operator in accordance with this chapter;

(4) Equipped with a door that, when opened, audibly signals the facility operator's surveillance monitoring room; and

(5) Covered by a surveillance system enabled to record all entry and exit to the computer space and activity in the area;

b. Equipment storage space for the central monitor and control system contractor;

c. Cable infrastructure access to the gaming floor;

d All necessary wiring for the gaming floor, unless the department requires its central monitor and control system contractor to install its wiring;

e. A base and high-backed seat for each slot machine;

f. At least 1,000 square feet of office space for use by department staff that is located immediately adjacent to the gaming floor and is equipped with:

(1) Partitioned work space, computers, telephones, copy capability, and supplies sufficient to meet the department's data processing and related needs;

(2) Computer terminals permitting read only access by authorized department staff to any computerized slot monitoring system, casino management system, or player tracking system used by the facility operator; and

(3) Keys or alternative locking mechanisms which are under the exclusive control of the department;

g. A surveillance system approved in writing by the department that is:

(1) Configured to provide surveillance of all slot machine and table game related activities within the facility in accordance with standards established by the department;

(2) Enabled with a digital video recording format in accordance with standards established by the department; and

(3) Equipped with a monitoring station for the exclusive use of the department which is configured with full camera control capability over the surveillance system and is capable of overriding the camera control capability of the facility operator;

h. An alarm system connected to all emergency exits from the gaming floor that:

(1) Produces a distinguishable warning sound that is discernible in the vicinity of an exit when the emergency door is opened; and

(2) Requires deactivation and reset by means of a key or alternative locking mechanism maintained and controlled by the security department;

i. An area for the detention of individuals taken into custody by any law-enforcement agency that has jurisdiction over the facility;

j. Adequate space for use by the department in connection with conducting background investigations of applicants or licensees;

k Any signage required by the department;

l. Communication systems capable of effecting timely communication between the facility and the department, law enforcement exercising proper jurisdiction over the facility, and emergency first responders; and

m. Any other equipment or design feature required by the department.

2. Virginia Lottery games.

a. A facility operator shall provide at least two locations in the facility for the sale of Virginia Lottery games that are offered by or through the department.

b. Virginia Lottery game sales locations shall be situated as near as practicable to a cashiers' cage.

C. Table games surveillance requirements.

1. In addition to the general surveillance system required by subsection B of this section and 11VAC5-90-110, a facility operator that offers table games shall have a surveillance system that includes:

a. Light sensitive cameras with lenses of sufficient magnification to allow the operator to clandestinely monitor in detail:

(1) The gaming conducted at each gaming table in the facility with sufficient clarity and coverage to simultaneously:

(a) Identify players and dealers; and

(b) View the table and determine the configuration of wagers, card, dice and tile values, and game outcomes;

(2) The movement of cash, gaming chips, and plaques, tip boxes, and drop boxes within the facility; and

(3) Any other activity or areas designated by the department; and

b. Stationary cameras dedicated to table games, including:

(1) Except for craps, baccarat, roulette and big six wheel, at least one stationary camera for each table game offered by the facility;

(2) At least two stationary cameras for each craps table, with one camera covering each end of the table;

(3) At least two stationary cameras for each baccarat table, with one camera covering each end of the table;

(4) At least two stationary cameras for each roulette table, with one camera covering the roulette wheel and one camera covering the roulette table layout;

(5) At least two stationary cameras for each big six wheel, with one camera covering the big six wheel and one camera covering the big six wheel table layout;

(6) Additional cameras as required by the department, which may include cameras with 360-degree pan, tilt, and zoom capabilities; and

(7) Single stationary cameras that:

(a) Are capable of clearly identifying the entire table layout, conduct, and outcome of the game; and

(b) May be used by a facility operator with the approval of the department in lieu of cameras identified in subdivisions 1 b (2) through 1 b (5) of this subsection.

2. A facility's surveillance system must continuously record transmissions from cameras used to observe the:

a. Gaming conducted at table games;

b. Collection of drop boxes and tip boxes;

c. Distribution of cards, dice, and tiles to gaming pits;

d. Inspection of cards, dice, and tiles in the gaming pits and at the gaming tables;

e. Retrieval of cards, dice, and tiles from the gaming pits at the end of the gaming day; and

f. Delivery of cards, dice, and tiles to the location designated and approved by the department for inspection, cancellation, destruction, or, if applicable, packaging for reuse.

3. Retention of recordings.

a. The surveillance recordings required under subdivision 2 of this subsection shall be retained for a minimum of 14 days.

b. A surveillance recording of suspicious activity, suspected or alleged regulatory violations, or suspected or alleged criminal activity shall be retained for a minimum of 30 days.

c. A surveillance recording shall be made available for review upon request by law enforcement.

4. Department approval of monitoring rooms.

a. Prior to the commencement of table game operations, a facility shall submit to the department a minimum staffing submission for the facility operator's surveillance monitor rooms.

b. The minimum staffing submission must consider the size and layout of the licensed facility as well as the number of table games and must at all times provide for surveillance of activities inside and outside the licensed facility.

c. A facility operator may not implement a surveillance plan, or an amendment to a surveillance plan or minimum staffing submission, without prior department approval.

D. Gaming floor plan.

1. At least 60 days before gaming operations are to commence, a facility operator shall submit a floor plan depicting its gaming floor and all restricted areas to the department for review and written approval.

2. A facility operator may not commence operations until its gaming floor plan is approved in writing by the department.

3. A gaming floor plan that a facility operator submits to the department shall:

a. Be drawn to 1/8-inch scale, unless another scale is approved by the department;

b. Be certified by an architect licensed to practice in the Commonwealth of Virginia;

c. Depict the gaming floor with a notation as to:

(1) Total square feet;

(2) Total square feet utilized for the placement of slot machines, table games and any other types of casino games;

(3) Total square feet reserved for future placement of casino games;

(4) Each casino game location, identified by number and notation as to whether it is proposed for present use or reserved for future use;

(5) Number of casino game locations proposed for use on the gaming floor;

(6) Number of casino game locations reserved for future use;

(7) Each seat on the gaming floor;

(8) Perimeter of the gaming floor;

(9) A clearly delineated route for and individual who is not allowed to play casino games to bypass the gaming floor;

(10) Each automated bill breaker, gaming ticket redemption, coupon redemption, and jackpot payout machine; and

(11) Each security department zone, including a notation as to whether it is a fixed or roving post;

d. Depict all restricted areas within the facility with a notation as to:

(1) Cashiers' cage, any satellite cashiers' cage, and ancillary offices, inclusive of each cashiers' cage window location and location number;

(2) Computer space allocated to the central monitor and control system;

(3) Count rooms and any trolley storage areas;

(4) An area designated for the storage or repair of equipment or slot machines or table game equipment;

(5) Information technology department operations centers;

(6) Progressive controller locations;

(7) Surveillance monitoring room;

(8) Vault and armored car bay locations; and

(9) Any area designated as restricted by the facility operator in its department-approved internal controls;

e. Depict each surveillance camera with a notation as to camera type and location number; and

f. Depict each automated teller machine.

4. If a gaming floor includes an outdoor area, in addition to the requirements of subdivision 3 of this subsection, an operator shall submit to the department a gaming floor plan that includes:

a. The amenities that the operator intends to offer in the outdoor area;

b. An affidavit from the [~~chief executive officer~~ facility general manager] attesting that the outdoor area and its intended use meet all applicable local and state requirements; and

c. A plan for player and equipment safety during inclement weather.

5. A facility operator may not implement any change to its approved gaming floor plan without the prior written approval of the department.

11VAC5-90-130. On-premises mobile casino gaming.

A. A facility operator may offer to its players at the facility on-premises mobile casino gaming.

B. The on-premises mobile casino gaming permitted by under this section shall be subject to the provisions of and may be preempted and superseded by any applicable federal law.

C. A facility operator shall locate its primary on-premises mobile casino gaming operation, including facilities, equipment, and personnel who are directly engaged in the conduct of the gaming, within a restricted area of the facility.

D. Backup equipment used on a temporary basis may be located off-site with the approval of the department.

E. The area in a facility used to conduct and support on-premises mobile casino gaming shall:

1. Be arranged in a manner promoting optimum security;

2. Be incorporated into the surveillance system installed in the rest of the facility;

3. Meet the standards set by 11VAC5-90-120, with department staff allowed access to both the system and the signal of the operation;

4. Be designed to permit the department to monitor the mobile gaming operations; and

5. Comply in all respects with the casino gaming law, this chapter, and any department policy or directives.

F. A facility operator shall ensure that only people physically on-premises at the facility are able to place wagers through the facility operator's mobile casino gaming platform, by establishing systems and practices that provide that:

1. All wagers on casino games authorized by the gaming law, this chapter, or any other law, regulation, or condition of the department related to casino gaming shall be initiated, received, and otherwise made on the premises of the facility;

2. Before a facility operator begins its mobile gaming operations, all equipment and software used in conjunction with its operation shall be submitted to an independent testing laboratory approved by the director;

3. A mobile casino gaming platform submitted to an approved independent testing laboratory shall contain:

a. A complete, comprehensive, technically accurate description and explanation of the mobile casino gaming platform;

b. Detailed operating procedures of the mobile casino gaming platform;

c. A description of the risk management framework, including:

(1) User access controls for all facility operator personnel;

(2) Information regarding segregation of duties;

(3) Information regarding automated risk-management procedures;

(4) Information regarding identifying and reporting fraud and suspicious activity;

(5) Controls for ensuring regulatory compliance;

(6) A description of anti-money laundering compliance standards;

(7) A description of all software applications that comprise the system;

(8) A description of all types of wagers available to be offered by the system; and

(9) A description of all types of third-party systems proposed for utilization;

4. Upon request, a facility operator shall promptly provide the director with relevant reports and documentation that shall include, at a minimum:

a. Complete access to all wagers;

b. The ability to query or sort wagering data; and

c. The ability to export wagering data;

5. A facility operator or the supplier providing a facility operator's mobile casino gaming platform shall maintain all transactional wagering data for a period of five years;

6. The rules that apply to wagers placed on a mobile casino gaming platform shall be readily available to a player;

7. At least once every 24 hours, a mobile casino gaming platform shall perform an authentication process on all software used to offer, record, and process wagers to ensure there have been no unauthorized modifications. As part of this authentication process, the mobile casino gaming platform must be able to detect if any system component is determined to be invalid in the event of an authentication failure;

8. In the event of an authentication failure, the facility operator shall notify the director within 24 hours of the failure. The results of all authentication attempts shall be recorded by the mobile casino gaming platform and maintained for a period of 90 days;

9. A facility operator and a supplier providing a facility operator's mobile casino gaming platform shall grant the director access to wagering systems, transactions, and related data as deemed necessary and in the manner required by the director;

10. A mobile casino gaming platform shall provide a process for the director to query and export, in the format required by the director, all mobile casino gaming platform data; and

11. Additional system specifications may be specified by the director through the issuance of technical standards.

G. Geolocation systems.

1. A facility operator shall keep its geolocation systems up to date, including integrating current solutions in real time that can detect the use of remote desktop software, rootkits, virtualization, or any other programs identified by the director as having the ability to circumvent geolocation measures.

2. At least every 90 days, the integrity of the geolocation system shall be reviewed by the facility operator to ensure that the system detects and mitigates existing and emerging location fraud risks.

3. In order to prevent unauthorized placement of a wager by an individual on the premises of the facility, the mobile casino gaming platform must utilize a geofencing system to reasonably detect the physical location of an individual attempting to access the mobile casino gaming platform and place a wager and to monitor and block unauthorized attempts to place a wager when an individual is not within the permitted area inside the facility.

4. The geofencing system must ensure that an individual is located within the permitted area inside the facility when placing a wager and must be equipped to dynamically monitor the individual's location and block unauthorized attempts to place a wager when an individual is not within the permitted area inside the facility.

5. The director may issue additional geolocation requirements in the form of technical standards.

H. Player accounts and limitations.

1. A facility operator may offer on-premises mobile casino gaming only to an individual who has established an account and uses such account to place wagers as follows:

a. Any wager shall be placed directly with the facility operator by the account holder;

b. The facility operator shall verify the account holder's physical presence on site at the facility at the time of wagering;

c. The account holder shall provide the facility operator with the correct authentication information for access to the player account; and

d. A facility operator shall disable a player account after three failed login attempts and require multi-factor authentication to recover or reset a password or user name.

2. A facility operator may not allow a player to establish more than one user name or more than one player account per mobile casino gaming platform.

3. A facility operator shall take commercially and technologically reasonable measures to verify a player's identity and shall use such information to enforce the provisions of this section.

4. A facility operator shall implement procedures to terminate all accounts of any player who establishes or seeks to establish more than one user name or more than one account whether directly or by use of another individual as proxy; although such procedures may allow a player who establishes or seeks to establish more than one user name or more than one account to retain one account, provided that the facility operator investigates and makes a good faith determination that the player's conduct was not intended to commit fraud or otherwise evade the requirements of the gaming law, this chapter, or any other law, regulation, or condition of the department related to casino gaming.

5. A facility operator shall not allow a player to use a proxy server for the purpose of misrepresenting the player's location in order to engage in on-premises mobile casino gaming.

6. A facility operator shall take commercially and technologically reasonable measures to prevent one player from acting as a proxy for another, including use of geolocation technologies to prevent simultaneous logins to a single account from geographically inconsistent locations.

7. A facility operator may not accept a wager in an amount more than the funds on deposit in the player's account.

8. A mobile casino gaming platform shall employ a mechanism that can detect and prevent any player-initiated wagering or withdrawal activity that would result in a negative balance of a player account.

I. If an on-premises mobile casino gaming player account is inactive or dormant for five years:

1. The facility operator shall attempt to contact the account holder by mail, phone, and electronic mail;

2. If the account holder does not respond to the facility operator, the facility operator shall close the account; and

3. Any funds remaining in the account at the time of closing shall be paid 50% to the facility operator and 50% to the Commonwealth's general fund.

A facility operator shall ensure that account holders are made aware of the provisions of this subsection prior to opening a mobile gaming player account.

J. Responsible gaming.

1. In addition to the requirements for responsible casino gaming established in 11VAC5-90-100, a facility operator that offers on-premises casino gaming shall:

a. Cause the words "If you or someone you know has a gambling problem and wants help, call 1-800-GAMBLER," or other comparable language approved by the department, which shall include the words "gambling problem" and "call 1-800-GAMBLER," to be displayed prominently at log-on and log-off times to any person visiting or logged onto the on-premises mobile casino gaming; and

b. Prominently publish a responsible gambling logo in a manner approved by the director and shall direct a player to the facility operator’s responsible gambling page;

c. Provide a mechanism by which an account holder may establish the following controls on wagering activity through the individual's player account:

(1) A limit on the amount of money deposited within a specified period of time and the length of time the account holder will be unable to participate in gaming if the holder reaches the established deposit limit; and

(2) A temporary suspension of gaming through the account for any number of hours or days.

2. A facility operator shall institute and prominently publish procedures for players to implement the restrictions provided in this subsection, including:

a. Opportunities to self-exclude from or to set deposit limits, to set limits on the player's total gaming activity, or to limit participation to wagers below an established limit;

b. Options to set pop-up warnings concerning mobile casino gaming activity: and

c. Options to implement limits and timeouts (e.g., cooling off periods of at least 72 hours), where players have the option to adjust self-imposed limits to make the limits more restrictive as often as the players like but shall not have the option to make limits less restrictive until the prior restriction has expired.

3. A facility operator shall not send gaming-related electronic mail to an account holder when the player has suspended the account for at least 72 hours.

4. A facility operator shall provide a mechanism by which an account holder may change these controls, but when the player's account is suspended, the account holder may not change gaming controls until the suspension expires.

5. During a period of suspension, an account holder shall have access to the account and be permitted to withdraw funds from the account.

K. A facility operator's website or mobile application shall contain, at a minimum, the following:

1. A clear statement of the facility operator's commitment to responsible gaming and problem gambling prevention;

2. A mechanism for a player to take note of the passage of time;

3. The ability to initiate a "cooling off" period such as breaks in play and avoidance of excessive play;

4. Practices and procedures on the site that do not reinforce myths and misconceptions about gambling;

5. Information about the website's terms and conditions is readily accessible;

6. Promotional or free games do not mislead players;

7. Notification to players of age-verification procedures;

8. Access to credit is prohibited;

9. Fund transfers and automatic deposits are prohibited or restricted; and

10. Games display credits and spending as cash.

L. At least 60 days before on-premises mobile casino gaming operations are to commence, a facility operator shall submit its internal controls for those operations to the department for review and written approval. The internal controls shall be integrated into the internal controls required by 11VAC5-90-110 and shall address, at a minimum:

1. Administrative controls;

2. Recordkeeping and record retention;

3. Accounting controls;

4. Segregation of functions, duties, and responsibilities;

5. Security;

6. Surveillance;

7. Reports; and

8. Such other subject matters that the department may require.

M. Gross receipts from on-premises mobile casino gaming shall be included in a facility operator's adjusted gross receipts and subject to taxation pursuant to the provisions of §§ 58.1-4124 and 58.1-4125 of the Code of Virginia.

N. Prohibited conduct.

1. The provisions of this subsection are in addition to any criminal proceeding that may be brought against a person for a violation of the prohibited conduct described in this subsection.

2. A person may not offer on-premises mobile casino gaming in violation of the casino gaming law, this chapter, or any other law, regulation, or condition of the department related to casino gaming.

3. A person may not knowingly tamper with software, computers, or other equipment used to conduct on-premises mobile casino gaming to alter the odds or the payout of a game or disable the game from operating according to the rules of the game as approved by the department.

4. The permit of an employee of a facility operator who violates subdivision 3 of this subsection shall be revoked and the employee shall be subject to such further penalty as the department deems appropriate.

5. The license of a facility operator that violates subdivision 3 of this subsection shall be suspended for a period determined by the department and the facility operator shall be subject to such further penalty as the department deems appropriate.

6. A person may not knowingly offer or allow to be offered any on-premises mobile casino game that has been tampered with in a way that affects the odds or the payout of a game or disables the game from operating according to the rules of the game as approved by the department.

7. The permit of an employee of the facility operator who violates subdivision 6 of this subsection shall be suspended for a period of at least 30 days.

8 The license of a facility operator that violates subdivision 6 of this subsection shall be suspended for a period of at least 30 days.

11VAC5-90-140. Transportation and testing of casino gaming machines and equipment.

A. Compliance with federal law. A person who transports a slot machine, mechanical casino gaming machine, or table game equipment shall comply with applicable provisions of 15 USC §§ 1171-1178, commonly known as the Johnson Act.

B. Transportation.

1. Unless otherwise directed by the director, a person shall submit written notice to the department prior to transporting a slot machine, mechanical casino gaming machine, or table game equipment.

2. A person proposing to transport a slot machine, mechanical casino gaming machine, or table game equipment shall submit to the director a written notice containing:

a. Name and address of person initiating transportation;

b. Reason for transportation;

c. Method of transportation;

d. Name of and address of carrier;

e. Anticipated beginning and end dates of transportation;

f. Name and address of destination;

g. Name and address of manufacturer;

h. Manufacturer's serial number;

i. Model number;

j. Description; and

k. Any other information requested by the department.

3. The person proposing to transport or transporting a slot machine, mechanical casino gaming machine, or table game equipment shall promptly provide the department with written notice of any changes to the information already submitted as required under subdivision 2 of this subsection.

4. A person transporting a slot machine, mechanical casino gaming machine, or table game equipment shall plainly and clearly label the package so that the name and address of the shipper and recipient and the contents of the package may be readily ascertained during an inspection of the machine outside of the package.

5. After delivery of a slot machine, mechanical casino gaming machine, or table game equipment, the facility to which the terminal is delivered shall promptly provide the department with written notice that includes:

a. Date the slot machine, mechanical casino gaming machine, or table game equipment was received;

b. Date the slot machine, mechanical casino gaming machine, or table game equipment will be placed into operation; and

c. Any other information requested by the department.

C. Storage.

1. If a slot machine, mechanical casino gaming machine, or table game equipment will not be placed into operation upon delivery to a casino gaming facility, the facility shall provide the department with written notice that includes:

a. Identification of the slot machine, mechanical casino gaming machine, or table game equipment;

b. Reason for storage;

c. Storage facility location; and

d. Any other information requested by the department.

2. A facility operator shall store a slot machine, mechanical casino gaming machine, or table game equipment only in a manner that the department has approved.

D. Registration.

1. The department shall maintain a register of each slot machine, mechanical casino gaming machine, and specified table game equipment placed in operation in the Commonwealth.

2. The table game equipment for which the board shall maintain a register under subdivision 1 of this subsection is:

a. Table games that contain an approved table layout;

b. Automated table game shuffling devices;

c. Table game progressive controllers; and

d. Any other table game equipment specified by the department.

3. For each slot machine placed into operation, the department shall incorporate the slot machine into the department's central monitor and control system.

4. For each slot machine, mechanical casino gaming machine, or table gaming equipment specified in subdivision 2 of this subsection that is placed into operation, the department shall:

a. Assign a registration control number; and

b. Affix a department registration tag.

E. Out of state movement. A slot machine, mechanical casino gaming machine, or gaming equipment may not be transported out of the Commonwealth unless the director:

1. Approves the action; and

2. If the slot machine, mechanical casino gaming machine, or table gaming equipment is being permanently removed from Virginia, removes the registration tag.

F. Testing.

1. The department may test slot machines and associated equipment for:

a. Accuracy;

b. Compatibility with the central monitor and control system; and

c. Any other function that the director determines may be necessary to validate the proper functionality and performance of the slot machines and equipment.

2. The director may test mechanical casino gaming machines, table game rules, and table game equipment for:

a. Accuracy; and

b. Any other function the department determines is necessary to validate the proper functionality and performance of the mechanical casino gaming machine or table game equipment.

G. Request for authorization.

1. A facility operator shall obtain prior written authorization from the department before taking any of the following actions with respect to a slot machine, mechanical casino gaming machine, or table game equipment in its facility:

a. Placing the slot machine, mechanical casino gaming machine, or table game into operation;

b. Relocating the slot machine, mechanical casino gaming machine, or table game within the facility;

c. Converting a game theme or table layout;

d. Converting a play denomination on a slot machine or mechanical casino gaming device;

e. Changing percentage payout;

f. Changing an erasable programmable read only memory chip;

g. Changing a jackpot lockup amount;

h. Changing a configuration;

i. Performing a substantial replacement of parts;

j. Implementing any variation, composite, or new feature of a table game; or

k. Performing any other action that materially alters or interrupts the operation of a slot machine, mechanical casino gaming machine, or table game.

2. Before the director authorizes an action described in subdivision 1 of this subsection, a facility shall submit to the department written notice of the request that includes:

a. Description of proposed action;

b. Location of action;

c. Start and end dates and times;

d. Estimated "go live" date for the slot machine, mechanical casino gaming machine, or table game;

e. Approval of the manufacturer of the affected slot machine, mechanical casino gaming machine, or table game equipment;

f. Approval of the operator of the central monitor and control system; and

g. Any other information requested by the department.

3. A facility operator shall promptly provide the director with written notice of any changes to the information already submitted under subdivisions 1 and 2 of this subsection.

4. Response to request for authorization.

a. The director may impose additional requirements on the facility operator or the manufacturer before authorizing the action.

b. The director may deny approval of the action.

c. A facility operator shall notify the director if the action is not completed as approved.

11VAC5-90-150. Slot machines.

A. Definitions. In addition to the terms defined in 11VAC5-90-10, the following terms have the meanings indicated.

"Double-up" means an optional wager on a slot machine, the availability of which is triggered by a preceding winning event, in which the player has a mathematically equal probability of doubling the amount wagered or losing the entire amount placed at risk.

"Modification" means a change or alteration that:

1. Affects the conduct of play or operation of equipment, a system, or software including a change or alteration to a:

a. Control program;

b. Graphics program; or

c. Payout percentage; and

2. Does not include the replacement of one approved component with an identical component.

"Random number generator" means a computational or physical functionality within the operating system of an electronic device that ensures the observed unpredictability and absence of pattern in a set of elements or events that have definite probabilities of occurrence.

"RAM" means random access memory.

"RAM clear" means a process that results in the zeroing out of any:

1. Meter information;

2. Configuration information; or

3. Data stored in the random access memory of a slot machine.

"Skill" means the application of intelligence and specific knowledge to achieve the best result when a slot machine offers a choice of options during game play.

"Theme" means a concept, subject matter, and methodology of design of a slot machine.

"Version" means a sequence number or designation assigned to equipment, a system, or software to identify the initial release of the equipment, system, or software and to track changes or revisions to the initial release.

B. Testing, certification, and approval of equipment, a system, or software

1. A manufacturer may not offer the equipment, systems, or software enumerated in subdivision 5 of this subsection, or a modification to a department-approved version of that equipment, system or software, for sale, lease, distribution, or use in a facility without it having been:

a. Tested and certified by an independent certified testing laboratory; and

b. Approved in writing by the department.

2. A facility operator may not purchase, lease, or otherwise acquire the right to install, utilize, or make available for use the equipment, systems, or software enumerated in subdivision 5 c of this subsection, or a modification to a department-approved version of that equipment, system, or software, without it having been:

a. Tested and certified by an independent certified testing laboratory; and

b. Approved in writing by the department.

3. A facility operator may not modify, alter, or tamper with the central monitor and control system or a slot machine.

4. Modification, alteration, or tampering with the central monitor and control system or a slot machine may result in the immediate suspension of an operation license by the department.

5. The testing, certification, and approval requirements of this subsection shall, at a minimum, apply to:

a. The central monitor and control system;

b. A slot machine;

c. The interoperability between a slot machine and:

(1) A slot machine data system;

(2) A casino management system;

(3) A gaming ticket system;

(4) A promotional play system;

(5) A player tracking system;

(6) A ticket redemption unit;

(7) An automated jackpot payout machine;

(8) An external bonusing system;

(9) A cashless funds transfer system; and

(10) A progressive controller; and

d. Other equipment, systems, or software designated for testing and certification by the department.

6. A prototype of equipment, a system, or software required to be tested, certified, and approved under subdivision 5 of this subsection, or a modification to a department-approved version of that equipment, system, or software shall, at a minimum, be tested for:

a. Overall operational integrity;

b. Conformance with the casino gaming law, this chapter, and any other law, regulation, or condition of the department related to casino gaming; and

c. If applicable, compatibility and compliance with the central monitor and control system communication protocol designated by the department, including the ability to communicate with the central monitor and control system on a real-time basis for:

(1) Meter retrieval; and

(2) Slot machine status, activation, and deactivation.

7. Until such time as the department determines it has assembled a list of approved equipment, systems, and software sufficient to meet the needs of facility operators under the casino gaming law, notwithstanding the requirements of subsections C and D of this section, the department may permit an abbreviated testing and approval process in accordance with the requirements of subsection E of this section.

8. If a facility operator develops any equipment, system, or software that is functionally equivalent to that enumerated in subdivision 5 c of this subsection, or modifies a department-approved version of that equipment, system, or software, the facility operator shall be subject to the testing, certification, and approval requirements of this section to the same extent as if the equipment, system, or software were developed or modified by a manufacturer.

9. A manufacturer shall pay all costs of testing, certification, and approval under this section including all costs associated with:

a. Transportation;

b. Equipment and technical services required by an independent certified testing laboratory to conduct the testing and certification process; and

c. Implementation testing.

C. Submission of equipment, a system, or software for testing and certification.

1. A manufacturer seeking department approval for equipment, a system, or software other than a slot machine shall submit the equipment, system, or software to an independent certified testing laboratory.

2. The submission required by subdivision 1 of this subsection shall include the following:

a. A request for testing and certification under subdivision B 6 of this section;

b. A prototype of the equipment, system, or software identical in all mechanical, electrical, electronic, and other respects to that for which department approval is sought;

c. Technical and operator manuals;

d. A description of all security methodologies incorporated into the design of the equipment, system, or software including, if applicable:

(1) Password protection;

(2) Encryption methodology for all alterable media;

(3) Auto-authentication of software;

(4) Network redundancy; and

(5) Back-up and recovery procedures;

e. A schematic or network diagram of the major components of the equipment, system, or software with a:

(1) Description of each component's functionality; and

(2) Software object report;

f. A description of the data flow, in narrative and in schematic form, including:

(1) Data cabling; and

(2) If applicable, communications methodology for multi-site applications;

g. A list of:

(1) Computer operating systems;

(2) Third-party software; and

(3) Available system reports;

h. System software and hardware installation procedures;

i. A description of the method used to authenticate software;

j. All source code;

k. If applicable, a description of the features offered by the equipment, system, or software with regard to:

(1) Player and employee card functions; and

(2) Reconciliation procedures;

l. If applicable, a description of any interoperability testing conducted by the manufacturer, including test results identified by manufacturer, model, and software identification and version number, for the submitted equipment, system, or software's connection to any of the following:

(1) Slot machine;

(2) Slot machine data system;

(3) Casino management system;

(4) Gaming ticket system;

(5) Promotional play system;

(6) Player tracking system;

(7) Ticket redemption unit;

(8) Automated jackpot payout machine;

(9) External bonusing system;

(10) Cashless funds transfer system; and

(11) Progressive controller;

m. If applicable, a description, accompanied by diagrams, schematics, and specifications, of the creation of a:

(1) Gaming ticket and the redemption options available; and

(2) Promotional play instrument and the redemption options available; and

n. If requested by the department or an independent certified testing laboratory:

(1) Any specialized hardware, software, or other equipment, inclusive of technical support and maintenance, required to conduct the testing and certification process; and

(2) Additional documentation pertaining to the equipment, system, or software being tested.

3. A manufacturer seeking department approval for a modification to a department-approved version of equipment, a system, or software other than a slot machine shall submit the proposed modification to an independent certified testing laboratory.

4. An independent certified testing laboratory selected by a manufacturer or the department to test a modification may be, but need not be, the testing laboratory that performed the initial prototype testing.

5. The submission required by subdivision 3 of this subsection shall include the following:

a. A request for testing and certification under subdivision B 6 of this section;

b. The equipment, system, or software proposed for modification;

c. A description of the proposed modification, accompanied by applicable diagrams, schematics, and specifications;

d. A narrative disclosing the purpose for the modification;

e. If requested by the department or an independent certified testing laboratory:

(1) Any specialized hardware, software, or other equipment, inclusive of technical support and maintenance, required to conduct the testing and certification process; and

(2) Additional documentation pertaining to the testing of the proposed modification.

6. At the conclusion of testing of a prototype or modification of equipment, a system, or software other than a slot machine, an independent certified testing laboratory shall issue to the department a certification report in an:

a. Electronic form; and

b. Format acceptable to the department.

[~~7. Upon receipt of a certification report from an independent certified testing laboratory, but prior to a decision to approve a prototype or modification of equipment, a system, or software other than a slot machine, the department may require a trial period, as follows:~~

~~a. A trial period shall be of a scope and duration the department deems appropriate to assess the operation of the prototype or modification in a live gaming environment;~~

~~b. A trial period shall be subject to compliance by the manufacturer and the facility operator with specific terms and conditions required by the department, that may include:~~

~~(1) Development and implementation of product specific accounting and internal controls; and~~

~~(2) Periodic data reporting to the department;~~

~~c. The department may authorize the receipt of compensation by a manufacturer during a trial period; and~~

~~d. The department may order termination of a trial period at any time upon a determination by the department that:~~

~~(1) A manufacturer or facility operator has not complied with the terms and conditions required by the department; or~~

~~(2) Equipment, a system, or software is not performing as expected.~~

~~8. Upon receipt of a certification report from an independent certified testing laboratory, the department may:~~

~~a. Approve the prototype or modification, with or without specific conditions;~~

~~b. Reject the prototype or modification;~~

~~c. Require additional testing; or~~

~~d. Require a trial period under subdivision 7 of this subsection.~~

~~9. Department approval of a prototype or modification does not constitute a guarantee of its safety or reliability.~~]

D. Submission of a slot machine for testing and certification.

1. A manufacturer seeking department approval for a slot machine shall submit the slot machine to an independent certified testing laboratory.

2. The submission required by subdivision 1 of this subsection shall include the following:

a. A request for testing and certification under subdivision B 6 of this section;

b. A prototype of the slot machine identical in all mechanical, electrical, electronic, and other respects to that for which department approval is sought;

c. Technical and operator manuals;

d. A description of the slot machine including:

(1) Diagrams, schematics, and specifications; and

(2) Documentation with regard to the manner in which the slot machine was tested and emulated by the manufacturer prior to submission;

e. A copy on electronically readable media of all:

(1) Executable software, including data and graphics information;

(2) Source code for programs that have no commercial use other than as a component of a slot machine; and

(3) Graphical images displayed on a slot machine including, if applicable:

(a) Reel strips or card images;

(b) Rules and instructions; and

(c) Pay tables;

f. A mathematical explanation of the average and theoretical return to the player, listing all:

(1) Assumptions; and

(2) Steps in the formula including the treatment of bonus pays;

g. A description of:

(1) Security methodologies incorporated into the design of a slot machine including, if applicable:

(a) Encryption methodology for all alterable media;

(b) Auto-authentication of software; and

(c) Recovery capability of a slot machine on power interruption;

(2) Tower light functions indicating the corresponding condition;

(3) Error conditions and the corresponding action required; and

(4) Use and function of available:

(a) Dip switch settings; and

(b) Configurable options;

h. A description, accompanied by supporting test results, of the random number generator or generators used to determine the results of a wager, including a detailed explanation of:

(1) Operational methodology; and

(2) The manner by which the random number generator, including the random number selection process is impervious to:

(a) Outside influences;

(b) Interference from electro-magnetic, electrostatic, and radio frequencies; and

(c) Influence from ancillary equipment by means of data communications;

i. If a slot machine requires or permits player skill in the theoretical derivations of the payout return, the source of strategy;

j. If required, a cross-reference between the meters denoted on the slot machine and the meters required by subsection P of this section;

k. Program storage media including:

(1) Erasable programmable read-only memory (EPROMs);

(2) Electrically erasable programmable read-only memory (EEPROMs); and

(3) Any type of alterable media for slot machine software;

l. Proof that a slot machine has been inspected and approved for customer safety by a reputable testing laboratory;

m. If applicable, a description of any interoperability testing conducted by the manufacturer, including test results identified by manufacturer, model and software identification and version number, for the submitted slot machine's connection to any of the following:

(1) Slot machine data system;

(2) Casino management system;

(3) Gaming ticket system;

(4) Promotional play system;

(5) Player tracking system;

(6) Ticket redemption unit;

(7) Automated jackpot payout machine;

(8) External bonusing system;

(9) Cashless funds transfer system; and

(10) Progressive controller;

n. A description of the manner in which the slot machine was or will be tested for compatibility and compliance with the central monitor and control system communication protocol designated by the department including the ability to communicate with the central monitor and control system on a real time basis for:

(1) Meter retrieval; and

(2) Slot machine status, activation, and deactivation;

o. Specialized hardware, software, or testing equipment, inclusive of technical support and maintenance, requested by an independent certified testing laboratory including:

(1) An emulator for a specified microprocessor;

(2) Personal computers;

(3) Extender cables for CPU departments;

(4) Target reel strips; and

(5) Door defeats; and

p. If requested by the department or an independent certified testing laboratory, additional documentation pertaining to the slot machine being tested including:

(1) Hardware block diagrams of the major subsystems;

(2) A complete set of schematics for all subsystems;

(3) A wiring harness connection diagram; and

(4) Technical specifications for any microprocessor or microcontroller.

3. A manufacturer seeking department approval for a modification to a department-approved version of a slot machine, including a change in theme, shall submit the modification to an independent certified testing laboratory.

4. An independent certified testing laboratory selected by a manufacturer or the department to test a modification may, but need not be, the testing laboratory that performed the initial prototype testing.

5. The submission required by subdivision 3 of this subsection shall include the following:

a. A request for testing and certification under subdivision B 6 of this section;

b. The slot machine proposed for modification;

c. A description of the proposed modification to the slot machine, accompanied by applicable diagrams, schematics, and specifications;

d. If a change in theme is involved, a copy of the graphical images displayed on the slot machine including, if applicable:

(1) Reel strips and card images;

(2) Rules and instructions; and

(3) Pay tables;

e. If a change in the manner in which the average payout percentage is achieved or a change in the theoretical return to the player is otherwise involved, a mathematical explanation of the return to the player, listing all:

(1) Assumptions; and

(2) Steps in the formula including the treatment of bonus pays;

f. If the proposed modification requires or permits player skill in the theoretical derivations of the payout return, the source of strategy;

g. A description of the manner in which the slot machine was or will be tested for compatibility and compliance with the central monitor and control system communication protocol designated by the department including the ability to communicate with the central monitor and control system on a real time basis for:

(1) Meter retrieval; and

(2) Slot machine status, activation and deactivation; and

h. If requested by the department or an independent certified testing laboratory:

(1) Any specialized hardware, software, or other equipment, inclusive of technical support and maintenance, required to conduct the testing and certification process; and

(2) Additional documentation pertaining to the testing of the proposed modification.

6. At the conclusion of testing of a prototype or modification to a slot machine, an independent certified testing laboratory shall issue to the department a certification report in an:

a. Electronic form; and

b. Format acceptable to the department.

7. Upon receipt of a certification report from an independent certified testing laboratory, but prior to a decision to approve a prototype or modification to a slot machine, the department may require a trial period, as follows:

a. A trial period shall be of a scope and duration the department deems appropriate to assess the operation of the slot machine in a live gaming environment;

b. A trial period shall be subject to compliance by the manufacturer and the facility operator with specific terms and conditions required by the department, which may include:

(1) Development and implementation of product specific accounting and internal controls; and

(2) Periodic data reporting to the department;

c. The department may authorize the receipt of compensation by a manufacturer during a trial period; and

d. The department may order termination of the trial period at any time upon a determination by the department that:

(1) A manufacturer or facility operator has not complied with the terms and conditions required by the department; or

(2) The slot machine is not performing as expected.

8. Upon receipt of a certification report from an independent certified testing laboratory, the department may:

a. Approve the prototype or modification, with or without specific conditions;

b. Reject the prototype or modification;

c. Require additional testing; or

d. Require a trial period under subdivision 7 of this subsection.

9. Department approval of a prototype or modification of a slot machine does not constitute a guarantee of its safety or reliability.

E. Abbreviated testing and certification.

1. Except with regard to the department's central monitor and control system, a manufacturer may, during the period specified in subdivision B 7 of this section, seek department approval of a prototype or proposed modification under an abbreviated testing and certification process for any equipment, system, or software required to be tested and certified under subdivision B 5 of this section.

2. A manufacturer shall submit the equipment, system, or software to an independent certified testing laboratory.

3. The submission required by subdivision 2 of this subsection shall include the following:

a. A request for abbreviated testing and certification under this subsection naming the state within the United States

on whose regulations and technical standards the manufacturer proposes the department rely;

b. A prototype of the equipment, system, or software identical in all mechanical, electrical, electronic, and other respects to that for which department approval is sought;

c. A certification signed by the chief engineer of the manufacturer, or the engineer in charge of the division of the manufacturer responsible for producing the equipment or system submitted, representing that:

(1) The prototype or proposed modification is identical in all mechanical, electrical, electronic and other respects to one that has been tested and certified by:

(a) A testing laboratory operated by the named state; or

(b) An independent certified testing laboratory on behalf of the named state;

(2) The manufacturer is licensed in good standing in the named state;

(3) The submitted equipment, system, or software has all regulatory approvals prerequisite to sale, lease, or distribution in the named state;

(4) The testing standards of the named state are comprehensive, thorough and involve substantially similar technical requirements and safeguards as those required by the casino gaming law, this chapter, or any other law, regulation, or condition of the department related to casino gaming; and

(5) The manufacturer has fully disclosed any conditions or limitations placed by the named state on the operation or placement of the equipment, system, or software:

(a) At the time of approval; or

(b) Subsequent to approval;

d. Copies of the submission package, and any amendments thereto, filed in the named state, including any:

(1) Checklists;

(2) Correspondence, review letters, or certification letters issued by:

(a) The testing laboratory operated by the named state; or

(b) An independent certified testing laboratory on behalf of the named state; and

(3) Final approval letter issued by the named state;

e. If applicable, a description of any interoperability testing conducted by the manufacturer, including test results identified by manufacturer, model and software identification and version number, for the submitted equipment or system's connection to a:

(1) Slot machine;

(2) Slot machine data system;

(3) Casino management system;

(4) Gaming ticket system;

(5) Promotional play system;

(6) Player tracking system;

(7) Ticket redemption unit;

(8) Automated jackpot payout machine;

(9) External bonusing system;

(10) Cashless funds transfer system; and

(11) Progressive controller;

f. If the submission involves a slot machine, a description of the manner in which the slot machine was or will be tested for compatibility and compliance with the central monitor and control system communication protocol designated by the department, including the ability to communicate with the central monitor and control system on a real time basis for:

(1) Meter retrieval; and

(2) Slot machine status, activation, and deactivation; and

g. If requested by the department or an independent certified testing laboratory:

(1) Any specialized hardware, software, or other equipment, inclusive of technical support and maintenance, required to conduct the testing and certification process; and

(2) Additional documentation pertaining to the equipment, system, or software being tested.

4. At the conclusion of testing of a prototype or modification, an independent certified testing laboratory conducting abbreviated testing and certification shall issue to the department a certification report in an:

a. Electronic form; and

b. Format acceptable to the department.

5. The certification report issued under subdivision 4 of this subsection shall state:

a. Whether the independent certified testing laboratory concurs with the manufacturer that the testing standards of the named state are comprehensive, thorough and involve substantially similar technical requirements and safeguards as those required by the casino gaming law, this chapter, and any other law, regulation, or condition of the department related to casino gaming;

b. Whether the documentation required by subdivision 3 c of this subsection is complete;

c. With respect to any deficiency noted relating to subdivision 5 a or 5 b of this subsection, the nature of the noncompliance; and

d. The results of any supplemental testing performed, including interoperability testing with the central monitor and control system.

6. Upon receipt of a certification report from an independent certified testing laboratory, the department may act with regard to:

a. Acceptance of the testing standards of the named state; and

b. The specific equipment, system, or software by:

(1) Approving the prototype or modification, with or without specific conditions;

(2) Rejecting the prototype or modification;

(3) Requiring additional testing; or

(4) Requiring a trial period under this chapter.

7. Department approval of a prototype or proposed modification does not constitute a guarantee of its safety or reliability.

F. Concatenated binary files and related documentation. A manufacturer shall deliver each slot machine to the department with:

1. The concatenated binary file signature corresponding to the department-approved version of the slot machine in a form satisfactory to the:

a. Department; and

b. Central monitor and control system operator; and

2. A file, in a form satisfactory to the department, describing the slot machine including:

a. The manufacturer's:

(1) Serial number;

(2) Model number;

(3) Software identification number; and

(4) Version number;

b. Denomination or a designation as multi-denomination;

c. Cabinet style;

d. An indication as to whether the slot machine is a:

(1) Progressive; or

(2) Wide area progressive;

e. Configured for use with a:

(1) Gaming ticket system;

(2) External bonusing system; and

(3) Cashless funds transfer system; and

f. Other information required by the department.

G. Emergency modification of equipment, a system, or software.

1. Notwithstanding the requirements of subsections C and D of this section, the department may, on submission of a written request by a manufacturer, authorize installation of a modification to equipment, a system, or software required to be tested, certified, and approved by the department under subdivision B 5 of this section, on an emergency basis.

2. A written request submitted by a manufacturer to the department shall document the:

a. Equipment, system, or software proposed for emergency modification, including:

(1) Software identification number; and

(2) Version number;

b. Facility;

c. Reason for the emergency modification; and

d. Proposed date and time of installation.

3. A manufacturer may not install an emergency modification without the written approval of the department.

4. No more than 15 days following receipt of department authorization on an emergency modification, a manufacturer shall submit a modification identical to that receiving emergency authorization for testing, certification and approval under this chapter.

H. Notice of known or suspected defect.

1. A manufacturer shall immediately notify the department of any known or suspected defect or malfunction in equipment, system, or software required to be tested, certified, and approved by the department under subdivision B 5 of this section.

2. A manufacturer shall:

a. Confirm in writing any notice given to the department verbally pursuant to subdivision 1 of this subsection; and

b. If required by the department, notify a facility operator of any known or suspected defect or malfunction in equipment, a system, or software installed in its facility.

3. A facility operator shall immediately notify the department of any known or suspected defect or malfunction in equipment, system, or software required to be tested, certified, and approved by the department under subdivision B 5 of this section.

4. A facility operator shall confirm in writing any notice given to the department verbally pursuant to subdivision 3 of this subsection.

I. Revocation.

1. The department may, at any time, revoke an approval granted to equipment, a system, or software under subsection C, D, or E of this section on a determination by the department that the equipment, system, or software does not comply with:

a. The casino gaming law, this chapter, or any other law, regulation, or condition of the department related to casino gaming; or

b. The central monitor and control system communication protocol designated by the department including the ability to communicate with the central monitor and control system on a real time basis for:

(1) Meter retrieval; and

(2) Slot machine status, activation, and deactivation; or

c. Any other requirement established by the department.

2. The department may, at any time, impose additional conditions on the operation or placement of department-approved equipment, systems, or software.

3. A revocation by the department of an approval under subdivision 1 of this subsection does not give rise to an appeal right.

J. Communication requirements. A manufacturer shall enable a slot machine to communicate with the department's central monitor and control system through a gaming industry communication protocol approved by the department.

K. Average payout percentage.

1. In this subsection, the following terms have the meanings indicated.

"Game cycle" means the finite set of all possible combinations of symbols on a slot machine, including spinning reels or card images or other forms of video display or both.

"Theoretical payout percentage" means the total value of jackpots expected to be paid by a slot machine divided by the total value of slot machine wagers expected to be made on that slot machine during the game cycle.

2. A slot machine shall have a theoretical payout percentage that is between 84% and 100%.

3. Once a facility is operational, the department shall:

a. Conduct periodic reviews to ensure that average payout percentages, on an average annual basis, comply with the requirements of this subsection; and

b. If necessary, require the modification or replacement of a slot machine to ensure compliance with the average payout percentage requirements of this subsection.

4. A payout percentage that may be affected by reason of skill shall meet the payout percentage requirements of this subsection factoring in a method of play that provides the greatest return to a player.

5. A slot machine:

a. May not:

(1) Offer the top advertised winning combination where the odds exceed 50 million to one; and

(2) Alter any function based on an internal computation of payout percentage; and

b. Shall be designed to ensure that all possible combinations in the game cycle are independent of each other, unless disclosed to the player.

L. Minimum and maximum bet.

1. A slot machine may accept a minimum bet on a single game event as low as one cent.

2. A slot machine may not accept a maximum bet on a single game event in excess of $500 without the written approval of the department.

3. The $500 maximum bet in subdivision 2 of this subsection does not apply to a double-up option on a winning wager.

4. For an electronic table game, each wager on a separate outcome is a single game event.

M. Slot machine lock-up.

1. A slot machine shall be configured to lock-up and preclude further play following a single jackpot that requires the filing of IRS Form W-2G, Certain Gambling Winnings.

2. A single jackpot event shall include the exhaustion of all available double-up and bonus wager options on a winning wager.

3. A slot machine may be configured to permit the transfer, upon lock-up, of a jackpot amount to the credit meter.

N. Random number generator.

1. In this subsection, the following terms have the meanings indicated.

"Chi-squared analysis" means a statistical test for goodness of fit that measures the difference between a theoretical result and an observed result.

"Correlation test" means a statistical test that determines whether each card, number, symbol, or stop position is independently chosen without regard to another card, number, symbol, or stop within that game play.

"Runs test" means a statistical test that determines the existence of recurring patterns within a set of data.

"Series correlation test" means a statistical test that determines whether each card, number, symbol, or stop position is independently chosen without regard to another card, number, symbol, or stop in the previous game.

2. A slot machine shall determine the occurrence of a specific card, number, symbol, or stop by utilizing:

a. One random number generator; or

b. Two or more random number generators working collectively.

3. A slot machine's selection process shall be considered random if it meets the following statistical requirements:

a. A chi-squared analysis meeting a 99% confidence level;

b. A runs test meeting a 99% confidence level;

c. A correlation test meeting a 99% confidence level;

d. A series correlation test meeting a 99% confidence level; and

e. Any other test of randomness determined appropriate by the department.

4. A random number generator, including its random number selection process shall be designed in a manner that ensures it is impervious to:

a. Outside influences;

b. Interference from electro-magnetic, electrostatic, and radio frequencies; and

c. Influence from ancillary equipment by means of data communication.

5. Once a random selection process has occurred, a slot machine:

a. Shall display an accurate representation of the randomly selected outcome; and

b. May not make a secondary decision that affects the result shown to the player at the slot machine.

O. Rules of play.

1. In this subsection the following term has the meaning indicated.

"Strategy choice" means a particular play option on a slot machine that requires the use of skill to consistently achieve the best result.

2. A slot machine shall be equipped to display to a player while idle the:

a. Schedule of credits awarded with each winning combination;

b. Applicable rules of play; and

c. Any maximum bet limit imposed under this chapter.

3. The department may prohibit the display of any rules of play it determines to be:

a. Incomplete;

b. Confusing;

c. Misleading; or

d. Inconsistent with the rules of play required by the department.

4. For rules of play, the schedule of credits awarded with each winning combination may not include possible aggregate awards achievable from free plays.

5. A slot machine that includes a strategy choice shall include in its rules of play mathematically sufficient information for a player to use optimal skill unless the player:

a. Is not required to make an additional wager; and

b. Cannot lose any credits earned prior to the strategy choice.

6. A manufacturer or facility operator may not attach a sticker or other removable device that concerns rules of play to the face, glass, or screen of a slot machine without the prior written approval of the department.

P. Slot machine meters.

1. A slot machine shall be equipped with:

a. The meter functions required by this subsection;

b. Cumulative meters that are accessible and legible without access to the interior of the slot machine, including:

(1) Count meters that are at least eight digits in length; and

(2) Value meters that are at least 10 digits in length and maintained in:

(a) Credit units equal to the denomination of the slot machine; or

(b) Dollars and cents; and

c. A device, mechanism, or method for retaining electronically accounting data for all meters required under this subsection for a period of not less than 10 days after a power loss.

2. A slot machine may not be equipped with any device, mechanism, or method that allows or causes the cumulative meters required under this subsection to automatically clear or zero out.

3. A slot machine shall be equipped with the following cumulative meters, that continuously and automatically increment as follows:

a. A coin-in meter that:

(1) Accumulates the total number of credits wagered whether the wager involves:

(a) A gaming ticket;

(b) A promotional play instrument;

(c) Downloaded credits; or

(d) Credits won; and

(2) Does not accumulate subsequent double-up wagers or other wagers of intermediate winnings accumulated during a game event;

b. A series of meters that collectively account for the number of credits won, including:

(1) A coin-out meter that does not record amounts awarded as the result of an external bonusing system or a progressive payout but accumulates the total number of credits paid out automatically by the slot machine as a result of winning wagers including a payout:

(a) By gaming ticket; and

(b) Directly to a credit meter; or

(c) Any other means.

(2) A progressive payout meter does not record amounts awarded as the result of an external bonusing system but accumulates the total number of credits paid out

automatically by the slot machine as a result of a progressive jackpot;

(3) An external bonus payout meter that does not record amounts awarded as the result of a progressive payout but that accumulates the total number of credits paid out automatically by the slot machine as a result of an external bonusing system award;

(4) An attendant paid jackpot meter that does not record amounts awarded as the result of an external bonusing system or a progressive payout but accumulates the total number of credits hand paid by a facility operator as the result of a single winning combination that exceeds the physical or configured capability of the slot machine;

(5) An attendant paid progressive jackpot meter that does not record amounts awarded as the result of an external bonusing system but accumulates the total number of credits hand paid by a facility operator as a result of a progressive jackpot that exceeds the physical or configured capability of the slot machine; and

(6) An attendant paid external bonus payout meter that does not record amounts awarded as the result of a progressive payout but accumulates the total number of credits hand paid by a facility operator as a result of an external bonusing system award that exceeds the physical or configured capability of the slot machine;

c. An attendant paid canceled credit meter that accumulates the total number of credits hand paid by a facility operator as the result of a player initiated cash-out that exceeds the physical or configured capability of the slot machine;

d. A gaming ticket in count meter that accumulates the number of gaming tickets accepted by a slot machine;

e. A gaming ticket in value meter that accumulates the total value of credits on gaming tickets accepted by a slot machine;

f. A gaming ticket out count meter that accumulates the number of gaming tickets issued by a slot machine;

g. A gaming ticket out value meter that accumulates the total value of credits on gaming tickets issued by a slot machine;

h. A promotional play instrument in count meter that accumulates the number of promotional play instruments accepted by a slot machine;

i. A promotional play instrument in value meter that accumulates the total value of credits on promotional play instruments accepted by a slot machine;

j. A cashable downloadable in value meter that accumulates the total value of cashable credits accepted by a slot machine through a cashless funds transfer system;

k. A cashable downloadable out value meter that accumulates the total value of cashable credits issued by a slot machine to player accounts through a cashless funds transfer system;

l. A noncashable downloadable in value meter that accumulates the total value of noncashable credits accepted by a slot machine through a cashless funds transfer system;

m. A noncashable downloadable out value meter that accumulates the total value of noncashable credits issued by a slot machine to player accounts through a cashless funds transfer system; and

n. Other meters as required by the department.

4. A slot machine shall be equipped with the following noncumulative meters:

a. A credit meter that advises a player of the total number of credits, cashable and noncashable, available for wagering on the slot machine, which shall be wagered in the following order:

(1) Noncashable credits; and

(2) Cashable credits;

b. A credits wagered meter that advises a player of the total number of credits wagered in a particular game or round of slot machine play;

c. A win meter that advises a player of the total number of credits won in the immediately concluded game or round of slot machine play; and

d. A credits paid meter that advises a player of the total value of the last:

(1) Cash out initiated by a player;

(2) Hand paid jackpot; and

(3) Hand paid canceled credit.

5. The noncumulative meters required by subdivision 4 of this subsection shall be:

a. Visible from the exterior of the slot machine; and

b. At least eight digits in length.

6. A slot machine shall be equipped with a meter at least eight digits in length that stores, in a manner and for a duration acceptable to the department, the number of games played after the following events:

a. Power reset;

b, Door close; and

c. RAM clear.

7. The department may approve a slot machine that combines one of more of the meters enumerated in subdivision 3 of this subsection if the department determines that the combined meters do not preclude the capture of all critical transactions occurring on a slot machine.

8. A manufacturer may enable a slot machine that has been tested, certified, and approved under this chapter for

tournament play with the prior written approval of the department, and if a slot machine has been enabled for tournament play, the results of tournament play may not increment the cumulative meters required under subdivision 3 of this subsection.

Q. RAM clear. A manufacturer may not perform a RAM clear on a slot machine without:

1. Prior notice to the central monitor and control system operator; and

2. Recordation and transmission to the central monitor and control system operator of accounting meter data immediately prior to the RAM clear.

R. Slot machine tower lights and error conditions

1. In this subsection, the following terms have the meanings indicated.

"Administrative mode" means a slot machine has been deliberately placed by a manufacturer in an unplayable state to access the set up or recall functions of the slot machine;

"Disabled mode" means a slot machine has been deliberately placed, by a manufacturer or the central monitor and control system, in an unplayable state for any reason other than access to the set up or recall functions of the slot machine; and

"Tilt mode" means a slot machine has placed itself in an unplayable state due to malfunction or error condition and may not be returned to a playable state without the intervention of a manufacturer.

2. A slot machine shall be equipped with a tower light located at the top of its cabinet used to identify the operational status of the slot machine including:

a. A jackpot payout;

b. A credit meter payout that exceeds the physical or configured capability of the slot machine to pay;

c. Main door open;

d. Player requesting attendant services;

e. Administrative mode;

f. Disabled mode; and

g. Tilt mode.

3. A tower light shall be visible to:

a. A player; and

b. The facility operator's surveillance department.

4. When illuminated, the tower light shall indicate the default denomination of the slot machine, which for multi-denomination slot machines, shall be the lowest configured denomination.

5. Each denomination shall be indicated by a unique color and be consistent across the facility operator's gaming floor.

6. The department may, on submission of a written request by a manufacturer, approve an alternative means for identifying the operation status enumerated in this subsection.

7. A manufacturer shall deliver a slot machine with documentation that identifies each light or light combination on its tower light and the operational status corresponding to that light or light combination.

8. Nothing in this subsection shall preclude a manufacturer from equipping a slot machine with a light or light combinations not required by this subsection for use by a facility operator for gaming floor communication provided the manufacturer notifies the department in writing of any internal communication protocols involving tower lights developed by a manufacturer for a facility prior to implementation.

9. A slot machine shall be equipped, while idle and in play mode, to do the following with regard to an error condition identified in subdivision 10, 11, 12, or 13 of this subsection:

a. Detect the error condition;

b. Identify the specific error condition by:

(1) Tower light; or

(2) Other department-approved means; and

c. Communicate the specific error condition to the:

(1) Central monitor and control system; and

(2) Casino management system.

10. The following error conditions may be cleared automatically by the slot machine upon completion of a new play sequence:

a. Power reset;

b. Door open; and

c. Door just closed.

11. The following error conditions shall result in placement of the slot machine in disabled mode, shall prevent play and shall only be cleared by a manufacturer:

a. Low RAM battery;

b. Program error or defective program storage media;

c. Reel spin error;

d. Removal of the control storage media; and

e. RAM defective or corrupted.

12. The following error conditions need not result in placement of the slot machine in disabled mode, may not preclude play if the error condition is determined not to prohibit completion of the transaction and shall be cleared by a manufacturer or facility operator:

a. Printer mechanism paper level is low;

b. Printer mechanism is out of paper;

c. Printer failure; and

d. Presentation error.

13. A manufacturer of a slot machine shall affix a description of the error code corresponding to each error condition inside a slot machine.

S. Last game recall.

1. A slot machine shall be capable of recalling and displaying a complete play history for the most recent game event and at least three games immediately preceding the most recent game event.

2. The play history required by subdivision 1 of this subsection shall:

a. Be retrievable using an external key switch or other secure method that is not available to a player;

b. Be available when the slot machine is in:

(1) Idle mode;

(2) Administrative mode;

(3) Disabled mode; and

(4) Unless a true fatal tilt has occurred, tilt mode; and

c. Include:

(1) Game outcome in graphics or text;

(2) The base game and all intermediate play decisions;

(3) Details sufficient to determine the credits available at the start and end of each game event;

(4) Wagers placed;

(5) Results of any player choices involved in the game outcome;

(6) Credits won;

(7) Unless discernable from other screens or attendant menus, credits cashed out;

(8) An indication of any progressive jackpot awarded; and

(9) All double-up, bonus, and extended play activity.

3. Notwithstanding the requirements of subdivision 2 c of this subsection, a slot machine offering a variable number of intermediate play steps in a game event shall satisfy the requirements of this subsection if it is capable of recalling and displaying the last 50 intermediate steps in each of the four base game events retained.

4. A slot machine shall be capable of recalling and displaying a complete transaction history for the last 35 transactions with a cashless funds transfer system.

T. Slot machine entry logs.

1. Unless a request for an alternate procedure is submitted in writing and approved by the department, a manufacturer shall equip a slot machine with a maintenance log for use in documenting each time a:

a. Slot machine is entered; or

b. Device connected to a slot machine that may affect the operation of the slot machine is accessed.

2. A maintenance log shall be:

a. Signed by each individual accessing an area enumerated in subdivision 1 of this subsection, including representatives of a manufacturer, a contractor, a facility operator, or the department;

b. Maintained in a book with bound numbered pages that cannot be readily removed, or in a functional equivalent that has been reviewed and approved by the department:

(1) In the main cabinet of the slot machine; and

(2) On the cover of which are fields to record:

(a) The slot machine's manufacturer's serial number;

(b) Department asset number; and

(c) A log book sequence number;

c. Utilized to document the following:

(1) Date and time of entry;

(2) Entering individual's signature;

(3) Reason for entering the slot machine, including the identification of areas inspected or repaired; and

d. Retained by a facility operator for a minimum of three years from the date of the last entry unless a request for destruction is submitted in writing and approved in writing by the department.

3. A manufacturer shall equip a progressive controller not housed within the cabinet of a slot machine with a maintenance log that documents each time the department-approved compartment in which the progressive controller resides is accessed that is:

a. Signed by each individual accessing the compartment housing the progressive controller including representatives of a manufacturer, a contractor, a facility operator, or the department;

b. Maintained in a book with bound numbered pages that cannot be readily removed:

(1) In the department-approved compartment in which the progressive controller resides; and

(2) On the cover of which are fields to record:

(a) The progressive controller's manufacturer's serial number;

(b) Department asset number; and

(c) A log book sequence number;

c. Utilized to document the following:

(1) Date and time of entry to the compartment housing the progressive controller;

(2) Entering individual's signature;

(3) Reason for entering the compartment housing the progressive controller including the identification of areas inspected or repaired; and

d. Retained by a facility operator for a minimum of three years from the date of the last entry unless a request for destruction is submitted in writing and approved in writing by the department.

U. Slot machine security.

1. If a manufacturer ships a slot machine with software already installed, prior to transporting it the manufacturer shall seal the slot machine with a prenumbered seal.

2. Access to the main door securing the interior of a slot machine shall be controlled by at least one lock:

a. The key to which is:

(1) Different from any other key securing access to a slot machine component including a belly door; and

(2) Limited to access by a manufacturer and facility operator; and

b. Provided and installed by a facility operator except a facility operator may supply a manufacturer with a lock for installation during the manufacturing process.

3. Access to the logic door securing the slot machine's main processing unit shall be controlled by at least one lock:

a. The key to which is:

(1) Different from any other key securing access to a slot machine component including a belly door; and

(2) Limited to access by a manufacturer and facility operator; and

b. Provided and installed by a facility operator, except a facility operator may supply a manufacturer with a lock for installation during the manufacturing process.

4. A slot machine shall be designed with access to hardware switches controlling functions critical to the operation of a slot machine limited to access by a manufacturer and the department including switches, jumpers, and other mechanisms utilized to alter:

a. Pay tables;

b. Payout percentages; and

c. Meters.

5. A slot machine shall have:

a. Printed or affixed to the top and front of the slot machine, in a size suitable for effective surveillance coverage:

(1) The facility operator's gaming floor location number; and

(2) Department asset number; and

b. An identification plate on its exterior displaying the:

(1) Manufacturer; and

(2) Manufacturer's:

(a) Serial number; and

(b) Model number.

V. Minimum design standards applicable to equipment, a system, or software.

1. Equipment, a system, or software required to be tested, certified, and approved under this subsection shall:

a. Conform to the minimum design standards of this subsection; and

b. If applicable, conform to any specific additional design standards enumerated in this se.

2. Equipment, a system, or software required to be tested, certified, and approved under this subsection shall, at a minimum, control logical access through:

a. Generation of daily monitoring logs documenting:

(1) User access; and

(2) Security incidents;

b. Assignment of rights and privileges to an individual user including specific protocols addressing:

(1) Creation, modification, and termination of a unique system account for each user;

(2) Password parameters that:

(a) Require a minimum length;

(b) Incorporate an expiration interval; and

(c) Result in lockout; and

(3) Administrator and override capabilities;

c. Use of access permissions to restrict an unauthorized user from performing any the following with regard to critical files and directories:

(1) Reading;

(2) Altering; or

(3) Deleting; and

d. Restricted access to critical files and directories through:

(1) Encryption; or

(2) If approved by the department, internal controls provided the internal controls include:

(a) The effective segregation of duties and responsibilities with regard to the system; and

(b) The automatic monitoring and recording by the system of access by an individual to its files and directories.

3. Equipment, a system, or software required to be tested, certified, and approved under this chapter shall, at a minimum, control system operations through:

a. Generation of daily monitoring logs and alert messages documenting:

(1) System performance;

(2) Hardware problems; and

(3) Software errors;

b. Authentication of the source of a data transmission;

c. Transmission completeness and accuracy checks;

d. Detection of corrupt or lost data packets;

e. Rejection of a transmission;

f. Use of cryptographic controls for critical transmissions of data; and

g. Daily synchronization of its real time clock with that of equipment, systems, or software to which it is linked.

4. Equipment, a system, or software required to be tested, certified, and approved under this subsection shall, at a minimum, control the integrity of data through:

(a) Validation of inputs to critical fields, including data:

(1) Type; and

(2) Format;

(b) Rejection of corrupt data;

(c) Automatic and independent recordation of critical data;

(d) Independent verification of the accuracy of data; and

(e) Segregation of all security critical system programs, files, and directories from other programs, files, and directories.

5. Equipment, a system, or software required to be tested, certified, and approved under this subsection shall, at a minimum, ensure continuity through:

a. Data redundancy to permit a complete and prompt recovery of all information in the event of malfunction or power interruption; and

b. Environmental protections, including an uninterruptible power supply to protect critical hardware.

6. Equipment, a system, or software required to be tested, certified, and approved under this subsection must comply with the gaming law, this chapter, any other law, regulation, or condition of the department related to casino gaming and any applicable technical standard issued by the director.

W. Gaming ticket system - additional requirements.

1. A facility operator may issue gaming tickets and shall utilize only a gaming ticket system that has been tested, certified, and approved under this chapter.

2. In addition to complying with the minimum design standards of subsection V of this section, a gaming ticket system shall:

a. Authenticate the source of a data transmission by identifying whether a transmission originated with a:

(1) Casino gaming machine;

(2) Ticket redemption unit; or

(3) Cashiers' cage redemption location;

b. Use cryptographic controls for transmissions that include:

(1) A gaming ticket series number;

(2) Meter information; and

(3) Other information used in the calculation or verification of proceeds;

c. Be configured to:

(1) Prevent issuance of a gaming ticket exceeding $10,000;

(2) Require gaming tickets of $5,000 or more to be redeemed only at the cashiers' cage;

(3) Issue a gaming ticket that does not expire for 180 days after the date of issuance; and

(4) Permit access to the complete series number of an unredeemed gaming ticket only to gaming ticket system administrative employees and accounting department employees not assigned to the cashier's cage;

d. Require a generated gaming ticket to include:

(1) Name or trade name of the facility operator;

(2) Date and time of issuance;

(3) Amount of the gaming ticket;

(4) A unique series number printed in at least two locations on the gaming ticket:

(a) Comprised of at least 18 numbers, symbols, or characters; and

(b) Containing at least three numbers, symbols, or characters that are:

(i) Randomly generated in a manner approved by the department;

(ii) Designed to prevent an individual from being able to predict the series number of any other gaming ticket; and

(iii) Containing at least one number, symbol, or character unique to a gaming ticket that visually differentiates between a gaming ticket and a promotional play instrument;

(5) Asset number of the casino gaming machine dispensing the gaming ticket;

(6) Locations where the gaming ticket may be redeemed and any restrictions applicable to redemption;

(7) A barcode or magnetic strip that enables ticket system to identify the numeric information required by this subdivision; and

(8) Notice to the player of the terms of expiration; and

e. Automatically and independently record the critical data required to be printed on a gaming ticket under the facility operator's approved minimum control standards at the time of gaming ticket:

(1) Generation; and

(2) Redemption;

f. Perform the following before payment:

(1). Independently verify, in a manner satisfactory to the department, the accuracy of a gaming ticket series number and amount prior to redemption; and

(2) Electronically cancel the gaming ticket: and

g. Be able to generate, at the conclusion of each gaming day, reports detailing:

(1) Gaming tickets issued;

(2) Gaming tickets redeemed and canceled by redemption location;

(3) Unredeemed liability for gaming tickets;

(4) Readings on gaming ticket related casino gaming machine meters;

(5) Meter readings compared to number and amount of issued and redeemed gaming tickets; and

(6) Any exceptions.

X. Ticket redemption unit - additional requirements.

1. A facility operator may utilize a ticket redemption unit or ancillary system or application that has been tested, certified, and approved under this chapter.

2. In addition to complying with the minimum design standards of subsection V of this section, a ticket redemption unit or ancillary system or application shall, in a manner satisfactory to the department:

a. Be configured to redeem a gaming ticket of less than $5,000;

b. Establish the validity of a gaming ticket or promotional play instrument by comparing the unique series number on the ticket or instrument with electronic records in a gaming ticket system or promotional play system;

c. Cancel upon acceptance a gaming ticket or promotional play instrument to prevent:

(1) Subsequent redemption at:

(a) A cashiers' cage; or

(b) Another ticket redemption unit; or

(2) Acceptance by a slot machine; and

d. Evaluate whether sufficient funds are available before accepting the gaming ticket or promotional play instrument and completing the transaction.

3. The following error conditions may be cleared automatically by a ticket redemption unit upon completion of a new transaction.

a. Power reset;

b. Door open;

c. Door closed; and

d. System communication loss.

4. The following error conditions shall result in placement of the ticket redemption unit in disabled mode, shall prevent new transactions, and shall only be cleared by a facility operator:

a. Failure to make payment, meaning that a gaming ticket or promotional play instrument was returned and no receipt for an unpaid amount was issued;

b. Failure to make complete payment, meaning no receipt for an unpaid amount was issued;

c. Bill validator failure; and

d. Printer failure due to printer jam or lack of paper.

5. A ticket redemption unit or ancillary system or application shall be equipped with:

a. The meters functions required by this subsection;

b. Cumulative meters that are accessible and legible without access to the interior of the ticket redemption unit, including:

(1) Count meters that are at least eight digits in length; and

(2) Value meters that are at least 10 digits in length maintained in dollars and cents; continuously and automatically increment in credits equal to cents; and

c. A device, mechanism, or method for retaining electronic accounting data for all meters for a period of not less than 10 days subsequent to a power loss.

6. A ticket redemption unit or ancillary system or application shall be equipped with meters that continuously and automatically increment as follows:

a. A gaming ticket in count meter that accumulates the number of gaming tickets accepted by a ticket redemption unit;

b. A gaming ticket in value meter that accumulates the total number of credits on gaming tickets accepted by a ticket redemption unit;

c. A promotional play instrument in count meter that accumulates the number of promotional play instruments accepted by a ticket redemption unit;

d. A promotional play instrument in value meter that accumulates the total value of credits on promotional play instruments accepted by a ticket redemption unit;

e. Bill denomination in count meters that accumulate, by denomination, the total number of bills accepted by a ticket redemption unit;

f. Bill denomination in value meters that accumulate, by denomination, the total dollar amount of currency accepted by a ticket redemption unit;

g. Bill denomination out count meters that accumulate, by denomination, the total number of bills dispensed by a ticket redemption unit;

h. Bill denomination out value meters that accumulate, by denomination, the total dollar amount of currency dispensed by a ticket redemption unit; and

i. Other meters required by the department.

7. A facility operator shall be able to generate the following reports by a ticket redemption unit or ancillary system or application for the reconciliation period, which may be by gaming day, shift, or drop cycle:

a. A gaming ticket transaction report that details:

(1) Disposition, as paid, partially paid, or unpaid, of gaming tickets accepted by a ticket redemption unit;

(2) Gaming ticket validation number;

(3) Date and time of redemption;

(4) Amount requested; and

(5) Amount dispensed;

b. A reconciliation report that details:

(1) Date and time;

(2) Unique asset identification number of the ticket redemption unit;

(3) Total amount of cash in the currency and coin cassettes;

(4) Total number of bills accepted by denomination; and

(5) Total amount of gaming tickets accepted;

c. A gaming ticket and currency storage box report that details the following data whenever a storage box is removed from the ticket redemption unit:

(1) Date and time;

(2) Unique asset identification number of the ticket redemption unit;

(3) Unique identification number for each storage box in the ticket redemption unit;

(4) Total amount of currency dispensed;

(5) Total number of bills dispensed by denomination;

(6) Total amount of gaming tickets accepted;

(7) Total count of gaming tickets accepted; and

(8) Details required to be included in any gaming ticket transaction report; and

d. A transaction history report that details all critical player transaction history including any required automated transaction log, which shall include for each transaction, whether complete or incomplete:

(1) Date and time;

(2) Amount;

(3) Disposition as complete or incomplete;

(4) Error conditions including failed access attempts;

(5) User access data; and

(6) If equipped to redeem multiple cashable gaming tickets and cashable promotional play instruments in a single transaction, a breakdown of the transaction by individual cashable gaming ticket and cashable promotional play instrument.

Y. External bonusing system - additional requirements.

1. A facility operator may utilize an external bonusing system that has been tested, certified, and approved under this section.

2. In addition to complying with the minimum design standards of subdivision V of this section, a casino gaming machine connected to an external bonusing system may not equal or exceed an average payout percentage of 100% when the contribution of any bonus awards available on a casino gaming machine is added to the casino gaming machine's average payout percentage.

Z. Cashless funds transfer system - additional requirements.

1. A facility operator may utilize a cashless funds transfer system that has been tested, certified, and approved under this chapter.

2. A facility operator shall, in a form and in a timeframe specified by the department, submit a report to the department detailing any adjustment made to the amount of a credit transferred to or from a casino game or a player account by means of a cashless funds transfer system.

3. A facility operator utilizing a cashless funds transfer system shall develop and include in the internal controls submitted to and approved by the department procedures addressing the integrity, security, and control of a cashless funds transfer system.

4. A facility operator's internal controls shall address the intended scope of use of a cashless funds transfer system, including whether it will be used to:

a. Transfer credits to a casino gaming machine; or

b. Transfer credits from a casino gaming machine to a player account.

5. Transfer of credits to a casino gaming machine under this section shall be initiated by a player using an access control that requires the use of a unique access code for each player that is selected by and only available to that player.

6. A record of every transfer of credits to a casino game under this section shall be maintained by the cashless funds transfer system, and each transaction shall be identified, at a minimum, by:

a. Date and time;

b. Casino gaming machine manufacturer serial number; and

c. The player's account identification number.

AA. Progressive slot machines.

1. A slot machine offering a progressive jackpot may:

a. Stand alone; or

b. Be linked to:

(1) Other slot machines in a facility; or

(2) Slot machines in two or more facilities in or outside the Commonwealth of Virginia through a wide area progressive system under subsection BB of this section.

2. A manufacturer may not install in a facility, and a facility operator may not make available for play, a slot machine offering a progressive jackpot without department approval in writing of:

a. A progressive proposal under subsection CC of this section; and

b. Internal controls submitted to and approved by the department addressing the payment of a progressive jackpot.

3. A manufacturer may not modify the terms of a progressive jackpot, and a facility operator may not make available for play, a slot machine that offers a progressive jackpot that differs from its approved progressive proposal without the approval in writing of the department under subsection CC of this section.

4. A slot machine may offer multiple progressive jackpots.

5. A progressive jackpot amount may be calculated and transmitted to a slot machine by:

a. The operating system of a slot machine; or

b. A separate progressive controller interfaced to a slot machine.

6. A progressive controller shall be:

a. Located in a restricted area;

b. Secured:

(1) In a dual key controlled compartment with:

(a) One key controlled by the operations department; and

(b) One key controlled by the security department; or

(2) By alternative means approved by the department; and

c. Capable of:

(1) Displaying an available progressive jackpot amount on a slot machine's:

(a) Progressive meter; or

(b) Common progressive meter;

(2) Transmitting to a slot machine for metering purposes the amount of a progressive jackpot;

(3) If linked to a common progressive meter in accordance with subdivision 8 of this subsection, displaying the department asset number of the slot machine on which a progressive jackpot is won;

(4) If a progressive controller is servicing multiple slot machines, automatically resetting all slot machines connected to it to a preestablished reset amount; and

(5) If the progressive offers multiple jackpot levels, maintaining and displaying for each progressive level the:

(a) Number of progressive jackpots won;

(b) Cumulative amount paid;

(c) Maximum progressive payout;

(d) Minimum amount or reset amount; and

(e) Rate of progression.

7. A slot machine offering a progressive jackpot shall be equipped, for each progressive jackpot offered, with the following mechanical, electrical, or electronic meters:

a. A progressive meter that:

(1) May increase in value based upon wagers;

(2) Advises the player of the amount that may be won if the slot machine characters that result in the award of a progressive jackpot appear as a result of activation of play; and

(3) Is visible from the front of the slot machine through:

(a) A meter display housed in the slot machine; or

(b) A common progressive meter display unit;

b. A progressive payout meter under subsection P of this section;

c. An attendant paid progressive jackpot meter under subsection P of this section; and

d. A cumulative progressive payout meter that continuously and automatically records the total value of progressive jackpots paid whether paid:

(1) Directly by the slot machine; or

(2) Hand paid by a facility operator as a result of a progressive jackpot that exceeds the physical or configured capability of a slot machine.

8. A slot machine linked to a common progressive meter for the purpose of offering the same progressive jackpot on two or more slot machines shall:

a. Have the same probability of hitting the combination of characters that will award the progressive jackpot as every other slot machine linked to that common progressive meter; and

b. Require each:

(1) Player to wager the same amount to receive a chance at winning the progressive jackpot; and

(2) Wager to increment the progressive meter by the same rate of progression on every slot machine connected to the common progressive meter.

9. Notwithstanding the requirements of subsection 8 of this subsection, slot machines linked to a common progressive

meter for the purpose of offering the same progressive jackpot on two or more slot machines may be of different denominations or require different wagers, or both, if:

a. The probability of winning the progressive jackpot is directly proportional to the wager required to win a jackpot; and

b. A notice indicating the proportional probability of hitting the progressive jackpot on the common progressive meter is conspicuously displayed in a manner specified by the department on each linked slot machine.

10. A manufacturer may not:

a. Set a limit for a progressive jackpot that exceeds the display capability of the progressive meter; or

b. Adjust a progressive meter without the prior approval of the department unless the adjustment is:

(1) Required as a direct result of slot machine or meter malfunction; and

(2) Reported by the manufacturer in a form and in a time frame specified by the department to the department and the facility operator.

BB. Wide area progressive system.

1. A manufacturer may not install, and a facility operator may not make available for play, a wide area progressive system without department approval in writing of:

a. A wide area progressive agreement under subdivision 3 of this subsection;

b. A progressive proposal under subsection CC of this section; and

c. Internal controls submitted to and approved by the department addressing the payment of a progressive jackpot on a slot machine participating in a wide area progressive system.

2. A manufacturer may not modify the terms of a progressive jackpot offered through a wide area progressive system, and a facility operator may not make available for play, a slot machine that offers a progressive jackpot that differs from its approved progressive proposal without the approval in writing of the department under subsection CC of this section.

3. A wide area progressive system shall operate under the terms and conditions of a wide area progressive agreement between:

a. The department;

b. A manufacturer; and

c. Participating facility operators in or outside the Commonwealth of Virginia.

4. A wide area progressive agreement shall assign responsibility for the operation and administration of a wide area progressive system to a designated system operator who may be:

a. Participating facility operators in or outside the Commonwealth of Virginia; or

b. A manufacturer.

5. A wide area progressive agreement shall address:

a. The duties and responsibilities of the:

(1) Participating:

(a) Manufacturer; and

(b) Facility operators in or outside the Commonwealth of Virginia; and

(2) System operator;

b. The terms of compensation for a system operator including to what extent the system operator is to receive compensation based, directly or indirectly, on an interest, percentage, or share of the proceeds of a wide area progressive system;

c. Responsibility for progressive jackpots, proceeds, and expenses associated with the operation of a wide area progressive system;

d. Control and operation of a system monitor room under subdivision 6 of this subsection;

e. Service and maintenance of a wide area progressive system;

f. Responsibility for generating, filing and maintaining the records and reports required under this chapter;

g. If applicable, terms with regard to establishing and servicing any trust agreement associated with an annuity jackpot offered by a wide area progressive system in accordance with the internal controls submitted to and approved by the department; and

h. If requested by the department, additional documentation with regard to a wide area progressive agreement.

6. A wide area progressive system shall be controlled and operated from a system monitor room:

a. Under the sole possession of, and maintained and operated by, the system operator designated in a wide area progressive agreement;

b. In a location approved by the department;

c. If required by the department, staffed by individuals licensed as gaming employees; and

d. Subject to:

(1) Surveillance coverage satisfactory to the department; and

(2) Access controls satisfactory to the department including a monitor room access log in accordance with subdivision 7 of this subsection.

7. A system operator shall maintain a monitor room access log:

a. Signed by each individual entering the system monitor room except an employee of a system operator assigned to the system monitor room on the individual's assigned shift;

b. Maintained in a book with bound numbered pages that cannot be readily removed;

c. Utilized to document the following:

(1) Date and time of entry;

(2) Entering individual's signature; and

(3) Reason for entering the system monitor room including the identification of areas inspected or repaired; and

d. Retained by a system operator for a minimum of three years from the date of the last entry unless a request for destruction is submitted in writing and approved in writing by the department.

CC. Progressive proposal.

1. A progressive proposal:

a. Shall be jointly prepared, executed, and submitted to the department by a facility operator and a manufacturer;

b. Shall include the following:

(1) Manufacturer's:

(a) Serial number;

(b) Model number;

(c) Software identification number; and

(d) Version number;

(2) Denomination or a designation as multi-denomination;

(3) Cabinet style;

(4) An indication as to whether the slot machine is to be:

(a) Stand alone;

(b) Linked to other slot machines in a facility; or

(c) Linked to a wide area progressive system;

(5) The initial and reset amounts at which the progressive meter or meters will be set;

(6) For each progressive jackpot the:

(a) Rate of progression;

(b) Limit; and

(c) Probability of winning; and

(7) If requested by the department, additional documentation; and

c. May be approved in writing by the department.

2. A manufacturer may not modify the terms of a progressive jackpot, and a facility operator may not make available for play, a slot machine that offers a progressive jackpot that differs from its approved progressive proposal without:

a. Submission to the department, in a timeframe specified by the department, of a request for modification of an approved progressive proposal identifying any proposed change to the terms and conditions of the progressive proposal to be modified; and

b. The approval in writing of the department.

3. The department may consider the following modifications to an approved progressive proposal:

a. A revision to the payout limit on an available progressive jackpot, provided the revised payout limit is greater than the then current payout amount on the progressive jackpot meter;

b. Transfer of an available progressive jackpot amount in accordance with subdivision 4 of this subsection;

c. Removal from the gaming floor of a slot machine offering a progressive jackpot in accordance with subdivision 5 of this subsection; and

d. Other modifications deemed consistent with this subsection by the department.

4. A transfer of an available deemed progressive jackpot amount shall involve:

a. The entire amount;

b. Transfer to the:

(1) Progressive meter of a slot machine with the same:

(a) Or greater probability of winning the progressive jackpot;

(b) Or lower wager requirement to be eligible to win the progressive jackpot; and

(c) Type of progressive jackpot award; or

(2) Progressive meters of two separate slot machines provided each terminal to which a jackpot amount is transferred individually satisfies the requirements of this subdivision; and

c. Disclosure of the intent to transfer an available progressive jackpot amount on the front of a slot machine in a manner specified by the department for at least 10 days prior to the intended date of transfer.

5. Removal from the gaming floor of a slot machine offering a progressive jackpot shall require:

a. If the removal involves one or more linked slot machines offered in:

(1) A single facility, that at least two linked slot machines offering the same progressive jackpot remain on the gaming floor; and

(2) More than one facility, that the facility operator retain at least one linked slot machine offering the same progressive jackpot on its gaming floor; and

b. In every case, disclosure of the intent to transfer an available progressive jackpot on the front of a slot

machine in a manner specified by the department for at least 14 days prior to the intended date of transfer.

6. Nothing in this subsection shall preclude the department from imposing additional terms and conditions on a modification of a progressive proposal.

DD. Remote access.

1. A manufacturer may not perform from a remote location analysis of, or technical support with regard to, a casino gaming machine without:

a. Submission of a written request to the department; and

b. The written approval of the department.

2. A manufacturer may perform from a remote location analysis of, or technical support with regard to, a casino management system including:

a. A gaming ticket system;

b. A promotional play system;

c. A player tracking system;

d. An external bonusing system;

e. A cashless funds transfer system; and

f. A wide area progressive system.

3. A facility operator intending to authorize remote access to a casino gaming machine management system under this subsection shall include in its internal controls submitted to and approved by the department a written system of access protocols that require:

a. A unique system account for each employee of a manufacturer identified by the manufacturer as potentially required to perform technical support from a remote location;

b. Use of a dedicated and secure communication facility;

c. The facility operator to provide the department with notice of access within four hours after a person remotely accesses a system;

d. The facility operator to take affirmative steps, on a per access basis, to activate a manufacturer's access privileges;

e. Imposition of limits on the ability of any individual authorized under this subsection to deliberately or inadvertently interfere with:

(1) The normal operation of the system; and

(2) The system's data; and

f. An access log:

(1) Maintained by both the:

(a) Manufacturer; and

(b) Facility operator's information technology department;

(2) Maintained in:

(a) A book with bound numbered pages that cannot be readily removed; or

(b) An electronic format equipped with software that prevents modification of an entry after it has been initially entered into the system; and

(3) Documenting the:

(a) Manufacturer version number of the system accessed;

(b) Type of connection as leased line, dial in modem, or private WAN;

(c) Name of the manufacturer employee remotely accessing the system;

(d) Name of the information technology department employee activating the manufacturer's access to the system;

(e) Date and time of the connection;

(f) Duration of the connection;

(g) Reason for the remote access including a description of the symptoms or malfunction prompting the need for remote access to the system; and

(h) Any action taken or further action required.

4. A facility operator may not authorize a manufacturer to remotely access a slot machine management system until its system access protocols are approved in writing by the department.

5. Any modification to a system required to be tested, certified, and approved by the department under this subdivision shall be processed as:

a. An emergency modification under subsection G of this section; or

b. A standard modification under subsection C or D of this section.

6. If an employee of a manufacturer is no longer employed or authorized by a manufacturer to remotely access a system pursuant to this subsection, the manufacturer shall:

a. Immediately notify in writing:

(1) Any facility operator that has established a unique system account for that employee of the change in authorization; and

(2) The department; and

b. Verify with each facility operator notified of the change in authorization that the access privileges of the individual have been revoked.

EE. Manufacturer storage of equipment, systems, and software outside a facility.

1. A manufacturer may not utilize a location outside of a facility to store or repair equipment, systems, software, or related parts and inventory for use in a facility without the storage facility being:

a. Inspected by the department; and

b. Approved in writing by the department.

2. A manufacturer shall locate a storage facility in Virginia in locations that reasonably permit the delivery of the support and technical services to which the manufacturer is obligated.

3. A manufacturer shall submit to the department a written request to utilize a storage facility under this subsection that includes, at a minimum:

a. The address;

b. A physical description of the storage facility;

c. Specifications for the surveillance system that has been or will be installed at the proposed storage facility including:

(1) If digital:

(a) Recording frames per second; and

(b) Common image rate; and

(2) Proposed recording retention schedule; and

d. Security procedures for the storage facility.

11VAC5-90-160. Mechanical casino games.

A. A facility operator may offer a mechanical casino game pursuant to this subsection.

B. Testing, certification, and approval of a mechanical casino game and equipment.

1. A manufacturer may not offer a mechanical casino game for sale, lease, distribution, or use in a facility, or a modification to a department-approved version of such a game, without it having been:

a. Tested and certified by an independent certified testing laboratory; and

b. Approved in writing by the department.

2. A facility operator may not purchase, lease, develop, or otherwise acquire the right to install, utilize, or make available for use a mechanical casino game, or a modification to a department-approved version of such a game or equipment, without it having been:

a. Tested and certified by an independent certified testing laboratory; and

b. Approved in writing by the department.

3. A facility operator may not modify, alter, or tamper with a mechanical casino game.

4. Modification, alteration, or tampering with a mechanical casino game may result in the immediate suspension of an operation license by the department.

5. A prototype of a mechanical casino game or equipment required to be tested, certified, and approved under this subsection, or a modification to a department-approved version of such a game, shall at a minimum be tested for:

a. Overall operational integrity; and

b. Conformance with the casino gaming law, this chapter, and any other law, regulation, or condition of the department related to casino gaming.

6. Procedures for submission, testing, certification, and approval of mechanical casino games and equipment shall:

a. Vary depending on the type of game; and

b. Be determined by the director.

7. Until such time as the department determines it has assembled a list of approved mechanical casino games and equipment sufficient to meet the needs of facility operators under the casino gaming law, notwithstanding the requirements of subsection C of this section, the department may permit an abbreviated testing and approval process in accordance with the requirements of subsection D of this section.

8. A manufacturer shall pay all costs of testing, certification, and approval under this section including all costs associated with:

a. Transportation;

b. Equipment and technical services required by an independent certified testing laboratory to conduct the testing and certification process; and

c. Implementation testing.

C. Submission of a mechanical casino game and equipment for testing and certification.

1. A manufacturer seeking department approval for a mechanical casino game shall submit the machine to an independent certified testing laboratory.

2. The submission required by subdivision 1 of this subsection shall include the following:

a. A request for testing and certification under subdivision B 6 of this section;

b. A prototype of the mechanical casino game identical in all respects to that for which department approval is sought;

c. Technical and operator manuals;

d. A description of the mechanical casino game, including:

(1) Diagrams, schematics, and specifications; and

(2) Documentation with regard to the manner in which the mechanical casino game and equipment was tested and emulated by the manufacturer prior to submission;

e. Where applicable, a copy, on electronically readable media, of all:

(1) Executable software, including data and graphics information;

(2) Source code for programs that have no commercial use other than as a component of a mechanical casino game; and

(3) Graphical images displayed on a mechanical casino game, including if applicable:

(a) Reel strips or card images;

(b) Rules and instructions; and

(c) Pay tables;

f. A mathematical explanation of the average and theoretical return to the player, listing all:

(1) Assumptions; and

(2) Steps in the formula including the treatment of bonus pays;

g. A description of the security methodologies incorporated into the design of a mechanical casino game;

h. A description accompanied by supporting test results of the random number generator or generators used to determine the results of a wager, including a detailed explanation of:

(1) Operational methodology; and

(2) Where applicable, the manner by which the random number generator, including the random number selection process, is impervious to:

(a) Outside influences;

(b) Interference from electro-magnetic, electrostatic, and radio frequencies; and

(c) Influence from ancillary equipment by means of data communications;

i. If a mechanical casino game requires or permits player skill in the theoretical derivations of the payout return, the source of strategy;

j. Proof that a mechanical casino game has been inspected and approved for customer safety by a reputable testing laboratory;

k. If applicable, a description of any interoperability testing conducted by the manufacturer, including test results identified by manufacturer, model and software identification, and version number, for the submitted mechanical casino game's connection to any of the following:

(1) Mechanical casino game data system;

(2) Casino management system;

(3) Gaming ticket system;

(4) Promotional play system;

(5) Player tracking system;

(6) Ticket redemption unit;

(7) Automated jackpot payout machine;

(8) External bonusing system;

(9) Cashless funds transfer system; and

(10) Progressive controller;

l. Specialized hardware, software, or testing equipment, inclusive of technical support and maintenance, requested by an independent certified testing laboratory including:

(1) An emulator for a specified microprocessor;

(2) Personal computers;

(3) Extender cables for CPU departments;

(4) Target reel strips; and

(5) Door defeats; and

m. If requested by the department or an independent certified testing laboratory, additional documentation pertaining to the mechanical casino game or equipment being tested.

3. A manufacturer seeking department approval for a modification to a department-approved version of a mechanical casino game, including a change in theme, shall submit the modification to an independent certified testing laboratory.

4. An independent certified testing laboratory selected by a manufacturer or the department to test a modification may, but need not be, the testing laboratory that performed the initial prototype testing.

5. The submission required by subdivision 3 of this subsection shall include the following:

a. A request for testing and certification under subdivision B 6 of this section;

b. The mechanical casino game proposed for modification;

c. A description of the proposed modification to the mechanical casino game, accompanied by applicable diagrams, schematics, and specifications;

d. If a change in theme is involved, a copy of the graphical images displayed on the mechanical casino game, including if applicable:

(1) Reel strips and card images;

(2) Rules and instructions; and

(3) Pay tables;

e. If a change in the manner in which the average payout percentage is achieved or a change in the theoretical return to the player is otherwise involved, a mathematical explanation of the return to the player listing all:

(1) Assumptions; and

(2) Steps in the formula including the treatment of bonus pays;

f. If the proposed modification requires or permits player skill in the theoretical derivations of the payout return, the source of strategy; and

g. If requested by the department or an independent certified testing laboratory:

(1) Any specialized hardware, software, or other equipment, inclusive of technical support and maintenance, required to conduct the testing and certification process; and

(2) Additional documentation pertaining to the testing of the proposed modification.

6. At the conclusion of testing of a prototype or modification to a mechanical casino game, an independent certified testing laboratory shall issue to the department a certification report in an:

a. Electronic form; and

b. Format acceptable to the department.

7. Upon receipt of a certification report from an independent certified testing laboratory, but prior to a decision to approve a prototype or modification to a mechanical casino game, the department may require a trial period, as follows:

a. A trial period shall be of a scope and duration the department deems appropriate to assess the operation of the mechanical casino game in a live gaming environment;

b. A trial period shall be subject to compliance by the manufacturer and the facility operator with specific terms and conditions required by the department, which may include:

(1) Development and implementation of product specific accounting and internal controls; and

(2) Periodic data reporting to the department;

c. The department may authorize the receipt of compensation by a manufacturer during a trial period; and

d. The department may order termination of the trial period at any time upon a determination by the department that:

(1) A manufacturer or facility operator has not complied with the terms and conditions required by the department; or

(2) The mechanical casino game is not performing as expected.

8. Upon receipt of a certification report from an independent certified testing laboratory, the department may:

a. Approve the prototype or modification, with or without specific conditions;

b. Reject the prototype or modification;

c. Require additional testing; or

d. Require a trial period under subdivision C 7.

9. Department approval of a prototype or modification of a mechanical casino game does not constitute a guarantee of its safety or reliability.

D. Abbreviated testing and certification.

1. A manufacturer may, during the period specified in subdivision B 7 of this section, seek department approval of a prototype or proposed modification under an abbreviated testing and certification process for a mechanical casino game required to be tested and certified under subdivision B 5 of this section.

2. A manufacturer shall submit the mechanical casino game to an independent certified testing laboratory.

3. The submission required by subdivision 2 of this subsection shall include the following:

a. A request for abbreviated testing and certification under this subsection naming the state within the United States on whose regulations and technical standards the manufacturer proposes the department rely;

b. A prototype of the mechanical casino game identical in all respects to that for which department approval is sought;

c. A certification signed by the chief engineer of the manufacturer, or the engineer in charge of the division of the manufacturer responsible for producing the equipment or system submitted, representing that:

(1) The prototype or proposed modification is identical in all respects to one that has been tested and certified by:

(a) A testing laboratory operated by the named state; or

(b) An independent certified testing laboratory on behalf of the named state;

(2) The manufacturer is licensed in good standing in the named state;

(3) The submitted mechanical casino game has all regulatory approvals prerequisite to sale, lease, or distribution in the named state;

(4) The testing standards of the named state are comprehensive and thorough and involve substantially similar technical requirements and safeguards as those required by the casino gaming law, this chapter, and any other law, regulation, or condition of the department related to casino gaming; and

(5) The manufacturer has fully disclosed any conditions or limitations placed by the named state on the operation or placement of the mechanical casino game:

(a) At the time of approval; or

(b) Subsequent to approval;

d. Copies of the submission package, and any amendments thereto, filed in the named state, including any:

(1) Checklists;

(2) Correspondence, review letters, or certification letters issued by:

(a) The testing laboratory operated by the named state; or

(b) An independent certified testing laboratory on behalf of the named state; and

(3) Final approval letter issued by the named state;

e. If applicable, a description of any interoperability testing conducted by the manufacturer, including test results identified by manufacturer, model and software identification, and version number, for the submitted mechanical casino game's connection to a:

(1) Separate mechanical casino game;

(2) Mechanical casino game or mechanical casino game data system;

(3) Casino management system;

(4) Gaming ticket system;

(5) Promotional play system;

(6) Player tracking system;

(7) Ticket redemption unit;

(8) Automated jackpot payout machine;

(9) External bonusing system;

(10) Cashless funds transfer system; and

(11) Progressive controller;

4. At the conclusion of testing of a prototype or modification, an independent certified testing laboratory conducting abbreviated testing and certification shall issue to the department a certification report in an:

a. Electronic form; and

b. Format acceptable to the department.

5. The certification report issued under subdivision 4 of this subsection shall state:

a. Whether the independent certified testing laboratory concurs with the manufacturer that the testing standards of the named state are comprehensive, thorough and involve substantially similar technical requirements and safeguards as those required by the casino gaming law, this chapter, and any other law, regulation, or condition of the department related to casino gaming;

b. Whether the documentation required by subdivision 3 c of this subsection is complete;

c. With respect to any deficiency noted relating to subdivision 5 a or 5 b of this subsection, the nature of the noncompliance; and

d. The results of any supplemental testing performed.

6. Upon receipt of a certification report from an independent certified testing laboratory, the department may act with regard to:

a. Acceptance of the testing standards of the named state; and

b. The specific mechanical casino game by:

(1) Approving the prototype or modification, with or without specific conditions;

(2) Rejecting the prototype or modification;

(3) Requiring additional testing; or

(4) Requiring a trial period under this chapter.

7. Department approval of a prototype or proposed modification does not constitute a guarantee of its safety or reliability.

E. Emergency modification of mechanical casino game.

1. Notwithstanding the requirements of subsections C and D of this section, the department may, on submission of a written request by a manufacturer, authorize installation of a modification to equipment, a system, or software required to be tested, certified, and approved by the department under subdivision B 5 of this section, on an emergency basis.

2. A written request submitted by a manufacturer to the department shall document the:

a. Equipment proposed for emergency modification, including:

(1) Software identification number; and

(2) Version number;

b. Facility;

c. Reason for the emergency modification; and

d. Proposed date and time of installation.

3. A manufacturer may not install an emergency modification without the written approval of the department.

4. No more than 15 days following receipt of department authorization on an emergency modification, a manufacturer shall submit a modification identical to that receiving emergency authorization for testing, certification, and approval under this chapter.

F. Notice of known or suspected defect.

1. A manufacturer shall immediately notify the department of any known or suspected defect or malfunction in a mechanical casino game required to be tested, certified, and approved by the department under subdivision B 5 of this section.

2. A manufacturer shall:

a. Confirm in writing any notice given to the department verbally pursuant to subdivision 1 of this subsection; and

b. If required by the department, notify a facility operator of any known or suspected defect or malfunction in the mechanical casino game installed in its facility.

3. A facility operator shall immediately notify the department of any known or suspected defect or malfunction in a mechanical casino game required to be tested, certified, and approved by the department under subdivision B 5 of this section.

4. A facility operator shall confirm in writing any notice given to the department verbally pursuant to subdivision 3 of this subsection.

G. Revocation.

1. The department may, at any time, revoke an approval granted to a mechanical casino game or equipment under this subsection on a determination by the department that the mechanical casino game or equipment does not comply with:

a. The casino gaming law, this chapter, or any other law, regulation, or condition of the department related to casino gaming; or

b. Any other requirement established by the department.

2. The department may at any time impose additional conditions on the operation or placement of department-approved equipment, systems, or software.

3. A revocation by the department of an approval under subdivision 1 of this subsection does not give rise to an appeal right.

H. Minimum and maximum bet.

1. A mechanical casino game may accept a minimum bet on a single game event as low as one cent.

2. A mechanical casino game may not accept a maximum bet on a single game event in excess of $50 without the written approval of the department.

I. Rules of play.

1. In this subsection the following term has the meaning indicated.

"Strategy choice" means a particular play option on a mechanical casino game that requires the use of skill to consistently achieve the best result.

2. A mechanical casino game shall be equipped to display to a player while idle the:

a. Schedule of credits awarded with each winning combination;

b. Applicable rules of play; and

c. Any maximum bet limit imposed under this chapter.

3. The department may prohibit the display of any rules of play it determines to be:

a. Incomplete;

b. Confusing;

c. Misleading; or

d. Inconsistent with the rules of play required by the department.

4. For rules of play, the schedule of credits awarded with each winning combination may not include possible aggregate awards achievable from free plays.

5. A mechanical casino game that includes a strategy choice shall include in its rules of play mathematically sufficient information for a player to use optimal skill unless the player:

a. Is not required to make an additional wager; and

b. Cannot lose any credits earned prior to the strategy choice.

6. A manufacturer or facility operator may not attach a sticker or other removable device that concerns rules of play to the face, glass, or screen of a mechanical casino game without the prior written approval of the department.

J. Manufacturer storage of mechanical casino games and equipment outside a facility.

1. A manufacturer may not utilize a location outside of a facility to store or repair a mechanical casino game or equipment, or related parts and inventory for use in a facility without the storage facility being:

a. Inspected by the department; and

b. Approved in writing by the department.

2. A manufacturer shall locate a storage facility in Virginia in locations that reasonably permit the delivery of the support and technical services to which the manufacturer is obligated.

3. A manufacturer shall submit to the department a written request to utilize a storage facility under this subsection that includes, at a minimum:

a. The address;

b. A physical description of the storage facility;

c. Specifications for the surveillance system that has been or will be installed at the proposed storage facility including:

(1) If digital:

(a) Recording frames per second; and

(b) Common image rate; and

(2) Proposed recording retention schedule; and

d. Security procedures for the storage facility.

11VAC5-90-170. Table games definitions and equipment.

A. Definitions. In addition to the terms defined in the casino gaming law and 11VAC5-90-10, the following terms have the meanings indicated unless the context clearly requires otherwise.

"Ante" means the wager that a player may be required to make prior to any cards being dealt to participate in the round of play.

"Assistant table games shift manager" means an employee of a facility operator whose primary function is to supervise all of the table games in a licensed facility and who may be authorized to act as the table games shift manager in his absence.

"Automated card shuffling device" means a software compatible mechanical or electronic contrivance that automatically randomizes playing cards, either continuously or on command, to be utilized for table gaming activity.

"Bad Beat" means one or more predesignated high value poker hands that, when held by a player as a losing hand in a round of play, results in a bad beat payout.

"Bad Beat payout" means one or more payouts made to a player upon the occurrence of a Bad Beat.

"Banking table game" means a table game in which a player competes against a facility operator rather than against another player.

"Boxperson" means an employee of a facility operator whose primary function is to participate in and supervise the conduct of gaming at a single craps table.

"Chip runner" means an employee of a facility operator whose job duties include transporting cash to the poker room cage or the poker cashier window at the main cage for dealers or players of the poker room to be exchanged for value chips.

"Cover card" means an opaque card that is a solid color readily distinguishable from the color of the backs and edges of the playing cards.

"Dealer controlled electronic table game" means

1. A table game or table game equipment that:

a. Requires a live dealer to operate it;

b. Utilizes electronics as part of the games operation to collect and store game outcome, accounting and other significant event data; and

c. Permits wagering to be conducted electronically at a table game that is operated by a dealer.

2. A table game that may not randomly determine the game of chance.

"Dealing shoe" means a device that holds multiple decks of playing cards that the dealer deals during the operation of a table game.

"Direct bet coupon" means an approved wagering instrument with a stated denomination that, when presented at a banking game, the player may use for wagering.

"Edge" means the surface of a gaming chip across which its thickness can be measured in a perpendicular line from one face to the other.

"Edge spot" means an identifying characteristic used on the edge of each value chip issued by a facility operator.

"Face" means each of the two surfaces of a gaming chip across which the diameter of the gaming chip can be measured.

"Fill" means the distribution of gaming chips, coins, and plaques to a gaming table to replenish the table inventory.

"Game account" means the funds that are available to a player for use at a dealer controlled electronic table game.

"Impress" means the roulette chips, which are used for gaming, that remain at each roulette table.

"Impressment" means an inventory conducted on each impress.

"Match play coupon" means an approved wagering instrument with a stated denomination that when presented with gaming chips at a banking game is included in the amount of the player's wager.

"Nonbanking table game" means a table game in which a player competes against another player and in which the facility operator collects a rake.

"Pit clerk" means an employee of a facility operator whose primary function is to prepare documentation required for the operation of table games, including requests for fills, requests for credits, counter checks or other documents that evidence the exchange of gaming chips.

"Pit manager" means an employee of a facility operator whose primary function is to supervise all of the table games in one or more gaming pits.

"Poker rake chip" means a chip used by dealers to facilitate the collection of the rake in the poker room.

"Poker shift manager" means an employee of a facility operator whose primary function is to supervise all of the poker tables in a poker room.

"Primary color" means the predominant color used on a gaming chip.

"Rake" means a set fee or percentage assessed by a facility operator for providing the services of a dealer, gaming table, or location to allow the play or operation of any nonbanking game.

"RFID card" means a card that contains a radio-frequency identification tag which can be used to determine the value on the face of the card.

"RFID chip" means a value or roulette chip that contains a radio-frequency identification tag which can be used to determine the authenticity of the chip.

"Roulette chip" means a nonvalue chip that does not contain a denomination on either face that is used for wagering at the game of roulette.

"Round of play" means one complete cycle of play during which all wagers have been placed, all cards have been dealt and all wagers have been settled in accordance with the rules of the game.

"Secondary color" means any color on the face or edge of the gaming chip that is used as a contrast to the gaming chip's primary color.

"Standard rules" means the basic requirements that govern the play of a table game approved by the department.

"Stickperson" means an employee of a facility operator whose primary function is to control the selection and use of the dice at a craps table.

"Stub" means the remaining portion of a deck or decks after all cards in a round of play have been dealt.

"Suit" means one of the four categories of cards:

1. Clubs;

2. Diamonds;

3. Hearts; or

4. Spades.

"Table games shift manager" means an employee of a facility operator whose primary function is to supervise all of the table game operations in a licensed facility during a shift.

"Table inventory" means the chips, coins, or plaques used for the operation of a table game.

"Table inventory container" means the area of a gaming table where a boxperson or dealer keeps gaming chips, coins, or plaques used for the operation of a table game.

"Tournament chip" means a chip used for wagering in a table game tournament or poker tournament.

"Washing" means mixing of a deck or decks of cards or tiles by placing the cards or tiles face down on a table and mixing them around with both hands so that they are in no particular order.

"Vigorish" means a percentage commission that is taken by a facility operator from a wager placed by a player or the winnings of a player.

B. Gaming chips and promotional chips.

1. A gaming chip issued by a facility operator shall be in the form of a disk.

2. A gaming chip may not be issued by a facility operator or utilized in a facility until:

a. The facility operator submits to the department for approval the design specifications of the proposed gaming chip, including a detailed schematic depicting the actual size and location of:

(1) Each face, including any indentations or impressions;

(2) The edge; and

(3) Any colors, words, designs, graphics, or security measures contained on the gaming chip;

b. The facility operator submits to the department, a sample of each gaming chip, manufactured in accordance with its approved design specifications; and

c. The department approves the gaming chip design.

3. To prevent the counterfeiting of the gaming chip, a gaming chip issued by a facility operator shall be designed and manufactured with graphics and security measures required to appear on the face or edge of a value chip under this subsection.

4. Prohibitions.

a. A facility operator may not issue, use, or allow a player to use in its facility, a gaming chip that it knows, or reasonably should know, is materially different from the sample of a gaming chip approved in accordance with subdivision 2 of this subsection.

b. A facility operator or other person licensed by the department may not manufacture, sell or distribute to, or use in, a licensed facility outside of Virginia a gaming chip that has the same edge spot or design specifications as a chip approved for use in a facility in Virginia.

5. Promotional nongaming chips.

a. A facility operator may issue a promotional nongaming chip that:

(1) Is unique from an approved gaming chip and promotional chip in [~~size or~~] color [and appearance];

(2) Has no edge designs; and

(3) On both faces, bears:

(a) The name of the facility issuing the promotional nongaming chip; and

(b) Language that the promotional nongaming chip has no redeemable value.

b. A promotional nongaming chip may not be used for table game play in a facility.

c. To prevent confusion with approved gaming chips in use in Virginia facilities, the physical characteristics of promotional nongaming chips must be sufficiently distinguishable from approved gaming chips.

d. A facility operator shall submit to the department for approval a detailed schematic depicting the actual size, face, and any colors, words, designs, or graphics on the promotional nongaming chip.

6. A facility operator may issue a promotional chip with value that is permitted to be used for gaming purposes in a licensed facility, provided:

a. The physical characteristics of promotional chips with value must be sufficiently distinguishable from approved gaming chips issued by any facility operator in Virginia to

reasonably ensure that the promotional chips with value will not to be confused with approved gaming chips and promotional nongaming chips;

b. A facility operator shall submit to the department for approval a detailed schematic depicting the actual size, face and any colors, words, designs or graphics on the promotional gaming chip;

c. At a minimum, a promotional gaming chip shall:

(1) Be unique in terms of size or color;

(2) Have no edge designs;

(3) Bear the name of the facility operator issuing the promotional gaming chip; and

(4) Contain language on both faces stating value of the promotional chip.

d. A promotional chip with value may be redeemed only at a gaming table in which a player wagers against the house;

e. The dealer shall deposit the promotional chip with value into the drop box attached to the gaming table at the time the winning wager is paid or the losing wager is collected; and

f. If the wager wins, it shall be paid in accordance with the terms and conditions of the promotional chip.

C. Value chips.

1. A facility operator may issue and use value chips in denominations of $1, $2, $2.50, $5, $20, $25, $100, $500, $1,000, $5,000, $10,000, $25,000, and other denominations approved in advance by the department.

2. A primary color may not be used as a secondary color on a value chip of another denomination if its use on the edge is reasonably likely to cause confusion as to the chip's denomination when the edge alone is visible.

3. A manufacturer shall submit sample color disks to the department that identify all primary and secondary colors to be used for the manufacture of value chips for facility operators in Virginia.

4. The department may not approve a primary color for use in a value chip unless it visually appears, when viewed in daylight or incandescent light, as the following colors for these denominations:

a. $1, white;

b. $2, blue;

c. $2.50, pink;

d. $5, red;

e. $20, yellow;

f. $25, green;

g. $100, black;

h. $500, purple;

i. $1,000, fire orange;

j. $5,000, brown;

k. $10,000, silver; and

l. $25,000, gold.

5. After the department has approved a manufacturer's primary or secondary color for a gaming chip, the color shall be consistently manufactured in accordance with the approved sample color disk.

6. At least once on any location of each face of a value chip, a value chip issued by a facility operator must contain identifying characteristics that are applied in a manner ensuring that each identifying characteristic is clearly visible and remains a permanent part of the value chip.

7. The identifying characteristics required under subsection F of this section shall be visible to surveillance employees using the licensed facility's surveillance system, and include:

a. The denomination of the value chip, expressed in numbers;

b. The name, logo, or other department-approved identification of the facility operator issuing the value chip; and

c. The letters "VA" and the name of the city in which the licensed facility is located.

8. In addition to the characteristics specified in subdivision 7 of this subsection, a value chip in a denomination of $100 or more must contain a design or other identifying characteristic that is unique to the gaming chip manufacturer.

9. After the department approves a manufacturer's value chip design or characteristic:

a. The manufacturer has the exclusive right to use that design or characteristic on any denomination of value chip;

b. The approved unique design or characteristic:

(1) May be used on all value chips manufactured for use in Virginia; and

(2) May be changed only after receiving the department's written approval of a new unique design or other identifying characteristic.

10. Each value chip issued by a facility operator must contain an edge spot that:

a. Is applied in a manner that ensures the edge spot:

(1) Is clearly visible on the edge and on each face of the value chip; and

(2) Remains a permanent part of the value chip; and

b. Is created using both:

(1) The primary color of the chip; and

(2) One or more secondary colors; and

c. Includes a design, pattern, or other feature that an individual may use to identify, through the facility's surveillance system, the denomination of a particular value chip that is in:

(1) A stack of gaming chips;

(2) The table inventory; or

(3) Any other location when only the edge of the value chip is visible.

11. A facility operator shall use as a secondary color to make an edge spot on a particular denomination of value chip only a secondary color that is reasonably likely to differentiate the facility operator's value chip from the same denomination of value chip issued by any other facility operator in the Commonwealth of Virginia.

12. If an approved value chip uses a single secondary color, no other facility operator may use a similar secondary color as the sole secondary color on the same denomination of value chip unless it is used in a different pattern or design approved by the department.

13. A facility operator may not use the identical combination of secondary colors on the same denomination of value chip unless it is used in a different pattern or design approved by the department.

14. A value chip issued by a facility operator is limited to a specific size for each denomination:

a. Less than $500 must have a uniform diameter of 1-9/16 inch;

b. $500 and $1,000 must have a uniform diameter of 1-9/16 inch or 1-11/16 inch; and

c. $5,000 or more must have a uniform diameter of 1-11/16 inch.

15. In addition to the features that are required under this subsection to appear on the face and edge of a value chip:

a. Each value chip with a denomination less than $100 must contain at least one anti-counterfeiting measure; and

b. Each value chip with a denomination of $100 or more must contain at least two anti-counterfeiting measures.

D. Roulette chips.

1. A facility operator shall issue a roulette chip solely for the purpose of gaming at roulette.

2. At least once on any location of each face of a roulette chip, a roulette chip issued by a facility operator must contain identifying characteristics that are applied in a manner ensuring that each identify characteristic is clearly visible and remains a permanent part of the roulette chip.

3. The identifying characteristics required under subdivision 2 of this subsection shall be visible to surveillance employees using the facility's surveillance system and include:

a. The name, logo, or other department-approved identification of the facility operator issuing the roulette chip;

b. A unique design, insert, or symbol that will permit a set of roulette chips being used at a particular roulette table to be distinguished from the roulette chips being used at another roulette table in the facility;

c. The word "Roulette";

d. Color and design combinations distinguish the roulette chips of a player at a particular roulette table from:

(1) The roulette chips of another player at the same roulette table; and

(2) The value chips issued by a facility operator; and

e. An edge spot that:

(1) Is applied in a manner which ensures that the edge spot;

(a) Is clearly visible on the edge and on each face of the roulette chip; and

(b) Remains a permanent part of the roulette chip; and

(2) Is created by using the colors approved for the face of the particular roulette chip in combination with one or more other colors that provides a contrast with the color on the face of the roulette chip and that enables the roulette chip to be distinguished from the roulette chips issued by any other facility operator; and

(3) Includes a design, pattern, or other feature that an individual may use to identify, through the facility's surveillance system, the player to whom the roulette chip has been assigned when the roulette chip is placed in a stack of gaming chips or in any other location where only the edge of the roulette chip is visible.

E. Roulette chips - permitted uses, inventory, and impressment.

1. A roulette chip shall be issued to a particular roulette table and be used for gaming at that table only, and:

a. A roulette chip used at a particular roulette table must have the same design, insert or symbol as required under subdivision D 3 b of this section; and

b. A facility operator or an employee may not knowingly allow a player to remove a roulette chip from the roulette table to which it was issued.

2. A player at a roulette table may not purchase or be permitted to game with roulette chips that are identical in color and design to any roulette chip purchased by another player at the same table. When a player purchases a roulette chip, the dealer shall place a:

a. Roulette chip of the same color and design in a slot or receptacle attached to the outer rim of the roulette wheel, or in another device or location approved by the department; and

b. Marker button denoting the value of a stack of 20 roulette chips of the same color and design in the slot, receptacle or other device.

3. At least once every three months, a floorperson or higher-ranking individual specified in the facility operator's internal controls shall complete an impressment of the roulette chips assigned to a roulette table, and:

a. The facility operator shall record the results of the impressment in the chip inventory ledger required under subsection K of this section;

b. If additional roulette chips are required to restore the impress, the floorperson, or higher-ranking individual specified in the facility operator's internal controls shall complete a Roulette Chip Impressment Form.

4. The completed Roulette Chip Impressment Form required under subdivision 3 of this subsection shall be maintained by the accounting department and contain at least the following:

a. The date and time of preparation;

b. The design schematic of the chip, including its primary color and the applicable table number;

c. The number of roulette chips needed to restore the impress;

d. The signature of the individual who completes the Roulette Chip Impressment Form and the impressment for the table; and

e. The signature of the main bank cashier or chip bank cashier who issued the roulette chips to restore the impress.

5. The accounting department shall immediately report a discrepancy in the impressment to department staff on a written report that includes at least the following for each roulette chip color and design:

a. The balance on hand at the beginning of the three-month period;

b. The number of roulette chips distributed to the roulette table during the three-month period;

c. The number of roulette chips returned to inventory during the three-month period; and

d. The balance on hand at the end of the three-month period.

F. Tournament chip.

1. If a facility operator conducts a table game tournament, the tournament shall be conducted using tournament chips.

2. The identifying characteristics of a tournament chip must include at least:

a. The name, logo, or other approved identification of the facility operator issuing the tournament chip;

b. The word "Tournament";

c. The denomination of the chip;

d. The phrase "No Cash Value";

e. Color or design combinations that distinguish the tournament chips from:

(1) Roulette chips used for the play of roulette at the facility;

(2) Value chips issued by a facility operator in the Commonwealth of Virginia; and

(3) Poker rake chips.

3. A facility operator shall store tournament chips in a secure area approved in advance by the department.

4. A facility operator shall conduct an inventory of all tournament chips prior to the start and after the completion of each tournament.

5. A facility operator shall send a weekly report to department staffs of a discrepancy in the inventory on a report that shall include the balance for each denomination of tournament chip on hand at the beginning of the tournament and the balance on hand at the end of each tournament.

G. Poker rake chips.

1. To facilitate the collection of the rake, a facility operator may use poker rake chips in the poker room.

2. Poker rake chips:

a. Shall only be used by dealers; and

b. May only be substituted for value chips that have been collected as part of the rake prior to the rake being placed in a drop box.

3. A dealer shall keep unused poker rake chips in the table inventory container.

4. The denominations that may be used for poker rake chips are $2, $3, or $4.

5. The identifying characteristics of a poker rake chip must include:

a. The name, logo, or other approved identification of the facility operator;

b. The words "Poker Rake Chip";

c. One of the following denominations:

(1) "$2,"

(2) "$3," or

(3) "$4," and

d. Color or design combinations to distinguish the poker rake chips from:

(1) Roulette chips used for the play of roulette at the facility;

(2) Tournament chips used for tournament play at the facility; and

(3) Value chips issued by any facility operator in the Commonwealth of Virginia.

H. Removing chips from use.

1. Value chips.

a. Within 120 days of the commencement of table games at a facility, the facility operator shall have at least one department-approved set of value chips that may be used as a back-up for $100 and $500 value chips in active use.

b. A back-up set of value chips maintained for use by a facility operator shall have secondary colors that are different from the secondary colors of the value chips in active use and may use a different shade of the primary color.

c. A back-up set of value chips shall conform to the color and design requirements in this section.

2. Roulette chips.

a. A facility operator shall have at least one reserve set of roulette chips for each color roulette chip used in the facility with a design insert or symbol different from the roulette chips comprising the primary sets.

b. A back-up set of roulette chips must conform to the color and design requirements in this chapter.

3. RFID chips. If a facility operator uses RFID chips for its value or roulette chips, the facility operator may submit a request to the department for waiver of the requirements in subdivisions 1 and 2 of this subsection that shall include at least:

a. A detailed description of the RFID technology and devices that will be used at the facility;

b. A detailed description of how the RFID chips and related equipment will be used in the facility;

c. A detailed explanation of how the use of the RFID chips and related equipment will reduce or eliminate the potential use of counterfeit value or roulette chips; and

d. The approximate length of time it will take the facility operator to install the necessary devices and related equipment for the RFID technology to be operational in the facility.

4. The facility operator shall remove a set of gaming chips in use from active play when:

a. A facility operator reasonably believes that the facility is taking on multiple counterfeit chips valued at $100 or more so as to call into question the security and integrity of the gaming chip set;

b. A facility operator determines there is an impropriety or defect in the use of a set of chips makes removal of the chips in active use necessary; or

c. The department directs a facility operator to remove a set of chips from active use.

5. A facility operator shall place into active play a department-approved back-up set of value chips or a reserve set of roulette chips required under subdivisions 1 and 2 of this subsection when an active set is removed.

6. Before a set of chips in active use is removed from play, the facility operator shall notify the department of the impending removal and the reasons for the removal.

7. A facility operator shall immediately notify department staff of the discovery of counterfeit value chips.

I. Plaques.

1. A plaque issued by a facility operator shall be a solid, one-piece object constructed entirely of plastic or other substance, and a plaque shall:

a. Be square, rectangular, or elliptical in shape;

b. Have at least two, but not more than six, smooth, plane surfaces;

c. Have at least two faces opposite and parallel to each other and identical in shape.

2. A facility operator shall not issue a plaque or allow its use in a facility unless:

a. The facility operator submitted design specifications of the proposed plaque to the department that included a detailed schematic depicting the actual size and location of:

(1) Each face;

(2) The edge; and

(3) Any colors, words, designs, graphics, or security measures on the plaque including the minimum identifying characteristics listed in subdivision 6 of this subsection;

b. The facility operator made available for the department's inspection a sample plaque of each denomination to be manufactured and used in accordance with its approved design specifications;

c. The department approved the facility operator's submissions; and

d. The facility operator submitted to the department a system of internal procedures and administrative and accounting controls governing the distribution, redemption, receipt and inventory of plaques, by serial number that the department approved as part of the facility operator's internal controls.

3. Dimensions of a plaque.

a. The face of a square plaque shall have a surface area of not less than nine square inches.

b. The face of a rectangular or elliptical plaque may not be less than three inches in length by two inches in width.

c. The length and width of an elliptical plaque shall be measured by its axes.

4. A plaque issued by a facility operator shall be designed and manufactured with sufficient graphics or other security measures to prevent, to the extent possible, the counterfeiting of the plaque.

5. Denominations.

a. A facility operator may issue and use plaques in denominations of $5,000 or $10,000, and in other denominations approved by the department in advance.

b. A plaque of a specific denomination used by a facility operator shall be in a shape and of a size that is identical to the shape and size of all other plaques of that denomination issued by the facility operator.

c. The size and shape of each denomination of plaque issued by a facility operator must be readily distinguishable from the size and shape of every other denomination of plaque issued by the facility operator.

6. A plaque issued by a facility operator must contain identifying characteristics that appear at least once on each face of the plaque and are applied in a manner that ensures each identifying characteristic is clearly visible and remains a permanent part of the plaque.

7. The characteristics required under subdivision 6 of this subsection must be visible to surveillance employees using the licensed facility's surveillance system, and shall include at least:

a. The denomination of the plaque, expressed in numbers of at least 3/8-inch in height;

b. The name, logo, or other approved identification of the facility operator issuing the plaque; and

c. A unique serial number.

8. A facility operator may not issue, use, or allow a player to use in its facility, any plaque that it knows, or reasonably should know, is materially different from the sample of that plaque approved in accordance with subdivision 2 of this subsection.

J. Permissible wagers; exchange and redemption of chips and plaques.

1. Wagering at table games in a facility shall be conducted with gaming chips, plaques, electronic wagering credits, and other wagering instruments approved in advance by the department.

2. A value chip previously issued by a facility operator that is not in active use by that facility operator may not be used for any gaming purpose in a facility, and may be redeemed only at the cage.

3. A facility operator shall issue a gaming chip or plaque to a player only at the request of the player, and may not be given as change in any transaction other than a gaming transaction.

4. A gaming chip or plaque shall be issued to player by:

a. A dealer at a banking or nonbanking table game;

b. The poker room cage, poker room impressed bank or the poker window cashier at the main cage; or

c. A chip runner to a player seated at a poker table at which a game is in progress.

5. A player may redeem a plaque or value chip only at the cage.

6. Except as provided in subdivisions 12 and 13 of this subsection, or as otherwise approved in advance by the department, a facility operator shall redeem a gaming chip or plaque that it issued only from players.

7. Roulette chips.

a. A player may present a roulette chip for redemption only at the roulette table from which it was issued.

b. When a player presents a roulette chip for redemption, a dealer shall accept it in exchange for an equivalent amount of value chips.

8. Value chips at roulette.

a. A facility operator may permit, limit, or prohibit the use of a value chip in gaming at roulette in accordance with its rules as submitted to and approved by the department.

b. If a value chip is use at roulette, the facility operator and its employees shall keep accurate account of the wagers being made with value chips so that wager made by one player are not confused with the wagers made by another player at the table.

9. A gaming chip or plaque is solely evidence of a debt that the issuing facility operator owes to an individual legally in possession of the gaming chip or plaque, and it remains the property of the issuing facility operator.

10. Redemption at the facility.

a. A facility operator shall have the right at any time to demand that an individual possessing a gaming chip or plaque surrender the gaming chip or plaque for redemption in accordance with this subdivision.

b. Unless a gaming chip or plaque was obtained or is being used unlawfully, a facility operator shall promptly redeem its gaming chip or plaque presented by a player.

c. A facility operator shall redeem its value chip or plaque by:

(1) Exchanging the value chip or plaque for an equivalent amount of cash; or

(2) Exchanging the value chip or plaque for a check issued by the facility operator in the amount of the value chip or plaque surrendered and dated the day of the redemption.

11. Redemption by mail

a. Notwithstanding the requirements of subdivision 10 of this subsection, if a player requests by mail to redeem value chips, in any amount, by mail, a facility operator may effectuate the redemption in accordance with its approved internal controls.

b. A facility operator's internal controls for redemption of a value chip by mail shall, at a minimum, include procedures for the:

(1) Facility operator's issuance of a check to the player; and

(2) Transfer of a surrendered value chip to the chip bank in a documented transaction.

12. A facility operator shall accept, exchange, use, or redeem only a gaming chip or plaque that the facility operator has issued and may not knowingly accept, exchange, use, or redeem a gaming chip or plaque, or an object that appears to be a gaming chip or plaque, that has been issued by any other facility operator.

13. Notwithstanding subdivision 12 of this subsection, a facility operator may accept and redeem a value chip issued by another facility operator in the Commonwealth from a player.

14. Employee receiving a value chip as gratuity.

a. An employee of a facility operator may receive a value chip as a gratuity.

b. An employee of a facility operator may receive a value chip in exchange for food or beverage that a player purchases from the employee.

c. An employee of a facility operator who receives a value chip as a gratuity, or in exchange for food or beverage, shall redeem the value chip prior to leaving the facility at the end of the work shift during which the employee received the value chip.

d. A value chip received by a facility employee shall be redeemed at the cage or at another secure location approved in advance by the department.

e. A value chip received by a facility that is redeemed at a noncage employee redemption site shall be exchanged on a daily basis with the cage.

f. A facility operator shall include in its internal controls a means of ensuring the proper exchange and accounting of a value chip received as a gratuity or for the purchase of food and beverage.

15. Redemption of facility chips from another operator.

a. A facility operator shall promptly redeem its own value chip that is presented to it by another facility operator in the Commonwealth.

b. A facility operator shall include in its internal controls a system for the exchange with other legally operated facility operators of a value chip that:

(1) Is in the facility operator's possession that has been issued by another facility operator in the Commonwealth; and

(2) The facility operator has issued that is presented to it for redemption by another facility operator in the Commonwealth.

16. A facility operator shall post in a prominent place on the front of the main cage, any satellite cage, and the poker room cage, a sign that reads as follows: "Gaming chips or plaques issued by another facility may not be used, exchanged, or redeemed in this facility."

K. Receipt, inventory, security, storage, and destruction of chips and plaques.

1. Receipt.

a. A shipment of gaming chips or plaques that is received from a manufacturer or supplier shall be unloaded and transported to a secure area, which is covered by the facility operator's surveillance system, by at least two employees of the facility operator.

b. The chips or plaques shall then be opened and checked by at least two employees, who shall promptly report to department staff any deviation between the invoice accompanying the shipment of gaming chips or plaques and the actual chips or plaques received or any defects found in the chips or plaques.

c. The functions required under subdivisions 1 a and 1 b of this subsection shall be performed by at least the following employees of the facility operator:

(1) A supervisor from the accounting department; and

(2) An employee from the security department.

2. Inventory.

a. After a shipment of gaming chips or plaques is checked as required under subdivision 1 of this subsection, the employees identified in subdivision 1 c of this subsection shall record in a chip inventory ledger the:

(1) Denomination of the value chips and plaques received;

(2) Number of each denomination;

(3) Serial numbers of the value chips and plaques received;

(4) For any roulette chips received, the number and description of the roulette chips received;

(5) Date of the receipt;

(6) Signatures and license numbers of the employees who checked the chips and plaques.

b. If the value chips or roulette chips are not to be immediately put into active use, the chip inventory ledger must also identify the storage location of the chips.

3. Storage.

a. A gaming chip or plaque not in active use shall be stored in:

(1) A vault located in the main bank;

(2) Locked cabinets in the main cage; or

(3) Another restricted storage area approved in advance by the department.

b. A gaming chip or plaque may not be stored in the same storage area as dice, cards, pai gow tiles, or any other table game equipment.

c. When a gaming chip or plaque is removed from or returned to an approved storage area, at least the two employees identified in subdivision 1 c of this subsection shall be present and ensure that the chip inventory ledger contains the following information:

(1) Date;

(2) Signatures and license numbers of the employees supervising the transaction;

(3) Quantity;

(4) If applicable, the serial numbers and dollar amounts for each denomination of value chip or plaque;

(5) Number and description of the roulette chip;

(6) Specific storage area being entered; and

(7) Reason for the entry into the storage area.

4. At the end of each gaming day, a facility operator shall compute and record the unredeemed liability for each denomination of value chip and plaque according to procedures specified in the facility operator's internal controls.

5. Ongoing inventory.

a. A facility operator shall inventory all sets of value chips, roulette chips, and plaques in its possession and record the result of the inventory in the chip inventory ledger.

b. The inventory required under subdivision 5 a of this subsection shall be conducted at least once every month for value chips and plaques and at least once every three months for roulette chips.

c. If a facility operator's inventory procedures incorporate the sealing of a locked compartment containing the facility's value chips, roulette chips, and plaques not in active use, a physical inventory of value chips, roulette chips, and plaques not in active use is required to be conducted annually.

d. A facility operator shall include in its internal controls the procedures to be utilized to inventory value chips, roulette chips, and plaques.

6. Destruction.

a. At least five days prior to the destruction of a gaming chip or plaque, a facility operator shall notify department staff of the:

(1) Date and the location at which the destruction will be performed;

(2) Denomination, number, and when applicable, the serial number and amount of value chips or plaques to be destroyed;

(3) Description and number of roulette chips to be destroyed; and

(4) Detailed explanation of the method of destruction.

b. The destruction of a gaming chip or plaque shall be carried out in the presence of at least the two employees identified in subdivision 1 c of this subsection.

c. The facility operator shall record in the chip inventory ledger the names and license numbers of all employees and nonemployees involved in each destruction, and:

(1) The denomination, quantity, total value, and serial number, if applicable, of all value chips or plaques destroyed;

(2) The description and number of roulette chips destroyed;

(3) The signatures and license numbers of the individuals who carried out the destruction; and

d. The date and location where the destruction took place.

7. A facility operator shall ensure that at all times there is adequate security for all gaming chips and plaques in the facility operator's possession.

L. Dice.

1. Except as otherwise provided in subdivisions 2 and 3 of this subsection, each die used in the play of table games shall:

a. Be formed in the shape of a perfect cube and of a size not smaller than 0.750 inch on each side nor any larger than 0.775 inch on each side, with a tolerance of plus or minus 0.005;

b. Be transparent and made exclusively of cellulose except for the spots, name, or logo of the facility operator, and serial number or letters on the die;

c. Be perfectly flat on the surface of each of its sides, with the spots contained in each side flush with the area surrounding them;

d. Have all edges and corners perfectly square and forming 90 degree angles.

e. Have the texture and finish of each side identical to the texture and finish of all other sides;

f. Have its weight equally distributed throughout the cube with no side of the cube heavier or lighter than any other side of the cube;

g Have the six sides bearing white circular spots from one to six respectively with the diameter of each spot equal to the diameter of every other spot on the die;

h. Have spots arranged so that:

(1) The side containing one spot is directly opposite the side containing six spots;

(2) The side containing two spots is directly opposite the side containing five spots; and

(3) The side containing three spots is directly opposite the side containing four spots;

i. Have each spot placed on the die by drilling into the surface of the cube and filling the drilled out portion with a compound that is equal in weight to the weight of the cellulose drilled out and that forms a permanent bond with the cellulose cube and extends into the cube exactly the same distance as every other spot extends into the cube to an accuracy tolerance of 0.0004 inch;

j. Have imprinted or impressed on the die a serial number or letters and the name or logo of the facility operator using the die.

2. Dice used in the table games of pai gow and pai gow poker must comply with the requirements of subdivision 1 of this subsection, except as follows:

a. Each die must be formed in the shape of a perfect cube and of a size not smaller than 0.637 inch on each side nor any larger than 0.643 inch on each side;

b. With the department's approval, a facility operator may have an identifying mark imprinted or impressed on each die instead of the name or logo of the facility operator; and

c. The spots on each die do not have to be equal in diameter.

3. Dice used in the table game of sic bo must comply with subdivision 1 of this subsection, except each die may be formed in the shape of a cube 0.625 inch on each side with ball edge corners.

4. Dice may not be used in a facility unless a detailed schematic depicting the actual size and color of the dice and the location of serial numbers, letters, or logos on the dice has been submitted to and approved by the department.

M. Receipt, storage, inspection, and removal of dice.

1. Receipt.

a. A shipment of dice that is received from a manufacturer or supplier shall be immediately unloaded and transported to a secure area that is covered by the facility operator's surveillance system under the supervision of at least two employees of the facility operator.

b. The boxes of dice shall then be inspected by at least two employees of the facility operator to ensure that the seals on each box are intact, unbroken, and free from tampering.

(1) Boxes that do not appear to be intact, unbroken, and free from tampering shall be immediately inspected to ensure that the dice in those boxes conform to the requirements of this subsection, and there is no evidence of tampering with them.

(2) If dice inspected as required under subdivision 1 b (1) of this subsection show no evidence of tampering, they shall be placed along with boxes of dice that are intact, unbroken, and free from tampering for storage.

c. Dice shall be stored in a storage area approved by the department.

d. The functions required under subdivisions 1 a, 1 b, and 1 c of this subsection shall be performed by at least the following employees of the facility operator:

(1) A floor supervisor or above; and

(2) An employee from the security department.

2. Storage. The department-approved storage area must have two separate locks, to which access shall be controlled as follows:

a. The security department shall maintain one key and the gaming operations department shall maintain the other key; and

b. An employee of the gaming operations department below a floorperson in the organizational hierarchy may not have access to the gaming operations department key.

3. Dice that are to be distributed to gaming pits or tables for use in gaming shall be distributed from the approved storage area.

4. Once each gaming day and at other times as may be necessary, a floorperson or above in the presence of a security department employee shall remove the appropriate number of dice for that gaming day from the approved storage area.

5. Envelopes and containers used to hold or transport dice must be:

(a) Transparent;

(b) Designed or constructed with seals so that any tampering is evident; and

(c) Submitted to and approved by the department.

6. Inspection and distribution. Dice shall be inspected and distributed to the gaming tables in accordance with one of the following alternatives:

a. Alternative number 1.

(1) The floorperson or above and the security department employee who removed the dice from the approved storage area shall distribute sufficient dice directly to the pit manager or above in each pit or place them in a locked compartment in the pit stand, the keys to which shall be in the possession of the pit manager or above.

(2) Immediately upon opening a table for gaming, the floorperson or above shall distribute a set of dice to the table.

(a) To ensure that the dice are in a condition to ensure fair play and otherwise conform to the requirements of this section, at the time of receipt of a set of dice, a floorperson

at each craps, pai gow, pai gow poker, sic bo, or mini-craps table shall, in the presence of the dealer, inspect the dice with a micrometer or any other instrument approved by the department to perform the function of a micrometer, a balancing caliper, a steel set square, and a magnet.

(b) The instruments described in subdivision 6 a (2) (a) of this subsection shall be kept in a compartment at each craps table or pit stand and shall be at all times readily available for use by department staff.

(c) The inspection required under subdivision 6 a (2) (a) of this subsection shall be performed on a flat surface that allows the dice inspection to be observed through the facility operator's surveillance system and by any persons in the immediate vicinity of the table.

(3). Following the inspection required under subdivision 6 a (2) (a) of this subsection:

(a) For craps, the floorperson shall, in the presence of a dealer, place the dice in a cup on the table for use in gaming;

(b) For mini-craps, the floorperson shall, in the presence of a dealer, place the dice in a cup on the table for use in gaming;

(c) For sic bo, the floorperson shall, in the presence of the dealer, place the required number of dice into the shaker and seal or lock the shaker, and the floorperson shall secure the sic bo shaker to the table in the presence of the dealer who observed the inspection; or

(d) For pai gow and pai gow poker, the floorperson shall, in the presence of the dealer, place the dice in the pai gow shaker.

(4) The floorperson or above shall place extra dice for the dice reserve in the pit stand, where:

(a) Dice in the pit stand shall be placed in a locked compartment, the keys to which shall be in the possession of the floorperson or above; and

(b) No dice taken from the pit stand reserve may be used for actual gaming until the dice have been inspected in accordance with subdivision 6 a (2) (a) of this subsection.

b. Alternative number 2.

(1) The pit manager or above and the security department employee who removed the dice from the approved storage area shall distribute the dice directly to the following facility operator's employees who shall perform an inspection in each pit:

(a) For craps and mini-craps, a floorperson in the presence of another floorperson, both of whom are assigned the responsibility of supervising the operation and conduct of a craps or mini-craps game;

(b) For sic bo, pai gow, and pai gow poker, a floorperson in the presence of another floorperson, both of whom are assigned the responsibility of supervising the operation and conduct of sic bo, pai gow, or pai gow poker games;

(c) For storage of the dice for the dice reserve in the pit stand, to the pit manager or above.

(2) To ensure that the dice are in a condition to ensure fair play and otherwise conform to the requirements of this chapter, at the time of receipt of a set of dice, the dice shall be inspected by one of the individuals listed in subdivision 6 a (2) (a) of this subsection with a micrometer or other instrument approved by the department that performs the same function as a micrometer, a balancing caliper, a steel set square, and a magnet.

(3) The instruments described in subdivision 6 b (2) of this subsection shall be kept at the pit stand and shall be at all times readily available for use by department staff.

(4) The inspection required under subdivision 6 b (2) of this subsection shall be performed on a flat surface that allows the dice inspection to be observed through the facility operator's surveillance system and by any persons in the immediate vicinity of the pit stand.

(5) After completion of the inspection, the dice shall be distributed as follows:

(a) For craps and mini-craps, the floorperson who inspected the dice shall, in the presence of the other floorperson who observed the inspection, distribute the dice to the floorperson assigned at each craps table or to the floorperson assigned at each mini-craps table, and the craps floorperson or the mini-craps floorperson shall, in the presence of the dealer, place the dice in a cup on the table for use in gaming.

(b) For sic bo, the floorperson who inspected the dice shall, in the presence of the other floorperson who observed the inspection, place the required number of dice into the shaker and seal or lock the shaker, and the floorperson shall then secure the sic bo shaker to the table in the presence of the other floorperson who observed the inspection.

(c) For pai gow and pai gow poker, the floorperson who inspected the dice shall, in the presence of the other floorperson who observed the inspection, distribute the dice directly to the dealer at each pai gow table, and the dealer shall immediately place the dice in the pai gow shaker.

(6) The pit manager or above shall place extra sets of dice for the dice reserve in the pit stand, as follows:

(a) Dice in the pit stand shall be placed in a locked compartment, the keys to which shall be in the possession of the pit manager or above.

(b) Except as otherwise provided in subdivision 6 b (5) of this subsection, dice taken from the reserve in the pit stand shall be reinspected by a floorperson or above in the presence of another floorperson or above in accordance with the inspection procedures set forth in subdivision 6 b (2) of this subsection prior to their use for actual gaming.

(7) Previously inspected reserve dice may be used for gaming without being reinspected if the dice are maintained in a locked compartment in the pit stand in accordance with the following procedures:

(a) For craps and mini-craps, a set of five dice, after being inspected, shall be placed in a sealed envelope or container, to which shall be attached a label that identifies the date of inspection and contains the signatures of those responsible for the inspection shall be attached to the envelope or container.

(b) For sic bo, three dice, after being inspected, shall be placed in a sealed envelope or container or sealed or locked in a sic bo shaker, to which shall be attached a label or seal that identifies the date of inspection and contains the signatures of those responsible for the inspection shall, respectively, be attached to each envelope or container or placed over the area that allows access to open the sic bo shaker.

(c) For pai gow and pai gow poker, a set of three dice, after being inspected, shall be placed in a sealed envelope or container, to which shall be attached a label that identifies the date of inspection and contains the signatures of those responsible for the inspection shall be attached to each envelope or container.

7. Removal. A facility operator shall remove dice at any time of the gaming day and submit a Dice Discrepancy Report as required under subdivision 8 of this subsection:

a. If there is any indication of tampering, flaws, or other defects that might affect the integrity or fairness of the game; or

b. At the request of department staff.

8. Inspection.

a. At the end of each gaming day or at other times as may be necessary, a floorperson or above, other than the individual who originally inspected the dice, shall visually inspect each die that was used for play for evidence of tampering, and immediately report evidence of tampering to the department by:

(1) Completing a two-part Dice Discrepancy Report; and

(2) Submitting the completed Dice Discrepancy Report and the dice to department staff.

b. Dice showing evidence of tampering shall be placed in a sealed envelope or container with a label attached that:

(1) Identifies the table number, date, and time the dice were removed;

(2) Contains the signatures of the person assigned to directly operate and conduct the game at that table and the floorperson assigned the responsibility for supervising the operation and conduct of the game;

(3) Contains the signatures of a floorperson or above or a security department employee responsible for delivering the dice to department staff; and

(4) The original and duplicate copy of which is signed by the department staff receiving the dice, who shall retain the original copy and return the duplicate copy to the pit, where the duplicate copy shall be maintained in a secure place within the pit until it is collected by a security department employee.

c. Other dice that were used for play shall be put into envelopes or containers when removed from active use at the table in an envelope or container with a label attached that:

(1) Identifies the table number, date and time the dice were removed;

(2) Contains the signatures of the person assigned to directly operate and conduct the game at that table and the floorperson assigned the responsibility for supervising the operation and conduct of the game; and

(3) Is sealed and maintained within the pit until it is collected by a security department employee.

9. Reserve dice in the locked compartment in a pit stand at the end of the gaming day may be:

a. Collected and transported to the security department for cancellation or destruction;

b. Returned to the approved storage area; or

c. Retained in the locked compartment in the pit stand for future use.

10. Reserve dice in the locked compartment in a pit stand at the end of the gaming day that are to be destroyed or canceled shall be placed in a sealed envelope or container, with a label attached to each envelope or container that:

a. Identifies the pit stand where the reserve dice were being stored;

b. Identifies the date and time the dice where placed in the envelope or container; and

c. Contains the signature of the pit manager or above.

11. At the end of each gaming day or at least once each gaming day, as designated by the facility operator and approved in advance by the department, and at other times as may be necessary:

a. Except as provided in subdivision 11 b of this subsection, a security department employee shall collect and sign all envelopes or containers of used dice and reserve dice that are to be destroyed or canceled and transport the dice to the security department for cancellation or destruction; and

b. If an alternative procedure for collecting, destroying, or canceling dice described in subdivision 11 b of this subsection has been submitted to and approved by the department, a security department employee:

(1) Shall collect all envelopes or containers and return them to the security department; and

(2) May sign the envelopes or containers; and

c. The security department employee shall also collect any duplicate copies of Dice Discrepancy Reports.

12. An assistant table games shift manager or above may collect all reserve dice in a locked compartment in a pit stand, and if collected:

a. Reserve dice shall be returned to the approved storage area;

b. Reserve dice shall be collected at the end of each gaming day or at least once each gaming day, as designated by the facility operator and approved by the department; and

c. Except for dice maintained in a locked compartment in accordance with subdivision 6 of this subsection, if the reserve dice are not collected, all dice in the dice reserve shall be reinspected in accordance with one of the alternatives listed in subdivision 6 of this subsection prior to their use for gaming.

13. Facility operators shall submit to the department for approval internal control procedures for:

a. A dice inventory system, which includes, at a minimum, records of the:

(1) Number of three and five dice sticks and the corresponding number of single die received from a manufacturer or supplier;

(2) Balance of three and five dice sticks and the corresponding number of single die on hand;

(3) Number of three and five dice sticks removed from storage;

(4) Number of three and five dice sticks returned to storage;

(5) Number of single die destroyed or canceled;

(6) Date of each transaction; and

(7) Signatures of the individuals involved.

b. A daily reconciliation of the:

(1) Number of three or five dice sticks distributed;

(2) Number of single die destroyed or canceled;

(3) Number of three or five dice sticks returned to the approved storage area; and,

(4) Reserve three or five dice sticks in a locked compartment in a pit stand, if any; and

c. A physical inventory of all dice at least once every three months:

(1) That shall be performed by an individual with no incompatible functions and shall be verified to the balance of dice on hand required under subdivision 13 a of this subsection; and

(2) For which discrepancies shall immediately be reported to department staff.

14. Destruction or cancellation of dice.

a. Other than those retained for department or facility operator inspection, destruction or cancellation of dice shall be completed within seven days of collection.

b. Cancellation shall be accomplished by drilling a circular hole of at least 1/4-inch in diameter through the center of the die.

c. Destruction shall be accomplished by shredding or crushing the die.

d. The destruction or cancellation of dice must take place in a secure location in the facility that is covered by the facility operator's surveillance system.

15. Rotation and replacement of dice.

a. A set of five dice used at a craps or mini-craps table shall be changed at least once every 24 hours.

b. A new set of dice shall be used:

(1) When a craps or mini-craps table is reopened for gaming;

(2) If a die goes off the table during play and is lost;

(3) If a die shows signs of tampering or alteration; or

(4) A die is otherwise marked, chipped, scratched, or no longer suitable for play.

c. Dice that have been placed in a shaker for use in gaming may not remain on a table for more than 24 hours in the games of:

(1) Pai gow tiles; and

(2) Pai gow poker.

N. Sic bo shaker security procedures.

1. Storage.

a. Manual and automated sic bo shakers that have not been filled with dice may be stored in a locked compartment in a pit stand.

b. An automated sic bo dice shaker that has been filled with dice shall be secured to the sic bo table at all times.

2. Inspection.

a. At the end of each gaming day, a pit manager or above shall inspect all sic bo shakers that have been placed in use for gaming for evidence of tampering.

b. Evidence of tampering shall be immediately reported to department staff on a written report that includes at least:

(1) The date and time when the tampering was discovered;

(2) The name and signature of the individual discovering the tampering;

(3) The table number where the sic bo shaker was used; and

(4) The name and signature of the employee who is:

(a) Assigned to directly operate and conduct the game at the sic bo table; and

(b) The supervisor assigned the responsibility for supervising the operation and conduct of the game at the sic bo table.

O. Cards.

1. [~~Except as otherwise approved by the department, cards used to play table games shall be in decks of 52 cards with each card identical in size and shape to every other card in the deck~~ Approval required].

a. [~~Nothing in this regulation shall be construed to prohibit a manufacturer from manufacturing decks of cards with one or more jokers in each deck~~ Prior to use, a facility operator shall submit to the department for approval any cards proposed by the facility for use in table games].

b. [~~Jokers may not be used by the facility operator in the play of any game unless authorized by the rules of the game.~~ The department shall review the proposed cards for:

(1) The proposed use of the cards;

(2) The suitability of the card design based on applicability for use on a designated game;

(3) Size;

(4) Deck composition; and

(5) Any coloring specifications required for applicable game use.]

2. [~~Except as otherwise approved by the department, each deck shall be composed of cards in four suits: diamonds, spades, clubs and hearts, and:~~ A facility operator may accept cards from a manufacturer only in sealed containers or boxes.]

[~~a. Each suit shall be composed of 13 cards:~~

~~(1) Ace;~~

~~(2) King;~~

~~(3) Queen;~~

~~(4) Jack;~~

~~(5) 10;~~

~~(6) 9;~~

~~(7) 8;~~

~~(8) 7;~~

~~(9) 6;~~

~~(10) 5;~~

~~(11) 4;~~

~~(12) 3; and~~

~~(13) 2; and~~

~~b. If approved in advance by the department, the face of the ace, king, queen, jack, and 10 may contain an additional marking that will permit a dealer, prior to exposing the dealer's hole card at the game of blackjack, to determine if the value of the hole card gives the dealer a blackjack.~~]

3. [~~The backs of each card in a deck shall:~~ A facility operator shall submit to the department for approval its internal controls and procedures regarding receipt of card shipments.]

[~~a. Be identical and may not contain any marking, symbol, or design that may enable an individual to know the identity of any element printed on the face of the card or that will in any way differentiate the back of the card from any other card in the deck;~~

~~b. Be designed to diminish the ability of any individual to place concealed markings thereon; and~~

~~c. Contain the name or logo of the facility operator using the cards, unless otherwise approved by the department.~~]

4. [~~Each deck of cards shall be packaged separately or in a batch containing the number of decks selected by a facility operator for use in a particular table game, and:~~ A facility operator shall submit to the department for approval its internal controls and procedures regarding the secure storage of cards.]

[~~a. Each package of cards shall be sealed in a manner approved by the department to reveal evidence of any tampering with the package; and~~

~~b. If multiple decks of cards are packaged and sealed in a batch, the package must have a label that indicates or contains a window that reveals an adequate description of the contents of the package, including the:~~

~~(1) Name of the facility operator for which the cards were manufactured;~~

~~(2) Colors of the backs of the cards;~~

~~(3) Date that the cards were manufactured;~~

~~(4) Total number of cards in the batch; and~~

~~(5) Total number of decks in the batch.~~]

5. [~~Individual decks of cards that are packaged and sealed in a multideck batch may not be separated from the batch for independent use at a table game.~~ Management of cards.

a. A facility operator shall submit to the department for approval its internal controls and procedures regarding the management of cards while on premises.

b. A facility's internal controls and procedures regarding management of cards shall assure an auditable method of:

(1) Receipt;

(2) Secure handling;

(3) Real-time inventory;

(4) Authorized access for inventory or distribution; and

(5) Distribution process.]

6. [~~The cards used by a facility operator for poker shall be:~~ Opening a new game.]

a. [~~Visually distinguishable from the cards used by that facility operator for other banked table game play; and~~ A facility operator shall submit to the department for approval its internal controls and procedures regarding the process of opening a new game.]

b. [~~Made of plastic.~~ A facility operator's internal controls and procedures regarding the process of opening a new game shall include:

(1) Delivery of the cards to the game;

(2) Designated staff with authority levels;

(3) Inspection of cards prior to play;

(4) Hand and machine shuffled card games; and

(5) Pre-shuffled card games.]

7. [~~Each facility operator that offers the game of poker shall have and use on a daily basis at least four decks of cards with visually distinguishable card backings, and:~~ Closing a game.]

a. [~~Card backings may be distinguished by different logos, different colors, or different design patterns:~~ A facility operator shall submit to the department for approval its internal controls and procedures regarding the process of closing a game.]

b. [~~The facility operator shall submit, as part of its internal controls, the procedure for distributing and rotating the four visually distinguishable decks of cards required for use in the game of poker.~~ A facility operator's internal controls and procedures regarding the process of closing a game shall include:

(1) Removal of the cards from play; and

(2) Transportation of the cards to used card storage.]

8. [~~At a minimum, all poker cards that have been in play for four months shall be replaced~~ A facility operator shall submit to the department for approval its internal controls and procedures regarding the cancellation and destruction of cards].

9. [~~Cards may not be utilized in a facility unless a schematic depicting the face and backs of the cards, the colors, words, designs, and graphics has been submitted to and approved by the department~~ A facility operator shall submit to the department for approval its internal controls and procedures regarding damaged or missing cards].

10. [~~A facility operator may use RFID cards in table games if the department has reviewed and approved the facility operator's plan for use of RFID cards~~ Duration of card use].

[a. A facility operator shall submit to the department for approval its internal controls and procedures regarding the maximum duration of card usage or service life.

b. A facility operator's internal controls and procedures regarding maximum duration of card usage or service use shall include:

(1) Hand shuffled games;

(2) Machine shuffled games;

(3) Pre-shuffled games;

(4) Multi-deck games; and

(5) Plastic cards.]

11. A facility operator's [~~request for department approval of the use of RFID cards shall include~~ internal controls and procedures regarding cards shall require that]:

a. [~~A detailed description of the RFID technology and devices that will be used at the facility~~ All discrepancies with the internal controls and procedures be noted in the shift log]; [and]

b [~~A detailed description of the RFID technology security features that will ensure the integrity of the table games where RFID cards are in use;~~

~~c. A detailed description of how the RFID cards and related equipment will be used in the facility; and~~

~~d. Any other information required~~ The facility operator promptly notify the department if a card or deck of cards is discovered to fall outside the standards approved] by the department.

P. Receipt, storage, inspection, and removal of cards.

1. Receipt.

a. A shipment of decks of cards that is received from a manufacturer or supplier shall be unloaded immediately and transported to a secure area that is covered by the facility operator's surveillance system under the supervision of at least two employees of the facility operator.

b. The boxes of decks of cards shall be opened and inspected to ensure that the seals on each box are intact, unbroken, and free from tampering.

c. Boxes that do not appear to be intact, unbroken, and free from tampering shall be immediately inspected to ensure that the decks of cards in those boxes conform to the requirements of this section and there is no evidence of tampering with them.

d. If the decks of cards inspected show no evidence of tampering, they shall be placed, along with boxes of cards that are intact, unbroken, and free from tampering, for storage in an area approved by the department.

e. The functions required under subdivision 1 a through 1 d of this subsection shall be performed by at least the following employees of the facility operator:

(1) A floor supervisor or above; and

(2) An employee from the security department.

2. Storage. The department-approved storage area shall have two separate locks, to which access shall be controlled as follows:

a. The security department shall maintain one key and the gaming operations department shall maintain the other key.

b. An employee of the gaming operations department below a floorperson in the organizational hierarchy may not have access to the gaming operations department key.

c. If the facility operator has a separate poker storage area, an employee below a poker supervisor in the organizational hierarchy may not have access to the gaming operations department key to the poker storage area.

3. Distribution.

a. Except as provided under subdivision 5 of this subsection, as may be necessary, a floorperson or above, in the presence of a security department employee, shall remove the appropriate number of decks of cards from the approved storage area.

b. The floorperson or above and the security department employee who removed the decks shall distribute sufficient decks to the pit managers or above and, if applicable, to the poker supervisor.

c. The number of decks distributed shall include extra decks that shall be placed in the pit stand for the card reserve.

d. Decks of cards in the pit stand shall be placed in a locked compartment, the keys to which shall be in the possession of the pit managers or above or the poker supervisor or above.

4. Inspection.

a. If the decks are to be inspected at open gaming tables under subdivision 6 of this subsection, the pit manager or above shall distribute the decks to the dealer at each table or the poker supervisor shall transport the decks to the poker pit stand for subsequent distribution to the dealer at each poker table either directly by the poker supervisor or through the floorperson assigned to supervise the dealer.

b. If the decks are to be preinspected and preshuffled at a closed gaming table as permitted under subdivision 18 of this subsection, the pit manager or above or poker supervisor shall deliver the decks to the dealer and the floorperson or above at the closed gaming table where the preinspection and preshuffling shall be performed.

c. If the decks have already been preinspected, preshuffled, sealed in containers, and placed in the card storage area as permitted under subdivision 18 of this subsection, the pit manager or above and a security department employee shall transport the number of sealed containers of cards needed for that gaming day to the gaming pits where the cards will be utilized and shall ensure that the containers are locked in the pit stand.

d. Consistent with the facility operator's internal controls, the security department shall maintain a record of the removal of the sealed containers of cards from the approved storage area and the distribution of sealed containers to the gaming pits.

5. Removal.

a. If the decks of cards to be used for poker are removed from the poker storage area, the poker supervisor or above and a security department employee shall, at times as may be necessary, remove the appropriate number of decks from the poker storage area and distribute the decks in accordance with subdivision 3 of this subsection.

b. The number of decks distributed shall include extra decks that shall be placed in the pit stand for the card reserve.

c. Decks of cards in the pit stand shall be placed in a locked compartment, the keys to which shall be in the possession of the poker supervisor or above.

6. Verification.

a. Except for decks of cards that are preinspected and preshuffled under subdivision 18 of this subsection, the dealer shall sort the cards in each deck according to suit and in sequence to verify that all cards are present and visually inspect the backs of the cards for any defects that might compromise the integrity or fairness of the game.

b. The floorperson or above shall verify the inspection.

7. Unsuitable or missing card. If, while inspecting the cards in accordance with subdivision 4 of this subsection, the dealer finds that a card is unsuitable for use, a card is missing from the deck, or an extra card is found, the following procedures shall be observed:

a. A supervisor or above or a poker supervisor shall bring a replacement deck of cards or card from the card reserve in the pit stand.

b The unsuitable deck or card shall be placed in a sealed envelope or container; identified by table number, date, and time; and signed by the dealer and floorperson or above assigned to that table.

c. The pit manager or above or a poker supervisor shall maintain the envelope or container in a secure place within the pit until collection by a security department employee.

8. Envelopes and containers used to hold or transport cards shall be:

a. Transparent;

b. Designed or constructed [~~with seals~~] so that any tampering is evident; and

c. Submitted to and approved by the department.

9. Damaged cards.

a. If any card in a deck appears to be damaged during the course of play, the dealer shall immediately notify a floorperson or above.

b. If after inspection, the floorperson or above determines that the card is damaged and needs to be replaced, the floorperson shall notify the pit manager or above or the poker supervisor.

c. The pit manager or above or the poker supervisor shall:

(1) Notify surveillance of a card change;

(2) Bring a replacement deck of cards or card from the pit stand to replace the damaged card;

(3) Place the damaged card face up on the table and remove the matching card from the replacement deck and place it face up on the table;

(4) Turn over both the damaged card and the replacement card to verify that the backs of the cards match;

(5) Place the replacement card in the discard rack;

(6) Tear the damaged card down the center, or cancel the card, and place it face up in the replacement deck; and

(7) Return the replacement deck to the pit stand.

d. At least once each gaming day, the personnel operating table games shall:

(1) Collect the replacement cards and place the replacement cards in an envelope or container;

(2) Seal the envelope or container;

(3) Attach a label to each envelope or container that identifies the deck as a replacement deck; and

(4) Obtain the signature of the pit manager or above on the label.

e. On an as-needed basis, the personnel operating poker table games shall:

(1) Collect the replacement decks of poker cards and place the replacement poker cards in an envelope or container;

(2) Seal the envelope or container;

(3) Attach a label to each envelope or container that identifies the deck as a replacement deck; and

(4) Obtain the signature of the poker manager or above, or the poker supervisor, on the label.

f. The pit manager or above or the poker supervisor shall maintain the sealed envelopes or containers in a secure place within the pit until collection by a security department employee in accordance with subdivision 13 of this subsection.

g. This subdivision P 9 does not apply to cards showing indications of tampering, flaws, or other defects that might affect the integrity or fairness of the game.

10. Removing cards from active use.

a. Personnel operating table games shall put decks of cards that were used for play into envelopes or containers when the decks of cards are removed from active use at the table.

b. Personnel operating table games shall attach a label to each envelope or container that identifies the table number, date, and time the decks of cards where collected and shall be signed by the dealer and floorperson assigned to the table.

c. The poker supervisor or pit manager or above shall maintain the sealed envelopes or containers in a secure place within the pit until collection by a security department employee.

11. A facility operator shall remove a deck of cards at any time if there is an indication of tampering, flaws, or other defects that might affect the integrity or fairness of the game, or at the request of department staff.

12. Personnel operating table games shall place extra decks or packaged sets of multiple decks in the card reserve with broken seals in a sealed envelope or container with a label attached to each envelope or container that:

a. Contains the number of decks or packaged sets of multiple decks that are included;

b. The date and time the decks were placed in the envelope or container; and

c. The signature of the floorperson or above for decks used for poker and the pit manager or above for decks used for all other games.

13. At the end of each gaming day or at least once each gaming day, as designated by the facility operator and approved in advance by the department, and at other times as may be necessary:

a. Except as provided in subdivision 13 b of this subsection, a security department employee shall collect and sign all envelopes or containers with damaged decks of cards, decks of cards required to be removed that gaming day, and all extra decks in the card reserve with broken seals and return the envelopes or containers to the security department;

b. If an alternative procedure for collecting, destroying, or canceling a deck of cards described in subdivision 13 a of this subsection has been submitted to and approved by the department, a security department employee:

(1) Shall collect all envelopes or containers and return them to the security department; and

(2) May sign the envelopes or containers; and

c. A table game department supervisor or above may collect all extra decks with intact seals in the card reserve.

14. Inspection of cards.

a. When the envelopes or containers of used cards and reserve cards with broken seals are returned to the security department, the cards shall be inspected for tampering,

marks, alterations, missing or additional cards, or anything that might indicate unfair play.

b. For cards used in blackjack, Spanish 21, baccarat, midibaccarat, or minibaccarat, the facility operator shall inspect:

(1) All decks used during the day; or

(2) If department has approved, as part of the facility's internal controls, the procedures for selecting the sample size and for ensuring a proper selection of the sample, a sample of decks selected at random or in accordance with an approved stratification plan.

c. The facility operator shall also inspect:

(1) A deck of cards that the department requested the facility operator to remove for the purpose of inspection;

(2) A deck of cards the facility operator removed for indication of tampering;

(3) All cards used for all banked table games other than the games listed in subdivision 14 b of this subsection; and

(4) All cards used for poker.

d. The procedures for inspecting all decks required to be inspected under this subsection shall include the:

(1) Sorting of cards sequentially by suit or utilizing a machine approved by the department capable of reading the cards to determine whether any deck contains missing or additional cards;

(2) Inspection of the backs with an ultraviolet light;

(3) Inspection of the sides of the cards for crimps, bends, cuts, or shaving; and

(4) Inspection of the front and back of all plastic cards for consistent shading and coloring.

e. If, during the inspection procedures required for cards used in poker, one or more of the cards in a deck are determined to be unsuitable for continued use, those cards shall be placed in a sealed envelope or container and a two-part Card Discrepancy Report shall be completed in accordance with subdivision 14 j of this subsection.

f. Upon completion of the inspection procedures required under subdivision 14 c of this subsection, each deck of cards used in poker that is determined suitable for continued use shall be placed in sequential order, repackaged, and returned to the approved or poker storage area for subsequent use.

g. The facility operator shall develop internal control procedures for returning the repackaged cards to the poker card inventory in accordance with subdivision 18 of this subsection.

h. An individual performing an inspection shall complete a work order form that details the procedures performed and lists the tables from which the cards were removed and the results of the inspection and shall sign the form upon completion of the inspection procedures.

i. The facility operator shall submit to the department the training procedures for the employees performing the inspections required under this subsection in its internal controls.

j. (1) Evidence of tampering, marks, alterations, missing, or additional cards or anything that might indicate unfair play discovered during an inspection, or at any other time shall be immediately reported to department staff by the completion and delivery of a two-part Card Discrepancy Report.

(2) The two-part report shall include the cards or decks of cards that are the subject of the report, and the cards or decks of cards shall be retained by department staff for further inspection.

(3) The department staff receiving the cards shall sign the original and duplicate copy of the Card Discrepancy Report and retain the original, and the facility operator shall retain the duplicate copy.

15. A facility operator shall submit to the department for approval internal control procedures for:

a. A card inventory system that includes, at a minimum, records of the:

(1) Balance of decks of cards on hand;

(2) Decks of cards removed from storage;

(3) Decks of cards returned to storage or received from a manufacturer or supplier;

(4) Date of each transaction; and

(5) Signatures of the employees involved;

b. A daily reconciliation of the decks of cards distributed, destroyed, or canceled; returned to the storage area; and any decks of cards in the card reserve; and

c. A physical inventory of all decks of cards at least once every three months that:

(1) Is performed by an individual with no incompatible functions and verified to the balance of decks of cards on hand;

(2) Results in all discrepancies being immediately reported to department staff.

16. Destruction or cancellation.

a. Except for plastic cards used at poker that are of sufficient quality for reuse, decks of cards in an envelope or container that are inspected as required under subdivision 14 of this subsection and found to be without any indication of tampering, marks, alterations, missing or additional cards or any indication of unfair play shall be destroyed or canceled within seven days of collection.

b. Cards submitted to the department shall be destroyed or canceled within five days of release from the department.

c. Destruction of cards must be by shredding.

d. Cancellation of cards must be by drilling a circular hole of at least 1/4-inch in diameter through the center of each card in the deck.

e. The destruction or cancellation of cards shall take place:

(1) In a secure location in the licensed facility covered by the facility operator's surveillance system, the physical characteristics of which shall be approved by the department; or

(2) If conducted by a vendor that holds a service permit under this chapter and performed in accordance with an internal control of the licensed facility that has been approved by the department, at a location other than the facility.

17. Reused deck.

a. If a deck of plastic cards has been determined to not be suitable for reuse by the individual performing the inspection procedures required under subdivision 14 of this subsection:

(1) The personnel operating table games shall place the deck in a sealed envelope or container with a label attached that identifies the date and time the deck was placed in the envelope or container; and

(2) The poker supervisor or floorperson shall sign the label.

b. At the end of the gaming day or at other times as may be necessary, the envelope or container shall be collected by a security department employee and returned to the security department for destruction or cancellation in accordance with this subsection.

18. Preinspection and preshuffling.

a. If a facility operator elects to preinspect and preshuffle cards at a closed gaming table prior to the delivery of the cards to an open gaming table, a dealer and supervised by a floorperson or above with no concurrent supervisory responsibility for open gaming tables shall perform the procedures required under this subdivision.

b. The facility operator shall provide department staff with a schedule of the proposed time and location for the preinspection and preshuffling at least 24 hours prior to commencement of the process.

c. The procedures required under this subdivision shall be recorded by the surveillance department and the facility operator shall retain a recording for at least seven days.

d. Upon receipt of the decks of cards, the dealer shall perform the procedures in this subdivision independently for each batch of cards that will be sealed in a container with the number of decks of cards in each batch being equal to the number of decks of cards required for the table game in which the decks are intended to be used.

e. The dealer shall visually inspect the back of each card to assure that it is not flawed, scratched, or marked in a way that might compromise the integrity or fairness of the game.

f. By hand or by using a machine approved by the department, the dealer shall inspect the front of each card to ensure that all cards are present and that there are no extra cards in the deck.

g. If after inspection a card is determined to be unsuitable for use, or the deck is missing a card or an extra card is found, the following procedures shall occur:

(1) The personnel operating table games shall place the deck containing the unsuitable, missing, or extra card in an envelope or container that shall be identified by table number, date, and time the deck of cards was placed in the envelope or container and signed by the dealer and floorperson or above performing the preinspection and preshuffle; and

(2) The floorperson or above shall maintain the sealed envelope or container containing the deck containing the unsuitable, missing, or extra card until collection by a security department employee at the conclusion of the preinspection and preshuffling procedure.

h. The dealer shall then shuffle the cards by hand or by using an automated card shuffling device.

i. Upon completion of the preinspection and preshuffling process of the cards in the batch, the dealer and floorperson or above shall complete a two-part Preshuffled/Preinspected Form or other documentation that includes the:

(1) Time and date the Preshuffled/Preinspected Form was prepared;

(2) Number of decks in the batch;

(3) Table games at which the batch will be utilized if the batch contains more or less than 52 cards per deck;

(4) Signature of the dealer who preinspected and preshuffled the cards, certifying that the cards were preinspected and preshuffled in accordance with this subsection;

(5) Signature of the floorperson or above who witnessed and verified the preinspection and preshuffling;

(6) Time, date, and gaming table to which the sealed container of cards is subsequently delivered; and

(7) Signature of the floorperson or above who delivered the sealed container of cards to the gaming table.

j. The dealer shall place the preinspected and preshuffled batch of cards, together with the Preshuffled/Preinspected Form or other documentation, in a clear container that conforms to the requirements of this subsection and seal the container with a prenumbered label unique to the container.

k. The facility operator shall include in its internal controls procedures for the maintenance and security of unused seals, and the distribution, return, and reconciliation of

seals used on containers holding preinspected and preshuffled cards.

l. The sealed containers of cards shall be transported by:

(1) A pit manager or above or poker supervisor to the gaming pit of the gaming tables where the cards will be utilized and locked in the pit stand; or

(2) An assistant table games shift manager or above and a security department employee to the approved storage area or poker storage area where the cards shall be placed back into the card inventory and segregated from cards that have not been preinspected and preshuffled.

m. A record of the transport of the sealed containers of cards to the approved storage area shall be maintained by the security department in a manner consistent with the facility operator's approved internal controls.

n. When the preinspected and preshuffled cards are needed for play, each container of cards shall be delivered by a floorperson or above to an open gaming table.

o. Upon delivery, the floorperson or above shall unseal the container, place the decks of cards on the gaming table in front of the dealer, complete and sign the Preshuffled/Preinspected Form, drop the original Preshuffled/Preinspected Form in a locked box in the gaming pit, and forward the copy of the Preshuffled/Preinspected Form to the security department.

p. The dealer at the gaming table shall then cut the cards in the manner prescribed by the rules governing the particular table game.

19. If the department has approved a manufacturer or contractor to provide preinspected and preshuffled decks or batches of decks, a facility operator may use preinspected and preshuffled decks or batches of decks obtained from that manufacturer or contractor in the same manner as decks or batches of decks that are preinspected and preshuffled pursuant to subdivision 18 of this subsection.

20. Card rotation. The facility operator shall change:

a. The decks of cards used for all banked table games except the games set forth in subdivisions b through e of this subdivision P 20 at least every:

(1) Four hours if the cards are dealt by hand; and

(2) Eight hours if the cards are dealt from a manual or automated dealing shoe;

b. The decks of cards used in blackjack at least every:

(1) Four hours if the cards are dealt by hand; and

(2) 24 hours if the cards are dealt from a manual or automated dealing shoe;

c. The decks of cards used in mini baccarat at least every 24 hours if the cards are dealt from a manual or automated dealing shoe;

d. The decks of cards used in midibaccarat after the play of each dealing shoe; and

e. The two decks of cards used in poker at least every 24 hours.

Q. Dealing shoes and automated card shuffling devices.

1. In this subsection, the following terms have the meanings indicated.

"Base plate" means an interior shelf of a dealing shoe on which a card rests.

"Face plate" means the front wall of the dealing shoe against which the next card to be dealt rests and which typically contains a cutout.

2. A manual dealing shoe must be designed and constructed to maintain the integrity of the game at which the shoe is used and shall include these features:

a. At least the first four inches of the base plate shall be white;

b. The sides of the shoe below the base plate shall:

(1) Be transparent, have a transparent sealed cutout, or be otherwise constructed to prevent any object from being placed into or removed from the portion of the dealing shoe below the base plate; and

(2) Permit the inspection of this portion of the shoe; and

c. A stop underneath the top of the face plate that precludes the next card to be dealt from being moved upwards more than 1/8-inch.

3. In addition to the requirements of subdivision 2 of this subsection, a manual dealing shoe used in minibaccarat, midibaccarat, or baccarat must also meet these specifications:

a. Have a removable lid that is opaque from the point where it meets the face plate to a point at least four inches from the face plate;

b. The sides and back above the base plate must be opaque; and

c. Have a device within the shoe that, when engaged, prevents the cards from moving backward in the shoe.

4. An automated card shuffling device that has been submitted and approved by the department may be used in addition to a manual or automated dealing shoe.

5. An automated shuffling device must meet the testing requirements for a random number generator.

6. An automated card shuffling device may not provide any information that can be used to aid a player in:

a. Projecting the outcome of a game;

b. Tracking the cards played and cards remaining to be played;

c. Analyzing the probability of the occurrence of an event relating to a game; or

d. Analyzing the strategy for playing or betting to be used in a game.

7. Tampering.

a. At the beginning of each gaming day and before a card is placed in them, the floorperson assigned to the table shall inspect the dealing shoes and automated card shuffling devices to be used for gaming to ensure that they have not been tampered with.

b. Evidence of tampering shall be immediately reported to department staff in a written report that shall include:

(1) The date and time when the tampering was discovered;

(2) The name and signature of the individual who discovered the tampering;

(3) A description of the evidence of tampering;

(4) The table number where the dealing shoe or shuffler was used; and

(5) The name and signature of the person assigned to directly operate and conduct the game and the supervisor assigned the responsibility for supervising the operation and conduct of the game.

R. Pai gow tiles.

1. Pai gow shall be played with a set of 32 rectangular tiles.

2. Each tile in a set must be identical in size and shading to every other tile in the set and shall:

a. Be made of a nontransparent black material, formed in the shape of a rectangle, and be not smaller than 2-1/2 inches in length, 1-inch in width, and 3/8-inch in thickness;

b. Have the surface of each of its sides perfectly flat, except that the front side of each tile must contain spots that extend into the tile exactly the same distance as every other spot;

c. Have on the back or front of each tile an identifying feature unique to each facility operator;

d. Except for the front side containing spots, have an identical texture and finish on each side;

e. Have no tile within a set contain any markings, symbols, or designs that would enable a player to know the identity of any element on the front side of the tile or that would distinguish any tile from any other tile within a set; and

f. Have identifying spots on the front side of the tiles that are red, white, or both.

3. Pai gow tiles may not be used in a facility until the facility has submitted to the department a detailed schematic depicting the actual size and identifying features on pai gow tiles, and the department has approved the submission,

4. Each set of tiles shall be packaged separately and sealed under subsection S of this section.

S. Receipt, storage, inspection, and removal of pai gow tiles.

1. Receipt.

a. A shipment of tiles that a facility operator receives from a manufacturer or contractor shall be unloaded immediately and transported to a secure area that is covered by the facility operator's surveillance system under the supervision of at least two employees of the facility operator.

b. The boxes of tiles shall then be inspected by at least two employees of the facility operator to ensure that the seals on each box are intact, unbroken, and free from tampering.

c. Boxes that do not appear to be intact, unbroken, and free from tampering shall be inspected immediately to ensure that the tiles in those boxes conform to the requirements of this chapter and there is no evidence of tampering with them.

d. If the inspected tiles show no evidence of tampering, they shall be placed, along with boxes of tiles that are intact, unbroken, and free from tampering for storage in a storage area, the location and physical characteristics of which shall be approved by the department.

e. The functions required under this subdivision 1 shall be performed by at least the following employees of a facility operator:

(1) A floorperson or above; and

(2) An employee from the security department.

2. Sets of tiles that are to be distributed to gaming pits or tables for use in gaming shall be distributed from the approved storage area.

3. The approved storage area shall have two separate locks, to which access shall be controlled as follows:

a. The security department shall maintain one key and the gaming operations department shall maintain the other key; and

b. An employee of the gaming operations department below a floorperson in the facility's organizational hierarchy may not have access to the gaming operations department key.

4. Once each gaming day and at other times as may be necessary, a floorperson or above, in the presence of a security department employee, shall remove the appropriate number of sets of tiles from the approved storage area.

5. Envelopes and containers used to hold or transport tiles shall be:

a. Transparent;

b. Designed or constructed [~~with seals~~] so that any tampering is evident; and

c. Submitted to and approved by the department in advance.

6. Distribution of tiles.

a. The floorperson or above shall distribute sufficient sets of tiles to the pit manager or above in each pai gow pit.

b. The pit manager or above shall then distribute the sets of tiles to the dealer at each pai gow table and place extra sets of tiles in the reserve in the pit stand.

c. Sets of tiles in the reserve shall be placed in a locked compartment in the pit stand, keys to which shall be in the possession of the pit manager or above.

7. Damaged tiles.

a. If during the course of play a damaged tile is detected, the dealer or a floorperson shall immediately notify the pit manager or above, who shall bring a substitute set of tiles to the table from the reserve in the pit stand to replace the entire set of tiles.

b. A set containing a damaged tile shall be placed in an envelope or container, identified by table number, date, and time the tiles were placed in the envelope or container and sealed and signed by the dealer and the floorperson responsible for supervising the table or the pit manager or above.

c. The pit manager or above shall maintain the sealed envelope or container in a secure place within the pit until collection by a security department employee.

8. Collection.

a. The floorperson responsible for supervising the table or the pit manager or above shall collect used tiles, which shall be placed in an envelope or container when removed from active use.

b. A label shall be attached to each envelope or container that identifies the table number, date, and time the tiles were placed in the envelope or container and sealed and signed by the dealer and the floorperson responsible for supervising the table or the pit manager or above.

c. The pit manager or above shall maintain the sealed envelopes or containers in a secure place within the pit until collection by a security department employee.

9. Removal.

a. A facility operator shall remove a tile from play if there is any indication of tampering, flaws, or other defects that might affect the integrity or fairness of the game, or at the request of department staff.

b. A label shall be attached to each envelope or container that identifies the table number, date, and time the tiles were placed in the envelope or container and sealed and signed by the dealer and the floorperson responsible for supervising the table or the pit manager or above.

c. The pit manager or above shall maintain the sealed envelopes or containers in a secure place within the pit until collection by a security department employee.

10. Extra sets of tiles in the reserve that have been opened shall be placed in an envelope or container with a label attached to each envelope or container that identifies the date and time the tiles were placed in the envelope or container and sealed and is signed by the pit manager or above.

11. At the end of each gaming day or in the alternative, at least once each gaming day, as designated by the facility operator and approved by the department, and at other times as may be necessary:

a. A security department employee shall collect and sign all envelopes or containers with damaged tiles, tiles used during the gaming day, and all extra tiles in the reserve that have been opened, and return the envelopes or containers to the security department; and

b. A floorperson or above may collect all extra sets of tiles in the reserve that have not been opened, and, if collected, all unopened sets of tiles shall be canceled, destroyed, or returned to the approved storage area.

12. Inspection.

a. When envelopes or containers of used tiles and reserve sets of tiles that have been opened are returned to the security department, the security department shall inspect the tiles for tampering, marks, alterations, missing, or additional tiles or anything that might indicate unfair play.

b. The procedures for inspecting sets of tiles shall include:

(1) Sorting of tiles by pairs;

(2) Visually inspecting the sides and back of each tile for tampering, markings, or alterations; and

(3) Inspecting the sides and back of each tile with an ultraviolet light.

c. The individual performing the inspection shall complete a work order form that details the procedures performed, lists the tables from which the tiles were removed, and the results of the inspection and shall sign the form upon completion of the inspection procedures.

d. The facility operator shall submit to the department for approval the training procedures for the employees performing the inspections required under this subsection in its internal controls.

e. Evidence of tampering, marks, alterations, missing, or additional tiles or anything that might indicate unfair play discovered during the inspection, or at any other time, shall be immediately reported to department staff by the completion and delivery of a two-part Tile Discrepancy Report.

f. Tile Discrepancy Report.

(1) The two-part Tile Discrepancy Report shall include the tiles that are the subject of the report.

(2) Department staff shall retain the tiles for further inspection.

(3) The department staff receiving the tiles shall sign the original and duplicate copy of the Tile Discrepancy Report and retain the original.

(4) The facility operator shall retain the duplicate copy.

13. If, after completing the inspection procedures required under subdivision 12 of this subsection, it is determined that a complete set of 32 tiles removed from a gaming table is free from tampering, markings, or alterations, the set shall be packaged separately and sealed before being returned to the pai gow storage area for subsequent use.

14. A facility operator shall develop internal control procedures for returning the repackaged tiles to the tile inventory.

15. Except as provided in subdivision 16 of this subsection, individual tiles from different sets may not be used to make a complete set for subsequent gaming.

16. A facility operator may create replacement and reconstructed sets in accordance with the following requirements:

a. If after completing the inspection procedures required under subdivision 12 of this subsection, it is determined that a tile has scratches or other markings on the back, sides, or edges that make the tiles unsuitable for continued use, the tile shall be removed from the set and destroyed in accordance with subdivision 18 of this subsection.

b. The remaining usable tiles from the set shall be designated as a replacement set.

c. The employee who removes the tiles from a set shall complete a two-part form that shall:

(1) Include the date and time the tiles were removed from the set;

(2) Identify the specific tile or tiles removed from the set and sent for destruction; and

(3) Contain the name and signature of the individuals involved.

d. The duplicate copy of the form shall be retained with the replacement set and the security department shall retain the original.

e. The assistant table games shift manager or above shall return the replacement set, accompanied by the duplicate copy of the form, to the tile inventory, where replacement sets shall be inventoried and stored separately from any stored and new, used, or complete reconstructed sets.

f. Tiles in one or more replacement sets may be used to create a complete reconstructed set of tiles in accordance with the following procedures:

(1) The assistant table games shift manager or above shall conduct an inspection of each reconstructed set in the storage area, in the presence of a security department employee, and ensure that any replacement tile possesses the same color, texture, and finish as all other tiles in the reconstructed set.

(2) The assistant table games shift manager or above shall sort the tiles by pairs and verify the needed replacement tiles and visually inspect the sides, backs, and edges of each tile in the reconstructed set for tampering, markings, and alterations and for comparison as to shading, texture and finish.

(3) After a complete set of tiles has been assembled from replacement sets, the assistant table games shift manager or above shall attach a label to the envelope or container for the reconstructed set, which shall:

(a) Include the date and time of reconstruction;

(b) Contain the signature of the assistant table games shift manager or above and the security department employee who witnessed the inspection; and

(c) Identify the inspection steps that were followed to determine that the reconstructed set of tiles is suitable for use in gaming.

(4) A facility operator shall submit to the department for approval internal control procedures for returning the reconstructed sets into inventory, identifying all reconstructed sets and maintaining an accurate inventory balance of remaining replacement sets.

17. A facility operator shall submit internal control procedures for:

a. An inventory system that includes records of at least the following:

(1) The balance of sets of tiles on hand;

(2) The sets of tiles removed from storage;

(3) The sets of tiles returned to storage or received from a manufacturer or contractor;

(4) The date of each transaction; and

(5) The signatures of the individuals involved;

b. A daily reconciliation of the:

(1) Sets of tiles distributed;

(2) Sets of tiles destroyed or canceled;

(3) Sets of tiles returned to the approved storage area; and

(4) Sets of tiles in the tile reserve in a pit stand; and

c. A physical inventory of the sets of tiles at least once every three months.

(1) An inventory shall be performed by an individual with no incompatible functions and shall be verified to the balance of the sets of tiles on hand.

(2) Discrepancies shall immediately be reported to department staff.

18. Destruction or cancellation.

a. Destruction or cancellation of tiles other than those retained for department inspection shall be completed within seven days of collection.

b. The method of destruction or cancellation shall be included in the facility operator's internal controls.

c. The destruction or cancellation of tiles shall take place in a secure location in the licensed facility covered by the facility operator's surveillance system.

19. A facility operator shall change the tiles at least every 12 hours.

T. Electronic table games requirements.

1. A facility operator may conduct electronic wagering at a table game in accordance with this subsection.

a. Electronic wagering at a table game shall be conducted through the use of an electronic table game system.

b. If a dealer controlled electronic table game system is in use at a table game, a player may make only those wagers that are approved by the department.

2. The computer controlling the electronic table game system shall be under dual key control, with one key controlled by the accounting department and the other key controlled by the table games department or the slot operations department.

3. All aspects of an electronic table game system, including the computer and any related hardware, software, or related devices, shall be tested by an independent certified testing laboratory and approved by the department prior to use by a facility operator.

4. In addition to the other requirements for table games of this chapter, a facility operator using an electronic table game system shall include in its internal controls, at a minimum:

a. Procedures to ensure the physical security of the computer and related hardware, software, and other devices;

b. Procedures to ensure the integrity and security of all sensitive data and software;

c. Procedures to ensure that access to sensitive data and software is limited to only appropriate personnel; and

d. Procedures to ensure the logging of the events and the availability of records to enable an effective audit of the conduct of the system and the reporting of revenue.

5. An electronic table game system shall have the ability to authenticate the transmission of data between its various components.

6. An electronic table game system shall:

a. Credit funds to the game account of a player when a player buys in to a game at a particular table game and debit any remaining funds from the game account when a player cashes out of the game;

b. Permit a player to:

(1) Wager from a game account;

(2) Collect a losing wager from a game account; and

(3) Pay a winning wager by crediting the amount of the winnings and corresponding wager to the game account;

c. In the game of poker:

(1) Debit a game account and increment pot for a wager;

(2) Distribute a winning pot by crediting the game account of a winning player in the appropriate amounts;

(3) Extract the rake from a player or pot according to the rake procedures established under the standard rules for poker and debit the game account of a player in the correct amounts; and

(4) Make a player's balance or table stakes visible to all players in the game;

d. Depict the transactions described in this subdivision 6 of this subsection through one or more electronic fund displays that are visible to each player and to the dealer or boxperson;

e. Disclose to a player at all times the current balance in the player's game account;

f. Accurately report and audit the table game's win or loss, or poker revenue, in accordance with the standard rules for poker;

g. Be capable of generating reports setting forth, by gaming day, for each table game using the electronic table game system:

(1) The total amount deposited into the game account of a player;

(2) The total amount deposited into game accounts by all players;

(3) The total amount credited to the game account of a player in payment of winnings;

(4) The total amount credited to the game accounts of all players in payment of winnings;

(5) The total amount collected from a player as losing wagers;

(6) The total amount collected from all players as losing wagers;

(7) The total amount withdrawn from game accounts by each player;

(8) The total amount withdrawn from game accounts by all players; and

(9) The table game win or loss; and

(10) If applicable, for poker:

(a) The total amount deducted from the game account of a player for collection of poker rake time charges under the standard rules for poker;

(b) The total amount collected from the accounts of each player for collection of poker rake time charges under the standard rules for poker;

(c) The total amount collected from poker pots for collection of poker rake under the standard rules for poker; and

(d) The table game poker revenue.

7. The display of a virtual chip on an electronic table game system that depicts the transactions described in subdivision 6 of this subsection is not required to meet the physical requirements for chips otherwise required by this chapter.

8. Each table game position used in an electronic table game shall meet the requirements for slot machines.

9. After installation, department staff shall inspect an electronic table game system prior to use by a facility operator.

U. Dealer controlled electronic table game system procedures.

1. A player shall participate in wagering at a dealer controlled electronic table game by presenting a gaming voucher or value chips to the dealer or boxperson.

2. When a player presents a gaming voucher or value chips:

a. The dealer controlled electronic table game shall:

(1) Credit to the player's game account an amount of funds equivalent to the gaming voucher or value chips presented by the player; and

(2) Display on the electronic fund display the amount of funds deposited into the player's game account; and

b. The player shall acknowledge the amount of funds deposited into the player's game account.

3. A player shall cash out of a dealer controlled electronic table game system by receiving:

a. A gaming voucher equal in value to the balance in the player's game account; or

b. Value chips from the dealer or boxperson from the table inventory container that are equal in value to the balance in the player's game account.

4. After a player has cashed out of a dealer controlled electronic table game system, the dealer or boxperson shall zero out the electronic fund display of the player's game account.

5. A dealer controlled electronic table game shall have no more than 50 table game positions in operation for each dealer.

V. Tables.

1. A facility operator shall submit to the department for approval the layout for a table game that contains at least:

a. The name or logo of the facility operator;

b. Betting areas designated for the placement of wagers authorized under the standard rules; and

c. Inscriptions that advise a player of the payout odds or amounts for all permissible wagers offered by the facility operator, except that if payout odds or amounts are not inscribed on the layout, a sign identifying the payout odds or amounts for all permissible wagers shall be posted at each table.

2. If a facility operator offers a progressive payout wager, a table shall have a progressive table game system for the placement of progressive payout wagers that includes a:

a. Wagering device at each betting position that acknowledges or accepts the placement of the progressive payout wager; and

b. Device that controls or monitors the placement of progressive payout wagers at the gaming table and includes a lock-out button or other mechanism that prevents the recognition of any progressive payout wager that a player attempts to place after the dealer has announced "no more bets."

3. A table shall have a drop box and a tip box attached on the same side of the gaming table as, but on opposite sides of, the dealer, as approved by the department.

4. The department may approve an alternative location for the tip box when a card shuffling device or other table game equipment prevents the placement of the drop box and tip box on the same side of the gaming table as, but on opposite sides of, the dealer.

5. Each table shall have a discard rack securely attached to the top of the dealer's side of the table except for:

a. Craps; and

b. Roulette.

W. Roulette ball, table, and wheel inspection; security procedures.

1. A ball used in roulette shall be:

a. Made completely of a nonmetallic substance; and

b. Not less than 12/16-inch nor more than 14/16-inch in diameter.

2. Roulette shall be played on a table having a roulette:

a. Wheel of at least 30 inches in diameter at one end of the table; and

b. Layout imprinted on the opposite end of the table.

3. Prior to opening a roulette table for gaming activity, a floorperson or member of a facility operator's security department shall:

a. Inspect the roulette ball by passing it over a magnet or compass to assure its nonmagnetic quality;

b. Inspect the roulette table and roulette wheel for any magnet or contrivance that would affect the fair operation of the roulette wheel;

c. Inspect the roulette wheel to assure that the wheel is level and rotating freely and evenly; and

d. Inspect the roulette wheel to assure that all parts are secure and free from movement.

4. If a facility operator uses a roulette wheel that has external movable parts, any adjustments to the movable parts shall be made by a floorperson or a member of the facility operator's gaming operations department in the presence of a security department member.

5. All adjustments shall be completed prior to the inspections required under subdivision 3 of this subsection.

6. A facility operator may replace any of the movable parts at any time, except that an inspection required under subdivision 3 of this subsection shall be completed prior to reopening the roulette wheel and table for play.

7. A facility operator shall maintain an inspection log that shall include:

a. The date and time of inspection;

b. The roulette table number;

c. Whether an adjustment or replacement was completed;

d. A description of the adjustment or replacement;

e. If required, a certification that an inspection was completed; and

f. The signature and license number of the individual making the adjustment or replacement.

8. When a roulette table is not open for play, the roulette wheel shall be secured by a cover that is placed over the entire wheel and securely locked.

11VAC5-90-180. Table games procedures.

A. Applicability of definitions. In addition to terms defined in the casino gaming law and 11VAC5-90-10, the definitions in 11VAC5-90-170 shall apply in this section unless the context clearly requires otherwise.

B. Personnel operating and conducting table games.

1. A facility operator may use the following personnel to operate table games:

a. Dealer;

b. Stickperson;

c. Boxperson;

d. Floorperson;

e. Pit manager;

f. Poker manager;

g. Assistant table games shift manager; and

h. Table games shift manager.

2. A facility operator shall maintain the following minimum levels of staffing when table games are being operated:

a. Excluding craps or baccarat, one dealer for a table game;

b. Two dealers for a big baccarat table;

c. Two dealers for a craps table, one of whom shall act as the stickperson; and

d. One boxperson or floorperson for a craps table.

3. A facility operator shall provide a sufficient number of floorpersons to supervise the operation of table games in accordance with the standards in this section, so that a floorperson may not supervise more than the number of tables specified in one of the following:

a. Excluding baccarat, midibaccarat, craps, mini-craps, and pai gow, six tables comprised of a combination of banking table games;

b. One baccarat table;

c. Three midibaccarat tables;

d. Excluding baccarat, craps, and mini-craps, one midibaccarat table and one table of any other table game;

e. Three craps tables;

f. Excluding baccarat, midibaccarat, mini-craps, and pai gow, two craps tables and two tables of a banking table game;

g. If only one dealer is assigned to a table, two mini-craps table;

h. If the there is a dealer and a stickperson assigned to the tables, four mini-craps tables;

i. If the tables are in a side-by-side configuration, two pai gow tables;

j. Excluding baccarat, craps, and mini-craps, one pai gow table and one table of another banking table game;

k. 10 poker tables; and

l. If the floorperson assigned to poker does not have responsibilities for seating players, 12 poker tables.

4. If the gaming tables being supervised by a floorperson are dealer controlled electronic table games, the maximum number of gaming tables that the floorperson may supervise may be increased by 100% of the limits provided in subdivision 3 of this subsection.

5. Subject to the limitation that a pit manager or assistant table games shift manager may not directly supervise more than 12 floorpersons, a facility operator shall provide a sufficient number of pit managers or assistant table games shift managers to supervise the operation of table games.

6. A facility operator shall provide a poker manager to supervise all open poker tables.

7. If no more than three poker tables are open, a poker manager is not required.

8. Table games shift manager.

a. A facility operator shall provide a table games shift manager to supervise the operation of table games during every shift.

b. An assistant table games shift manager may be designated to act as the table games shift manager in the table games shift manager's absence.

c. An assistant table games shift manager may not be counted toward the required number of pit managers or assistant table games shift managers.

9. A facility operator may request the department to approve its use of a staffing plan that differs from the minimum standards in this section by submitting a written alternate minimum staffing plan which must include at least:

a. The pit number and configuration of any pit affected;

b. The type, location, and table number of any table affected;

c. The standard staffing level required under this regulation for a gaming table and the proposed alternative staffing;

d. The days, shifts, or times during which the alternative staffing would be in effect; and

e. A narrative explaining the rationale for the proposed alternative staffing and how the alternative staffing would protect the integrity of gaming at the affected gaming tables.

10. A facility operator may not implement an alternate minimum staffing plan unless the department has approved the plan in writing.

11. Nothing in this regulation shall be construed to limit:

a. A facility operator from using more personnel than required by this subsection; or

b. The department's discretion to direct a facility to use more personnel than required by this regulation in the operation of table games.

C. Table inventory.

1. When a table game is opened for gaming, table game operations shall commence with the table inventory.

2. A facility operator may not cause or permit gaming chips, coins, or plaques to be added to or removed from a table inventory during the gaming day except:

a. For the payment of winning wagers and collection of losing wagers made at the gaming table;

b. In exchange for a gaming chip or plaque received from a player having an equal aggregate face value;

c. In conformity with fill procedures; and

d. For the collection of vigorish.

3. When a table game is not open for gaming activity, the table inventory and a Table Inventory Slip shall:

a. Be stored in a locked container that is clearly marked on the outside with the game and the gaming table number to which it corresponds;

b. Have the information on the Table Inventory Slip be visible from the outside of the container; and

c. Be stored either in the cage or secured to the gaming table, in a manner consistent with the facility's approved internal controls.

4. Notwithstanding the requirements in subdivision 3 of this subsection, for table games that are not open for gaming activity during the gaming day, a facility operator may use this alternative procedure:

a. A floorperson or above shall complete a Closed Table Form for every table that was not open for gaming during the gaming day;

b. The table inventory shall remain locked during completion of the Closed Table Form;

c. The Closed Table Form shall contain:

(1) The date and identification of the shift ended;

(2) The game and table number;

(3) The date the table was last opened for gaming; and

(4) The signature and license number of the floorperson or above who completed the Closed Table Form; and

d. After completion of the procedure, the floorperson or above who completed the Closed Table Form shall deposit the form into the drop box.

5. The keys to the locked containers containing the table inventories shall be maintained and controlled by the gaming operations department and may not be made accessible to cage personnel or to any employee responsible for transporting the table inventories to or from the gaming tables.

6. Table Inventory Slips shall be two-part forms upon which the following is recorded:

a. The date and identification of the shift ended;

b. The game and table number;

c. The total value of each denomination of value chips, coins, and plaques remaining at the gaming table;

d. The total value of all denominations of value chips, coins, and plaques remaining at the gaming table; and

e. The signatures of the dealer, or boxperson and floorperson, assigned to the gaming table who conducted the count of the table inventory when the gaming table was closed and when the gaming table was opened.

D. Procedures for opening a table game.

1. When a table game is to be opened for gaming activity, a security department employee shall transport directly from the cage to the gaming table the locked container with the table inventory and the duplicate copy of the Table Inventory Slip if the slip is not already attached to the gaming table.

2. Immediately prior to opening the table game for gaming, the floorperson assigned to the gaming table shall unlock the container with the table inventory after assuring that it is the proper container for that gaming table.

3. The dealer or boxperson assigned to the gaming table shall count the contents of the table inventory in the presence of the floorperson assigned to the gaming table and reconcile the count to the totals on the duplicate copy of the Table Inventory Slip removed from the container.

4. The dealer or boxperson assigned to the table, and the floorperson who observed the dealer or boxperson count the contents of the container, shall attest to the accuracy of the information recorded on the duplicate copy of the Table Inventory Slip by signing the duplicate copy of the Table Inventory Slip.

5. After the duplicate copy of the Table Inventory Slip has been signed, the dealer, boxperson, or floorperson shall immediately deposit the slip into the table game drop box attached to the gaming table.

6. If there is a discrepancy between the amount of gaming chips and plaques counted and the amount of the gaming chips and plaques recorded on the duplicate copy of the Table Inventory Slip:

a. The discrepancy shall be immediately verbally reported to the floorperson or above, the security department, and department staff;

b. In the presence of the floorperson or above, the dealer or boxperson assigned to the table shall recount the table inventory and complete a new Table Inventory Slip reflecting the results of the dealer's or boxperson's recount of the table inventory;

c. The floorperson or above shall:

(1) Prepare an Error Notification Slip, which shall be a three-part form containing:

(a) The date and time;

(b) The type of game;

(c) The table number and pit; and

(d) An explanation of the discrepancy;

(2) Write "Incorrect Copy" on the copy of the Table Inventory Slip that was in the table inventory;

(3) Sign the "Incorrect Copy"; and

(4) Write "Correct Copy" on both copies of the Table Inventory Slip required to be prepared by the dealer or boxperson.

d. The "Correct Copy" shall be signed by the dealer or boxperson who recounted the table inventory, and the floorperson or above.

e. After the required signatures have been obtained, the dealer or boxperson shall deposit in the drop box the "Incorrect Copy" Table Inventory Slip, both copies of the "Correct Copy" Table Inventory Slip and the first copy of the Error Notification Slip.

7. A dealer or boxperson shall give the second copy of the Error Notification Slip to the pit clerk or floorperson or above, and shall deliver the third copy of the Error Notification Slip to a Department compliance representative.

8. For any unresolved discrepancy greater than $100, the security or surveillance department shall investigate the discrepancy and, within 24 hours, complete a written incident report and immediately forward a copy to department staff.

E. Procedure for distributing chips, coins, and plaques to a gaming table.

1. A pit clerk or floorperson or above shall prepare a request for a fill to add value chips, coins, and plaques to a table game using a Fill Request Slip.

2. Access to the blank Fill Request Slips shall be restricted to pit clerks and floorpersons or above.

3. A Fill Request Slip shall be a two-part form on which the following information shall be recorded:

a. The date, time, and shift of preparation;

b. The denomination of value chips, coins, and plaques to be distributed to the gaming table;

c. The total amount of each denomination of value chips, coins, and plaques to be distributed to the gaming table;

d. The game and table number to which the value chips, coins, and plaques are to be distributed; and

e. The signature of the floorperson or above requesting the fill.

4. After the Fill Request Slip has been prepared, the security department employee shall transport the chip bank copy of the Fill Request Slip directly to the chip bank.

5. The dealer or boxperson shall place the drop box copy of the Fill Request Slip in view of the facility operator's surveillance system on the gaming table to which the value chips, coins, and plaques are to be received.

6. Notwithstanding the requirements of subdivisions 1 through 5 of this subsection, a fill request may be prepared electronically if:

a. The input data for preparation of the fill is entered by and ability to input data is restricted to the pit clerk or a floorperson or above; and

b. A Fill Slip is generated in the chip bank as a direct result of the input.

7. A Fill Slip shall be prepared by a chip bank cashier or, if the required information was inputted in conformity with subdivision 6 of this subsection, the Fill Slip may be electronically generated in the chip bank.

8. A Fill Slip shall be:

a. A serially prenumbered form;

b. Used in sequential order;

c. Accounted for by employees with no incompatible functions; and

d. If applicable, marked "Void" and signed by the preparer.

9. If a Fill Slip is manually prepared, the following procedures and requirements shall be observed:

a. Each series of Fill Slips shall be a four-part form and shall be inserted in a locked dispenser or bound in a Fill Slip form book that permits an individual Fill Slip in the series and its copies to be written upon while still locked in the dispenser or bound in the Fill Slip form book;

b. The Fill Slip dispenser shall discharge the drop box, acknowledgment and chip bank copies of the Fill Slip while the accounting copy remains in a continuous, unbroken form in the dispenser; or

c. If a Fill Slip form book is utilized, the accounting copy must remain in the bound Fill Slip form book until removed in accordance with subdivision 9 d of this subsection; and

d. Access to copies of the Fill Slips shall be maintained and controlled by accounting department employees with no incompatible functions who are responsible for controlling and accounting for the unused supply of Fill Slips, placing Fill Slips in the dispensers and removing the accounting copies of the Fill Slips from the dispensers or Fill Slip form book each gaming day.

10. If a Fill Slip is electronically prepared, each series of Fill Slips must be a three-part form and:

a. Be inserted in a printer that will simultaneously print a drop box, acknowledgment, and chip bank copy of the Fill Slip in the chip bank; and

b. Store, in machine readable form, the information printed on the drop box, acknowledgment, and chip bank copies of the Fill Slips so that the stored data may not be susceptible to change or removal by any personnel involved in the preparation of a Fill Slip after the Fill Slip has been prepared.

11. A copy of a Fill Slip and, if applicable, the stored data, must contain at least the:

a. Denominations of the value chips, coins, and plaques being distributed;

b. Total amount of each denomination of value chips, coins, and plaques being distributed;

c Total amount of all denominations of value chips, coins, and plaques being distributed;

d. Game and table number to which the value chips, coins, and plaques are being distributed;

e. Date and shift during which the distribution of value chips, coins, and plaques occurs; and

f. Signature of the preparer or, if electronically prepared, the license number of the prepared.

12. The time of preparation of the Fill Slip shall be recorded on the drop box, acknowledgment, and chip bank copies of the Fill Slip upon preparation.

13. A security department employee shall directly transport a value chip, coin, or plaque distributed to a gaming table from the chip bank to a gaming table.

14. Upon receipt of a value chip, coin, or plaque at a gaming table, the floorperson shall:

a. Compare the Fill Request Slip to the Fill Slip; and

b. Attest to the accuracy of the fill by signing the drop box copy and acknowledgment copy of the Fill Slip.

15. If a fill request is generated electronically in the chip bank, the floorperson shall:

a. Compare the Fill Slip with the electronically generated fill request; and

b. Attest to the accuracy of the fill by signing the drop box and acknowledgment copies of the Fill Slip.

16. Signatures on the drop box and acknowledgment copies of the Fill Slip attesting to the accuracy of the information contained on a Fill Slip shall be required of the specified employees at the specified times, including:

a. The chip bank cashier, upon preparation;

b. The security department employee transporting the value chips, coins, and plaques to the gaming table, upon receipt from the cashier of the value chips, coins, and plaques to be transported;

c. The dealer or boxperson assigned to the gaming table, upon receipt and verification of the amounts of the value chips, coins, and plaques at the gaming table from the security department employee; and

d. The floorperson assigned to the gaming table, upon receipt and verification of the amounts of the value chips, coins, and plaques at the gaming table.

17. After the signature requirements in subdivision 16 of this subsection have been satisfied, the security department employee who transported to a gaming table a value chip, coin, or plaque; the drop box; and acknowledgment copies of the Fill Slip, shall:

a. Observe the dealer's or boxperson's immediate placement of the drop box copy of the Fill Slip and the drop box copy of the Fill Request Slip, if applicable, in the drop box attached to the gaming table to which a value chip, coin, or plaque was transported; and

b. Return the acknowledgment copy of the Fill Slip to the chip bank cashier.

18. The chip bank cashier shall maintain together the chip bank copies of the Fill Request Slip, if applicable, and the chip bank and acknowledgment copies of the Fill Slip, until those items are forwarded to the accounting department.

19. All parts of voided Fill Slips, as well as the chip bank copies of Fill Request Slips, if applicable, and the acknowledgment and chip bank copies of the Fill Slips that are maintained and controlled in conformity with subdivision 17 of this subsection, shall be forwarded to the accounting department for agreement, on a daily basis, with:

a. The drop box copies of the Fill Request Slips, if applicable, and Fill Slips removed from the drop box on the gaming table; and

b. If applicable, the electronically stored data and accounting copies of the Fill Slips.

F. Removing a value chip, coin, or plaque from a gaming table.

1. A pit clerk or floorperson or above shall prepare a request for a credit to remove a value chip, coin or plaque from a table game by using a Credit Request Slip.

2. Access to the blank Credit Request Slips shall be restricted to pit clerks and floorpersons or above.

3. A Credit Request Slip shall be a two-part form on which the following information shall be recorded:

a. The date, time, and shift of preparation;

b. The denomination of chips, coins, and plaques to be removed from the gaming table;

c. The total amount of each denomination of value chips, coins, and plaques to be removed from the gaming table;

d. The game and table number from which the value chips, coins, and plaques are to be removed; and

e. The signature of the floorperson or above assigned to the gaming table from which the value chips, coins, and plaques are to be removed.

4. A security department employee shall transport the chip bank copy of a prepared Credit Request Slip directly to the chip bank.

5. A dealer or boxperson shall place the drop box copy of the Credit Request Slip in view of the facility operator's surveillance system on the gaming table from which the value chips, coins and plaques are to be removed.

6. The drop box copy of the Credit Request Slip may not be removed until the drop box and acknowledgment copies of the Credit Slip are received from the chip bank.

7. Notwithstanding the requirements of subdivisions 1 through 6 of this subsection, a request for a credit may be prepared electronically if:

a. The input data for preparation of the credit is entered by and ability to input data is restricted to the pit clerk or a floorperson or above; and

b. A Credit Slip is generated in the chip bank as a direct result of the input.

8. A Credit Slip shall be prepared by a chip bank cashier or, if the required information was inputted in conformity with subdivision 7 of this subsection, the Credit Slip may be electronically generated in the chip bank.

9. Credit Slips shall be:

a. Serially prenumbered forms;

b. Used in sequential order;

c. Accounted for by employees with no incompatible functions; and

d. If applicable, marked "Void" and signed by the preparer.

10. When Credit Slips are manually prepared, the following procedures and requirements shall be observed:

a. Each series of Credit Slips shall be a four-part form and shall be inserted in a locked dispenser or bound in a Credit Slip form book that permits an individual Credit Slip in the series and its copies to be written upon while still locked in the dispenser or bound in the Credit Slip form book;

b. The Credit Slip dispenser must discharge the drop box, acknowledgment and chip bank copies of the Credit Slip while the accounting copy remains in a continuous, unbroken form in the dispenser;

c. If a Credit Slip form book is utilized, the accounting copy must remain in the bound Credit Slip form book until removed in accordance with subdivision 10 d of this subsection; and

d. Access to the copies of the Credit Slips shall be maintained and controlled by accounting department employees with no incompatible functions who shall be responsible for controlling and accounting for the unused supply of the Credit Slips, placing Credit Slips in the dispensers, and removing the accounting copies of the Credit Slips from the dispensers or Credit Slip form book each gaming day.

11. When Credit Slips are electronically prepared, each series of Credit Slips must be a three-part form and:

a. Be inserted in a printer that simultaneously prints drop box, acknowledgment and chip bank copies of the Credit Slip in the chip bank;

b. Store, in machine-readable form, the information printed on the drop box, acknowledgment, and chip bank copies of the Credit Slip; and

c. The stored data may not be susceptible to change or removal by any personnel after the preparation of a Credit Slip after the Credit Slip has been prepared.

12. Copies of the Credit Slip and, when applicable, the stored data must contain at least the following information:

a. The denominations of the value chips, coins, and plaques being returned to the chip bank;

b. The total amount of each denomination of value chips, coins, and plaques being returned;

c. The total amount of all denominations of value chips, coins, and plaques being returned;

d. The game and table number from which the value chips, coins, and plaques are being returned;

e. The date and shift during which the removal of value chips, coins, and plaques occurs; and

f. The signature of the preparer or, if electronically prepared, the identification code of the preparer.

13. When the Credit Slip is prepared, the time of its preparation shall be recorded on the drop box, acknowledgment, and chip bank copies of the Credit Slip.

14. After the Credit Slip has been prepared by the chip bank cashier or has been printed in the chip bank as a result of the information being inputted electronically by a pit clerk or floorperson or above, the security department employee shall transport the drop box, acknowledgment, and chip bank copies of the Credit Slip directly to the gaming table.

15. The dealer or boxperson shall compare the value chips, coins, and plaques to be removed from the table inventory container with the drop box copy of the Credit Slip and the Credit Request Slip, if applicable, and shall sign the Credit Slip.

16. Signatures on the drop box, acknowledgment, and chip bank copies of a Credit Slip attesting to the accuracy of the information contained on the Credit Slip shall be required of the specified employees at the specified times:

a. The chip bank cashier, upon receipt of the value chips from the table;

b. The dealer or boxperson assigned to the gaming table, upon removal of the value chips, coins, and plaques from the table inventory container and verification of the Credit Slip and Credit Request Slip, if applicable;

c. The floorperson assigned to the gaming table, upon observing the removal of the value chips, coins, and plaques from the table inventory container and the verification of the Credit Slip and Credit Request Slip, if applicable; and

d. The security department employee, upon receipt of the value chips, coins, and plaques from the gaming table.

17. After meeting the signature requirements required under subdivision 16 of this subsection:

a. The security department employee shall transport the value chips, coins, and plaques directly to the chip bank along with the acknowledgment and chip bank copies of the Credit Slip;

b. The dealer or boxperson shall place the drop box copy of the Credit Slip on the gaming table in view of the facility's surveillance system;

c. Upon receipt of the value chips, coins, and plaques from the security department employee, the chip bank cashier shall:

(1) Compare the chip bank copy of the Credit Request Slip with the Credit Slip; or

(2) If the credit request is electronically generated, the chip bank cashier shall compare the Credit Slip with the electronically generated credit request; and

(3) The chip bank cashier shall attest to the accuracy of the credit by signing the acknowledgment and chip bank copies of the Credit Slip.

d. After transporting the acknowledgment copy of the Credit Slip back to the gaming table from which the value chips, coins, and plaques were removed, the security department employee shall observe the immediate placement by the dealer or boxperson of the drop box copy of the Credit Request Slip, if applicable, and the drop box and acknowledgment copies of the Credit Slip into the drop box.

e. The chip bank copies of the Credit Request Slip, if applicable, and Credit Slip shall be maintained together by the chip bank cashier until forwarded to the accounting department.

18. All parts of voided Credit Slips; chip bank copies of Credit Request Slips, if applicable; and the chip bank copies of the Credit Slips that are maintained and controlled in conformity with subdivision 17 of this subsection, shall be forwarded by a chip bank cashier to the accounting department for agreement, on a daily basis, with:

a. The drop box copies of the Credit Request Slips, if applicable, and the drop box and acknowledgment copies of the Credit Slips removed from the drop box on the gaming table; and

b. The electronically stored data and accounting copies of Credit Slips, if applicable.

G. Drop at an open table game.

1. When a table game being dropped is to remain open for gaming activity, the dealer or boxperson assigned to the

gaming table shall count the value chips, coins, and plaques remaining in the table inventory at the time of the drop and record the amount on a Table Inventory Slip.

2. The floorperson who is responsible for supervising the table game at the time of the drop shall observe the count required by subdivision 1 of this subsection.

3. The dealer or boxperson assigned to the table, and the floorperson who observed the dealer or boxperson count the contents of the table inventory, shall attest to the accuracy of the information recorded on the Table Inventory Slip by signing the Table Inventory Slip.

4. After the Table Inventory Slip is signed as required:

a. The dealer or boxperson shall deposit the original copy of the Table Inventory Slip in the drop box that is attached to the gaming table immediately before the drop box is removed from the gaming table as part of the drop; and

b. The dealer or boxperson shall deposit the duplicate copy of the Table Inventory Slip in the drop box that is attached to the gaming table immediately after the removal of the drop box that is removed from the gaming table as part of the drop.

H. Procedure for closing a table game.

1. When gaming activity at a table game is concluded, the dealer or boxperson assigned to the gaming table, in the presence of the floorperson assigned to the gaming table, shall count the value chips, coins, and plaques remaining at the gaming table.

2. The floorperson assigned to the gaming table shall record the amounts of the value chips, coins, and plaques counted on the Table Inventory Slip, and the original copy of the Table Inventory Slip shall be signed by the dealer or boxperson who counted the table inventory and by the floorperson who observed the dealer or boxperson count the contents of the table inventory.

3. After the original copy of the Table Inventory Slip has been signed, the dealer or boxperson shall immediately deposit the original copy of the Table Inventory Slip in the table game drop box attached to the gaming table.

4. After the original copy of the Table Inventory Slip has been deposited in the table game drop box attached to the gaming table, the dealer or boxperson shall place the duplicate copy of the Table Inventory Slip and the value chips, coins, and plaques remaining at the gaming table in the container required by 11VAC5-90-170, after which the floorperson shall lock the table inventory container and cause it to be transported directly to the cage by a security department member or secured to the gaming table.

5. If the locked table inventory containers are transported to the cage, a cage supervisor shall determine that all locked containers have been returned.

6. If the locked table inventory containers are secured to the gaming table, a pit manager or above shall verify that all the containers are locked.

I. Table inventory for a poker table.

1. Notwithstanding other requirements in this section, a facility operator may establish procedures for the issuance of table inventories that are maintained by poker dealers on an impress basis.

2. A facility operator shall submit to the department for approval the procedures developed under subdivision 1 of this subsection as part of the facility operator's internal controls.

J. Table inventory counts.

1. In addition to other requirements in this section for opening a table game, conducting a drop during an open game, and closing a table game, a facility operator may establish procedures for the use of a three-compartment drop box.

2. The use of a three-compartment drop box requires the preparation of a Table Inventory Slip for each shift that the table was open at least once each gaming day.

3. A facility operator shall submit to the department for approval the procedures developed under subdivision 1 of this subsection as part of the facility operator's internal controls.

K. Match play coupons and direct bet coupons.

1. A facility operator may use match play coupons and direct bet coupons.

2. A coupon may not be issued by a facility operator or used in a facility until:

a. The design specifications of the proposed coupon are submitted to and approved by the department; and

b. A system of internal procedures and administrative and accounting controls governing the inventory, distribution, and redemption of the coupon is submitted to and approved by the department as part of the facility operator's internal controls.

3. A coupon issued by a facility operator shall contain at least:

a. The name or logo of the facility operator;

b. The value of the coupon, which can be identified when viewing the coupon through the facility operator's surveillance system;

c. A sequential serial number;

d. Any restrictions regarding redemption, including the type of game or wager on which the coupon may be used; and

e. The expiration date of the coupon.

4. Match play coupons shall contain an area designated for the placement thereon of the required gaming chips that does not obscure the visibility of the denomination of the coupon.

5. Administration of coupon program.

a. The accounting department and the marketing department, or other department as specified in the facility operator's internal controls, shall be responsible for administering the coupon program.

b. The marketing department shall be responsible for distributing the coupon to a player.

c. The accounting department shall be responsible for maintaining the coupon ledger and administering the coupon accounting procedures set forth in subdivision 14 of this subsection.

6. A shipment of coupons received from a manufacturer or contractor, or those coupons produced by the facility operator, in accordance with this subsection, shall be opened and examined by at least one member of the accounting department and one member of the marketing department, who shall report any deviation between the invoice accompanying the coupon and the actual coupon received to a supervisor from the accounting department.

7. After checking a coupon received from a manufacturer or contractor, or produced by the facility operator, an accounting department supervisor shall record the following information in the coupon ledger:

a. The date a coupon was received;

b. The quantity and denomination of coupons received;

c. The beginning and ending serial number of the coupons received; and

d. The name, signature, and license number of the individuals who checked the coupons.

8. A marketing department supervisor shall estimate the number of coupons needed for each gaming day or promotion and complete a requisition document that contains the following information:

a. The date the requisition was prepared;

b. The date for which the coupons are needed;

c. The denomination and quantity of coupons requested;

d. The name, signature, and license number of the marketing department supervisor completing the requisition; and

e. The name, signature, and license number of the accounting department supervisor authorizing the requisition.

9. Upon receipt of the requisition document, the accounting department supervisor shall record in the coupon ledger the following information before issuing the coupons to the marketing department supervisor:

a. The beginning and ending serial number of the coupons to be issued;

b. The denomination and quantity of coupons to be issued;

c. The name, signature, and license number of the accounting department supervisor who will be issuing the coupons; and

d. A record and explanation of coupons that were voided.

10. A coupon that is not issued to the marketing department shall be controlled by an accounting department supervisor or above and stored in a secured and locked area approved by the department and as designated in the facility operator's internal controls.

11. The marketing department shall maintain a daily Coupon Reconciliation Form that shall contain:

a. The date;

b. The beginning and ending serial numbers of the coupons received from the accounting department;

c. The denomination and quantity of coupons the marketing department has to distribute to players;

d. The denomination and quantity of coupons the marketing department distributed to players;

e. The denomination, quantity, and serial numbers of coupons remaining;

f. The serial numbers of coupons that were voided and the reason the coupons were voided;

g. Any discrepancy discovered in the accounting for coupons and an explanation of the discrepancy; and

h. The name, signature, and license number of the marketing department supervisor completing the form.

12. Undistributed coupons.

a. At the end of the gaming day or promotional period, a copy of the Coupon Reconciliation Form and all coupons that were not distributed to players shall be returned to the accounting department.

b. The marketing department may keep for use during the next gaming day all coupons that were not distributed to players if the coupons are:

(1) Stored in a secured and locked area approved in advance by the department; and

(2) Recorded on the daily Coupon Reconciliation Form for the next gaming day.

c. All expired coupons shall be returned to the accounting department on a daily basis.

d. When unused and expired coupons are returned to the accounting department, an accounting department supervisor shall record the following information in the coupon ledger:

(1) The date the coupons were returned;

(2) The beginning and ending serial numbers of the coupons returned;

(3) The denomination and quantity of coupons returned;

(4) The serial numbers of any coupons that were voided and the reason the coupons were voided;

(5) The name, signature, and license number of the marketing department supervisor returning the unused coupons; and

(6) The name, signature, and license number of the accounting department supervisor who received the unused coupons.

13. All documentation, voided coupons, redeemed coupons, and coupons that were not distributed to players shall be forwarded daily to the accounting department where the coupons shall be:

a. Counted and examined for proper calculation and recording;

b. Reviewed for the propriety of signatures on the documentation and canceled;

c. Reconciled by total number of coupons given to the marketing department for distribution to players, returned for reissuance, voided, distributed to players, and redeemed; and

d. Recorded, maintained, and controlled by the accounting department.

14. At least once every month, a facility operator shall inventory all coupons that are not distributed to players and record the result of the inventory in the coupon ledger in accordance with the inventory procedures that the department approved as part of the facility operator's internal controls.

15. A facility operator shall prepare and submit to the department a quarterly report that lists the total value of the coupons redeemed by players.

16. If a facility operator's department-approved internal controls include its production and subsequent reconciliation of coupons, a facility operator may internally manufacture or print coupons.

17. If a facility operator's department-approved internal controls include the production of coupons by a manufacturer or contractor, a facility operator may authorize a manufacturer or contractor to print and mail coupons directly to players in accordance with the following requirements:

a. The coupons shall comply with the requirements in subdivisions 17 b and 17 c of this subsection;

b. The facility operator shall supply the manufacturer or contractor, through electronic means, a list of the following information for each player to whom the coupon shall be mailed:

(1) The player's name and address;

(2) The denomination of the coupon;

(3) The expiration date of the coupon; and

(4) A serial number on each coupon;

c. The coupon issued shall include a magnetic strip or bar code that will enable the facility operator's computer system to identify the information required by subdivision 18 b of this subsection;

d. The information in subdivision 18 b of this subsection shall be provided to the accounting department, which shall maintain the information for purposes of reconciliation as required by subdivision 14 of this subsection;

e. Prior to redemption of the coupon, a dealer shall verify the expiration date and confirm that the coupon has not expired; and

f. All coupons issued shall be electronically canceled in the facility operator's computer system immediately upon redemption or during the counting of the table game drop boxes.

18. A facility operator may use a computerized system that complies with the requirements in this regulation if:

a. The computerized system creates coupons that comply with the requirements in subdivisions 18 b and 18 c of this subsection;

b. The computerized system provides an audit trail and allows for the segregation of duties to satisfy the requirements in this section; and

c. The facility operator includes in its internal controls procedures governing the production, recording, redemption, and reconciliation of computer-generated coupons.

L. Use of match play coupons and direct bet coupons.

1. A coupon may be redeemed only at a gaming table in which a player wagers against the house.

2. For redemption, the dealer shall:

a. Verify the coupon is valid prior to accepting it as a wager;

b. Ensure that a coupon is placed on an authorized wager so that the value of the coupon is visible at all times; and

c. Settle winning wagers in accordance with the terms and conditions of the coupon.

3. Whether the wager wins or loses, the dealer shall deposit the coupon into the drop box attached to the gaming table at the time the winning wager is paid or the losing wager is collected.

4. The coupon shall remain in the event of a push.

M. Electronic, electrical, and mechanical devices prohibited.

1. A player or an individual acting in concert with a player may not use or possess with the intent to use at a table game a calculator; computer; or other electronic, electrical, or mechanical device to assist in:

a. Projecting an outcome at any table game;

b. Tracking or analyzing cards that have been dealt;

c. Tracking the changing probabilities of a table game; or

d. Developing or tracking a playing strategy to be used by a player.

2. A violation of this subsection may be the basis for immediate ejection from the facility, placement on the department's mandatory exclusion list, or other sanction or civil or criminal penalty.

N. Minimum and maximum wagers; payout odds.

1. In accordance with subsection V of this section, a facility operator shall provide notice of the minimum and maximum wagers in effect at each gaming table.

2. A wager accepted by a dealer that exceeds the current table maximum or is lower than the current table minimum shall be paid or lost in its entirety in accordance with the rules of the game.

3. If a facility operator includes a wagering requirement in its rules of the game under subsection T of this section, nothing in this regulation shall preclude a facility operator from establishing additional wagering requirements that are consistent with the rules of the game, including a requirement that wagers be made in specified increments.

4. Unless otherwise specified in a department-approved paytable, the payout odds for wagers printed on a layout, signage, brochure, or other publication distributed by the facility operator shall be stated through the use of the word "to" and may not be stated through use of the word "for."

O. Approval of table game layout, signage, and equipment.

1. A facility operator shall submit to the department for approval table game staffing plans, tournament schedules, dealer training programs, and schematics of gaming guides, table game layouts, signage and equipment.

2. For purposes of the department's review and approval, schematics of table game equipment shall include:

a. Cards;

b. Dice;

c. Pai gow tiles;

d. Gaming chips;

e. Plaques;

f. Commemorative chips;

g. Pai gow and sic bo shakers;

h. Big six and roulette wheels;

i. Envelopes and containers used to hold or transport table game equipment;

j. Match play coupons;

k. Direct bet coupons; and

l. Table game equipment not otherwise required to be submitted to an independent certified testing laboratory for approval.

3. Upon receipt of written approval from the department, a facility operator may implement its table game staffing plan, tournament schedule, or dealer training program and may utilize a gaming guide, table game layout, signage, or equipment in the facility.

4. A facility operator's equipment storage and destruction areas may not be used until its location and physical characteristics have been approved by the department.

5. A facility operator shall obtain approval from the department for:

a. Alternative locations for:

(1) Equipment that is required to be on the gaming table, including drop boxes, shakers, shufflers, discard racks, and tip boxes; and

(2) The complete text of the rules of all authorized games;

b. Amendments to the facility operator's plan for the distribution and collection of slot storage boxes, table game drop boxes, or bad beat boxes;

c. Sample sets of gaming chips and plaques manufactured in accordance with approved design specifications; and

d. The collection times for dice, cards, tiles, and other table game equipment from the gaming floor.

P. Employee training by facility operators. A facility operator shall develop a training program for its dealers that, at a minimum, includes training in:

1. Procedures for opening and closing tables for gaming, including the proper security procedures regarding table chip inventories;

2. Procedures for distributing and removing gaming chips and plaques from gaming tables;

3. Procedures for accepting cash at gaming tables;

4. Procedures for the acceptance of tips and gratuities from players;

5. Procedures for shift changes at gaming tables;

6. Procedures for the proper placement of wagers by players and the proper collection of losing wagers and payment of winning wagers; and

7. Recognizing problem and compulsive gamblers at table games and procedures for informing supervisory personnel.

Q. Table test; employee personnel fill.

1. Before conducting a table game on the facility operator's gaming floor, a prospective dealer shall pass a table test on the table games that the dealer will be conducting.

2. A table test shall consist of the dealer demonstrating proficiency at the table game to the satisfaction of an employee of the facility operator who is a pit manager or higher.

3. A facility operator shall document the following in a dealer's personnel file:

a. Completion of the training program required by subsection P of this section; and

b. Successful completion of the table test.

R. Table games rules submissions.

1. Before offering a table game authorized under the standard rules, a facility operator shall submit to the department a rules submission that specifies which options the facility operator will use in the conduct of the table game.

2. A facility operator may implement the provisions in a rules submission only after receipt of written notice of approval from the department.

3. A facility operator shall maintain the current edition of each department-approved rules submission so that it is available in electronic form, through secure computer access, to the facility operator's internal audit and surveillance department and department staff.

4. Each page of a table game's rules submission shall indicate the date on which it was approved by the department.

5. A facility operator shall maintain a paper or electronic copy of any superseded rules submission for a minimum of five years from the date of department approval.

S. Request to offer a new table game or feature.

1. A facility operator that desires to offer a table game or feature that is not already in the standard rules, or to offer a new wager, paytable, or other feature as part of table game that has been approved by the department, shall submit a written request to the department that contains at least:

a. A detailed description of the table game or new feature, including the rules of play and wagering for the new table game or feature;

b. A description of whether the game is a variation of an authorized game, a composite of authorized games, or a new game;

c. The true odds, the payout odds, and the house advantage for each wager;

d. A sketch or picture of the game layout, if any;

e. Sketches, pictures, or samples of the equipment used to play the game;

f. The reason for proposing the new table game or feature;

g. A list of other gaming jurisdictions where the new table game or feature is currently being offered;

h. Whether the game, its name, or any of the equipment used to play the game is covered by any issued or pending copyrights, trademarks, or patents; and

i. Any other information the department requests.

2. In addition to submitting a change request with the department, a facility operator shall, at its expense, submit the new table game or new feature for review to an independent certified testing laboratory that is certified by the department.

3. Following testing by the independent certified testing laboratory, the department will notify the facility operator whether the new table game or new feature has been approved, approved with conditions, or rejected.

T. Game rules; notice; wagers.

1. The department shall maintain:

a. A list of all table games that have been approved by the department and the standard rules for each approved table game; and

b. Records of a facility operator's table game or feature rules that have been approved by the department.

2. Except as provided in subdivision 3 of this subsection, a facility operator may not change the rules under which a particular table game is being operated unless the facility operator submits to and receives written approval from the department for an amendment to its rules submission under subsection R of this section.

3. A facility operator may increase or decrease the permissible maximum wager or decrease the permissible minimum wager at a table game:

a. If no players are playing at that table, at any time; or

b. While players are playing the game, if the facility operator:

(1) Provides at least 30 minutes' advance notice of the change;

(2) Posts a sign at the gaming table advising players of the change and the time that it will go into effect; and

(3) Announces the change to players who are at the table.

4. A facility operator shall submit to the department for approval the minimum and maximum bets the facility will accept from players for table games.

5. A facility operator may not accept a bet at a table game in an amount less than [~~$5.00~~ $1.00] or more than $50,000.

U. Player access to game rules; gaming guide.

1. A facility operator shall maintain, at its security podium or other location approved in advance by the department, a printed copy of the complete text of the standard rules of all

authorized games that shall be available to the public for inspection upon request.

2. A facility operator shall make available to players upon request a gaming guide that contains, in a printed format, an abridged edition of the complete text of the standard rules of all authorized games.

3. The gaming guide required may not be issued, displayed, or distributed by a facility operator until a sample of the gaming guide has been submitted to and approved by the department.

4. A facility operator may display an approved gaming guide at any location in its licensed facility.

5. Each facility operator shall make the approved gaming guide available on its website.

V. Table game payouts.

1. A facility operator shall use a table game payout document meeting the requirements of this subsection to pay a single payout event that requires the filing of IRS Form W-2G, Certain Gambling Winnings.

2. A facility operator shall prepare and timely file IRS Form W-2G, Certain Gambling Winnings, in accordance with federal Internal Revenue Service (IRS) rules and regulations.

3. A facility operator shall pay a table game payout of:

a. $50,000 or more by check; and

b. Less than $50,000 by:

(1) Cash or check; or

(2) On the request of a player, any combination of cash, gaming ticket, check, or other methods of payment approved by the department.

4. A facility operator shall develop and include in the internal controls submitted to and approved by the department procedures to address the payment of a table game payout event that requires the filing of an IRS Form W-2G, Certain Gambling Winnings.

5. A facility operator's internal controls shall include:

a. The use of a two-part computer generated table game payout document initiated on the request of a dealer or above after verifying the winning combination of characters at the table game and the amount of the payout.

b. A requirement that, if a single payout event that requires the filing of an IRS Form W-2G, Certain Gambling Winnings is less than $50,000, a security department employee or floorperson or above sign the payout document after verifying the winning combination of characters at the table game and the amount of the payout.

c. A requirement that, if a single payout event that requires the filing of IRS Form W-2G, Certain Gambling Winnings, is $50,000 or more, a pit manager or higher level gaming operations department employee other than the preparer of the document sign the table game payout document after verifying the winning combination of characters at the table game and amount of the payout.

d. A requirement that the following information be on a two-part computer generated table game payout document:

(1) Date and time;

(2) Identification number of the table game on which the payout was registered;

(3) Winning combination of characters constituting the payout or a code corresponding to the winning combination of characters constituting the payout;

(4) Amount to be paid;

(5) Signature or identification code of the preparer of the document;

(6) The signature or identification code of a verifying witness in accordance with this regulation; and

(7) The signature or identification code of the employee issuing the funds;

e. A requirement that the surveillance department:

(1) Be notified of a table game payout of $25,000 or more;

(2) Log all notices regarding a table game payout in the surveillance log required under 11VAC5-90-110 K; and

(c) Obtain and retain, in accordance with 11VAC5-90-110 J, a photograph of the face of the player receiving the payout;

f. Details pertaining to:

(1) Payment of a payout at the table game;

(2) The use of an accounting drop box; and

(3) Audit procedures to be performed by the facility operator's accounting department at the conclusion of each gaming day;

g. Procedures addressing unclaimed table game payouts;

h. Details that establish the ability of the facility operator's casino management system to:

(1) Ensure that a two-part computer generated table game payout document is not susceptible to change or deletion from the system after preparation;

(2) Process and document system overrides or adjustments to table game payouts including:

(a) Overrides or adjustments where the payout requested does not match the payout amount; and

(b) Identification of the level of employee having override authority; and

(3) Process voided table game payout documents; and

i. Procedures utilized to issue a manual table game payout document that:

(1) Are to be used only when the casino management system is unable to generate a table game payout document;

(2) Conform to the table game payout verification and signature requirements of this regulation;

(3) Involve use of a three-part serially pre-numbered manual table game payout document residing in a book, wiz machine, or functional equivalent;

(4) Require manual table game payout books or their functional equivalent to be maintained in a secured locked cabinet; and

(5) Require the key to the secure locked cabinet to be:

(a) Controlled by the security department or the table games department in a manual key box or an automated key tracking system; and

(b) Limited to sign out by a floorperson or above.

W. Progressive table games.

1. A table game offering a progressive jackpot may:

a. Stand alone;

b. Be linked to:

(1) Other table games in a facility; or

(2) Table games in two or more facilities in or outside the state through a wide area progressive system.

2. A manufacturer may not install in a facility, and a facility operator may not make available for play, table game equipment offering a progressive jackpot without written department approval of:

a. A progressive proposal; and

b. Internal controls submitted addressing the payment of a progressive jackpot.

3. A manufacturer may not modify the terms of a progressive jackpot, and a facility operator may not make available for play, a table game or table game equipment that offers a progressive jackpot that differs from its approved progressive proposal without the approval in writing of the department.

4. A table game may offer multiple progressive jackpots.

5. A progressive jackpot amount may be calculated and transmitted to a table game or table game device by:

a. The operating system of a table game; or

b. A separate progressive controller interfaced to a table game or table game equipment.

6. A progressive controller shall be:

a. Located in a restricted area;

b. Secured:

(1) In a dual key controlled compartment with:

(a) One key controlled by a manufacturer; and

(b) One key controlled by the department; or

(2) By alternative means approved by the department; and

c. Capable of:

(1) Displaying an available progressive jackpot amount on a table game's, or table game equipment's:

(a) Progressive meter; or

(b) Common progressive meter;

(2) Transmitting to a table game for metering purposes the amount of a progressive jackpot;

(3) If linked to a common progressive meter, displaying the department asset number of the table game on which a progressive jackpot is won;

(4) If a progressive controller is servicing multiple table games, automatically resetting all table games connected to it to a pre-established reset amount; and

(5) If the progressive offers multiple jackpot levels, maintaining and displaying for each progressive level the:

(a) Number of progressive jackpots won;

(b) Cumulative amount paid;

(c) Maximum progressive payout;

(d) Minimum amount or reset amount; and

(5) Rate of progression.

7. A table game offering a progressive jackpot shall be equipped, for each progressive jackpot offered, with the following mechanical, electrical, or electronic meters:

a. A progressive meter that:

(1) May increase in value based upon wagers;

(2) Advises the player of the amount that may be won if the table game characters which result in the award of a progressive jackpot appear as a result of activation of play; and

(3) Is visible from the table game through:

(a) A meter display housed in the table game; or

(b) A common progressive meter display unit;

b. A progressive payout meter;

c. An attendant paid progressive jackpot meter; and

d. A cumulative progressive payout meter that continuously and automatically records the total value of progressive jackpots paid, whether paid:

(1) Directly at the table game; or

(2) Hand paid by a facility operator as a result of a progressive jackpot that exceeds the physical or configured capability of a table game or table game equipment.

8. A table game linked to a common progressive meter for the purpose of offering the same progressive jackpot on two or more table games shall:

a. Have the same probability of hitting the combination of characters that will award the progressive jackpot as every other table game linked to that common progressive meter; and

b. Require each:

(1) Player to wager the same amount to receive a chance at winning the progressive jackpot; and

(2) Wager to increment the progressive meter by the same rate of progression on every table game connected to the common progressive meter.

9. Notwithstanding the requirements of subdivision 8 of this subsection, table games linked to a common progressive meter for the purpose of offering the same progressive jackpot on two or more table games may be of different denominations or require different wagers, or both, if:

a. The probability of winning the progressive jackpot is directly proportional to the wager required to win a jackpot; and

b. A notice indicating the proportional probability of hitting the progressive jackpot on the common progressive meter is conspicuously displayed in a manner specified by the Department on each linked table game.

10. A manufacturer may not:

a. Set a limit for a progressive jackpot that exceeds the display capability of the progressive meter; and

b. Adjust a progressive meter without the prior approval of the department unless the adjustment is:

(1) Required as a direct result of table game equipment or meter malfunction; and

(2) Reported by the manufacturer in a form and in a time frame specified by the department to the department and facility operator.

X. Table game statistical data.

1. A facility operator shall maintain complete and accurate records that identify for each table game and type of game by daily, cumulative month-to-date, and cumulative year-to-date basis:

a. Statistical drop;

b. Statistical win; and

c. Statistical win-to-drop percentages.

2. A facility operator shall:

a. Prepare and distribute statistical reports to gaming facility management on at least a monthly basis;

b. Using a 95% confidence interval, investigate fluctuations outside of the standard deviation from:

(1) The facility operator's table game win-to-drop percentage for the previous business year; or

(2) In the initial year of operations, the previous month; and

c. Document the results of the required investigation in writing and submit a copy of the written investigation results to the department.

Y. Inspecting cards.

1. If the decks of cards received at a table are preinspected and preshuffled, the provisions of this subsection shall not apply.

2. After receiving one or more decks of cards at the table, the dealer shall inspect the cards for any defects and a floorperson assigned to the table shall verify the inspection.

3. After the cards are inspected, the dealer shall spread the cards out face up on the table, in horizontal fan shaped columns by deck according to suit and in sequence, for visual inspection by the first player to arrive at the table.

4. After the first player arriving at the table has been afforded an opportunity to visually inspect the cards, the dealer shall:

a. Turn the cards face down on the table;

b. Mix the cards thoroughly by washing them; and

c. Stack the cards.

5. After the cards have been stacked, the dealer shall shuffle them in accordance with subsection Z of this section.

6. If an automated card shuffling device is utilized and two decks of cards are received at the table, each deck of cards shall be spread for inspection, mixed, stacked, and shuffled in accordance with subdivisions 2 through 5 of this subsection.

Z. Shuffling and cutting the cards.

1. Unless the cards were preshuffled, the dealer shall shuffle the cards so that they are randomly intermixed, manually or with an automated card shuffling device:

a. Immediately prior to commencement of play;

b. After each round of play has been completed; or

c. When directed by a floorperson or above.

2. A facility operator may use an automated card shuffling device that inserts the stack of cards directly into a dealing shoe after shuffling is complete.

3. A deck shall be removed from the table if an automated card shuffling device:

a. Is being used which counts the number of cards in the deck after the completion of each shuffle and indicates the number of cards present; and

b. Reveals that an incorrect number of cards are present.

4. Upon completion of the shuffle, the dealer or automated shuffling device shall place the decks of cards in a single stack, and:

a. If the cards were shuffled using an automated card shuffling device, deal the cards in accordance with subsections AA, BB, and CC of this section; or

b. If the cards were shuffled manually or were preshuffled, cut the cards in accordance with subdivision 5 of this subsection.

5. If a cut of the cards is required, the dealer shall perform the cut in accordance with the standard rules.

6. After the cards have been cut and before any cards have been dealt, a floorperson or above may require the cards to be recut if the floorperson determines that the cut was performed improperly or in any way that might affect the integrity or fairness of the game.

7. If there is no gaming activity at a table that is open for gaming, the dealer shall:

a. Remove the cards from the dealing shoe and discard rack;

b. Unless a player requests that the cards be spread face up on the table, spread out the cards on the table face down;

c. After the first player arriving at the table is afforded an opportunity to visually inspect the cards, complete the procedures in subsection Y of this section and this subsection if there is no automated shuffling device in use; and

d. If an automated shuffling device is in use, stack the cards and place them into the automated shuffling device to be shuffled, and:

(1) Remove the batch of cards already in the shuffler; and

(2) If the automated card shuffling device stores a single batch of shuffled cards inside the shuffler in a secure manner at a player's request, remove the batch of cards from the shuffler and spread the cards for inspection and reshuffle them prior to dealing.

8. A facility operator may use a dealing shoe or other device that automatically reshuffles and counts the cards provided that the device is submitted to the department and approved prior to its use in the facility.

9. If a facility operator is using a dealing shoe or other device approved by the department, subdivisions 5 through 8 of this subsection do not apply.

AA. Procedure for dealing cards from a manual dealing shoe.

1. If a manual dealing shoe is used, it shall be located on the table in a location approved by the department, and the following requirements shall be met:

a. After the procedures required under subsection Z of this section have been completed, the stacked deck of cards shall be placed in the dealing shoe by the dealer or by an automated card shuffling device.

b. Prior to dealing any cards, the dealer shall announce "no more bets."

c. If the progressive payout wager is being offered, the dealer shall use the progressive table game system to prevent the placement of any additional progressive payout wagers.

d. If a player has made a progressive payout wager, the dealer shall:

(1) Collect the progressive payout wager in accordance with the standard rules;

(2) On the layout in front of the table inventory container, verify that the number of value chips wagered equals the number of progressive payout wagers accepted by the progressive table game system; and

(3) Place the value chips into the table inventory container.

e. The dealer shall remove each card from the dealing shoe with the hand of the dealer that is closest to the dealing shoe and place the card on the appropriate area of the layout with the opposite hand.

2. The dealer shall deal the cards in accordance with the standard rules.

3. After dealing cards in accordance with the standard rules, the dealer shall:

a. Remove the stub from the manual dealing shoe; and

b. Place the stub in the discard rack without exposing the cards.

4. If an automated card shuffling device is not being used, the dealer shall count the stub at least once every five rounds of play to determine if the correct number of cards required by the standard rules are still present in the deck.

5. The dealer shall determine the number of cards in the stub by counting the cards face down on the layout.

a. If the count of the stub indicates that the correct number of cards is in the deck, the dealer shall place the stub in the discard rack without exposing the cards.

b. If the count of the stub indicates that the number of cards in the deck is not correct, the dealer shall determine if the cards were misdealt.

c. If correct number of cards remain in the deck, but the cards were misdealt so that a player has more or less than the required number of cards, or the dealer has more or less than the required number of cards, all hands are void and the dealer shall return all wagers to the players.

d. If the cards were not misdealt, all hands are void and the dealer shall return all wagers to the players and remove the entire deck of cards from the table.

BB. Procedure for dealing cards from the hand.

1. If the cards are dealt from a dealer's hand, the following requirements shall be met:

a. [~~An automated shuffling device shall be used to shuffle the cards.~~

~~b.~~] After the procedures required under subsection Z of this section have been completed, the dealer shall place the stacked deck of cards in either of the dealer's hand.

[~~c.~~ b.] After the dealer has chosen the hand in which to hold the cards, the dealer shall continue to use that hand while holding the cards during that round of play.

[~~d.~~ c.] The cards held by the dealer shall be kept over the table inventory container and in front of the dealer at all times.

[~~e.~~ d.] Before dealing any cards, the dealer shall:

(1) Announce "no more bets;" and

(2) If the progressive payout wager is being offered, use the progressive table game system to prevent the placement of any additional progressive payout wagers.

[~~f.~~ e.] If any progressive payout wagers have been made, the dealer shall:

(1) On the layout in front of the table inventory container, collect the wagers in accordance with the standard rules;

(2) Verify that the number of value chips wagered equals the number of progressive payout wagers accepted by the progressive table game system; and

(3) Place the value chips into the table inventory container.

2. The dealer shall:

a. Deal each card by holding the deck of cards in the chosen hand;

b. Use the other hand to remove the top card of the deck to place it face down on the appropriate area of the layout;

c. Deal the cards in accordance with the standard rules.

d. Except as provided in subdivision 3 of this subsection, after dealing cards in accordance with the standard rules, place the stub in the discard rack without exposing the cards.

3. If an automated card shuffling device is not being used, the dealer shall:

a. Count the stub at least once every five rounds of play to determine if the correct number of cards is still present in the deck in accordance with the standard rules; and

b. Determine the number of cards in the stub by counting the cards face down on the layout.

4. If the count of the stub indicates that the correct number of cards is in the deck, the dealer shall place the stub in the discard rack without exposing the cards.

5. If the count of the stub indicates that the number of cards in the deck is not correct, the dealer shall determine if the cards were misdealt.

6. If the correct number of cards remains in the deck, but the cards were misdealt so that a player has more or less than the required number of cards or the dealer has more or less than the required number of cards, all hands are void and the dealer shall return all wagers to the players.

7. If the cards were not misdealt, all hands are void and the dealer shall return all wagers to the players and remove the entire deck of cards from the table.

CC. Procedure for dealing cards from an automated dealing shoe or shuffler.

1. If cards are dealt from an automated dealing shoe, the following requirements shall be met:

a. After the procedures required under subsection Z of this section have been completed, the dealer shall place the cards in an automated dealing shoe or shuffler.

b. Prior to the shoe or shuffler dispensing any stacks of cards, the dealer shall:

(1) Announce "no more bets;" and

(2) If the progressive payout wager is being offered, use the progressive table game system to prevent the placement of any additional progressive payout wagers.

c. If any progressive payout wagers have been made, the dealer shall:

(1) On the layout in front of the table inventory container, collect the wagers in accordance with the standard rules;

(2) Verify that the number of value chips wagered equals the number of progressive payout wagers accepted by the progressive table game system; and

(3) Place the value chips into the table inventory container.

2. The dealer shall deal the cards in accordance with the standard rules.

3. After the cards have been dispensed and delivered in accordance with the standard rules, the dealer shall:

a. Remove the stub from the automated dealing shoe; and

b. Except as provided in subdivision 4 of this subsection, place the cards in the discard rack without exposing the cards.

4. If the count of the stub indicates that the correct number of cards required by the standard rules is in the deck, the dealer shall place the stub in the discard rack without exposing the cards.

5. If the count of the stub indicates that the number of cards in the deck is not correct, the dealer shall determine if the cards were misdealt.

6. If the correct number of cards remains in the deck, but the cards were misdealt so that a player has more or less than the required number of cards or the dealer has more or less than the required number of cards, all hands are void and the dealer shall return all wagers to the players.

7. If the cards were not misdealt, all hands are void and the dealer shall return all wagers to the players and remove the entire deck of cards from the table.

DD. Mixing tiles.

1. After receiving a set of tiles at the table, the dealer shall sort and inspect the tiles and the floorperson assigned to the table shall verify the inspection.

2. Nothing in this section precludes a facility operator from cleaning the tiles prior to the inspection required in subsection 3 of this subsection.

3. A dealer shall inspect the tiles at the gaming table by:

a. Sorting a set of tiles into pairs;

b. Placing each tile side by side to determine that all tiles are the same size and shading; and

c. Examining the back and sides of each tile to ensure that it is not flawed, scratched, or marked, and if the dealer finds that a tile is unsuitable for use:

(1) A floorperson or above shall bring another set of tiles to the table from the reserve in the pit stand; and

(2) The unsuitable set of tiles shall be placed in a sealed envelope or container, identified by table number, date, and time and signed by the dealer and floorperson or above.

4. Following the inspection and verification of the tiles, the dealer shall:

a. Turn the tiles face up;

b. Place the tiles into 16 pairs;

c. Arrange the tiles according to rank; and

d. Leave the tiles in pairs for visual inspection by the first player to arrive at the table.

5. After the first player arriving at the table is afforded an opportunity to visually inspect the tiles, the dealer shall:

a. Turn the tiles face down on the table;

b. Mix the tiles:

(1) With the heels of the hands;

(2) In a circular motion with one hand moving clockwise and the other hand moving counterclockwise; and

(3) With each hand completing at least eight circular motions to provide a random mixing; and

c. Randomly pick up four tiles with each hand and place them side by side in stacks in front of the table inventory container, forming eight stacks of four tiles.

6. The entire set of tiles shall be remixed if, during the stacking process, a tile is turned over and exposed to the players.

7. After each round of play has been completed, the dealer shall turn all of the tiles face down and mix the tiles in accordance with subdivision 5 of this subsection.

8. If there is no gaming activity at the table, the dealer shall turn the tiles face up and place them into 16 pairs according to rank.

9. After a player arrives at the table, the dealer shall follow the procedures in subdivision 5 of this subsection.

11VAC5-90-190. Sports betting.

A. Definitions. In addition to the terms defined in 11VAC65-90-10, the following terms have the meanings indicated.

"Sports betting kiosk" means the physical device and collective hardware, software, communications technology, and other ancillary equipment used for sports betting voucher and ticket processing and automated functions as approved by the department.

"Sports betting law" means Article 2 (§ 58.1-4030 et seq.) of Chapter 40 of Title 58.1 of the Code of Virginia.

"Sports betting lounge" means a designated area in a casino gaming facility where sports betting is conducted.

"Sports betting platform" means a website, mobile application, or other platform accessible via the Internet or mobile, wireless, or similar communications technology that sports bettors use to participate in sports betting.

"Sports betting ticket" means a printed record issued or an electronic record maintained by the casino gaming operator that evidences a sports wager.

"Sports betting voucher" means a printed record or digital representation thereof issued by a casino gaming operator that may be used to fund a wager or may be redeemable for cash.

B. Sports betting transactions.

1. Before offering sports betting transactions in its sports betting facility, a facility operator shall submit a plan to the department that meets the requirements of 11VAC5-90-100 and has been approved by the department.

2. Sports betting transactions may be conducted from:

a. A sports betting lounge counter located in the sports betting lounge or other window locations as approved by the department;

b. Sports betting kiosks in locations as approved by the department;

c. Devices as approved by the department; or

d. A designated window in a cashiers' cage for the redemption of winning sports betting tickets only.

C. Security requirements.

1. Sports betting operations within a casino gaming facility shall be designed to promote optimum security of the casino

gaming facility, and shall include the installation and maintenance of security and surveillance equipment pursuant to the requirements of 11VAC5-90-110 and 11VAC5-90-120 and shall be approved by the department.

2. The department shall have direct access to the system and its transmissions.

3. At least 60 days before sports betting operations are to commence, a facility operator shall submit to the department the surveillance plan for its sports betting facility.

D. Internal controls. At least 60 days before sports betting operations are to commence, a facility operator shall submit to the department for approval its internal controls which, in addition to those required by11VAC5-70, shall address at a minimum the following items:

1. Description of the limitations placed on anonymous wagering at the sports betting kiosks;

2. Description of the process for accepting wagers and issuing payouts in excess of $10,000;

3. Description of the process for accepting multiple wagers from a single player in a 24-hour cycle, including a process to identify player structuring of wagers to circumvent recording and reporting requirements;

4. Detailed procedures for reconciliation of assets and documents contained in a sports betting lounge cashier's drawer and sports betting kiosks, which shall include the drop, fill and count procedures for sports betting kiosks;

5. Procedures for cashing winning tickets at the cashiers' cage after the sports betting facility has closed, if applicable;

6. Procedures for accepting value game chips for sports wagers, if applicable;

7. Detailed procedure for the issuance of IRS Form W-2G, Certain Gambling Winnings;

8. If allowed, the procedure for redeeming lost tickets; and

9. In the event of a failure of the facility's ability to pay winning wagers, detailed procedures for the method of paying winning wagers.

E. House rules. The house rules required by 11VAC5-70, together with any other information the director deems appropriate, shall be conspicuously displayed in the sports betting facility, and copies shall be made readily available to players.

F. Player wagers.

1. Wagers available to players shall be displayed in a manner visible to the public and the facility operator's closed circuit television system. The display shall include a brief description of the event and the odds.

2. All sports betting tickets generated by a sports betting facility shall contain the following information:

a. Description of the sporting event;

b. Wager selection;

c. Type of wager;

d. Amount of wager;

e. Date and time of the wager;

f. Unique wager identifier;

g. An indication of when the ticket expires;

h. Name and address of the party issuing the ticket;

i. A barcode or similar symbol or marking as approved by the department corresponding to the unique wager identifier;

j. Method of redeeming winning ticket via mail; and

k. Cashier, device, or sports betting kiosk generating the ticket.

3. If the facility operator issues and redeems a sports betting voucher, the system shall be capable of recording the following information for each voucher:

a. Amount of voucher;

b. Date, time, and location of issuance;

c. Unique voucher identifier;

d. Expiration date of the voucher; and

e. Date, time, and location of redemption, if applicable.

4. Sports betting vouchers issued by a facility operator shall contain the following information:

a. Date, time, and location of issuance;

b. Amount of the voucher;

c. Unique voucher identifier;

d. Expiration date of the voucher;

e. Name of the issuing facility operator; and

f. An indication that the voucher can only be redeemed in exchange for a sports wager or cash.

5. A cashier may not cancel a wager for which the cashier wrote the ticket and must instead call a supervisor to cancel the wager.

6. For all lost tickets that are redeemed, the facility operator's sports betting platform shall record and maintain the following information:

a. Date and time of redemption;

b. Employee responsible for redeeming the ticket;

c. Name of player redeeming the wager;

d. Unique wager identifier; and

e. Location of the redemption.

7. A player may redeem a winning sports wagering ticket by mail according to the facility operator's internal controls.

8. A winning sports wagering ticket that has not been redeemed within 180 days shall be treated like an unclaimed jackpot under 11VAC5-90-20.

G. Sports betting kiosks.

1. A facility operator may utilize sports betting kiosks within a casino gaming facility for sports betting wagering transactions at a location approved by the department.

2. All aspects of a sports betting kiosk, including the computer and any related hardware, software, or related devices, shall be tested by an independent certified testing laboratory and approved by the department prior to use by a facility operator.

3. When used to redeem sports betting tickets or vouchers, sports betting kiosks shall work in conjunction with the facility operator's sports betting platform and shall be designed to:

a. Accurately obtain the unique identification number of the item presented for redemption and cause such information to be accurately and securely relayed to the facility operator's sports betting platform for the purpose of redemption;

b. Issue currency, a sports betting voucher, or both in exchange for the item presented only if the facility operator's sports betting platform has authorized and recorded the transaction; and

c. Return a sports betting ticket and voucher to the player when it cannot be validated by the facility operator's sports betting platform or is otherwise unredeemable.

4. A facility operator shall be able to generate the following reports by a sports betting kiosk or ancillary system or application for the reconciliation period, which may be by gaming day, shift, or drop cycle as approved by the department:

a. A sports betting ticket issuance report that details:

(1) Unique wager identifier;

(2) Date and time of issuance; and

(3) Amount of wager;

b. A sports betting ticket redemption report that details:

(1) Unique wager identifier;

(2) Date and time of redemption; and

(3) Amount redeemed;

c. A sports betting voucher issuance report that details:

(1) Unique voucher identifier;

(2) Date and time of issuance; and

(3) Amount of voucher;

d. A sports betting voucher redemption report that details:

(1) Unique voucher identifier;

(2) Date and time of redemption; and

(3) Amount redeemed;

e. A reconciliation report that details:

(1) Date and time;

(2) Unique asset identification number of the sports betting kiosk;

(3) Total amount of cash in the currency and coin cassettes;

(4) Total number of bills accepted by denomination;

(5) Total amount of credit card and debit card transactions;

(6) Total amount of sports betting vouchers dispensed and inserted; and

(7) Total amount of sports betting tickets dispensed and inserted;

f. A transaction history report that details all critical player transaction history including for each transaction, whether complete or incomplete, the following:

(1) Date and time;

(2) Amount;

(3) Disposition as complete or incomplete;

(4) Error conditions including failed access attempts;

(5) User access data; and

(6) If equipped to issue or redeem multiple sports betting tickets and sports betting vouchers in a single transaction, a breakdown of the transaction by individual sports betting ticket and sports betting voucher.

5. On a daily basis, a facility operator shall:

a. Remove the bill validator boxes in the sports betting kiosks; and

b. Monitor and record by surveillance the removal of each bill validator box.

6. A facility operator shall submit to the department in advance its daily schedule for removal of the sports betting kiosk bill validator boxes.

7. A facility operator's accounting department shall reconcile the sports betting kiosks on a daily basis pursuant to internal controls. Any variance of $500 or more shall be documented by the accounting department and reported in writing to the department within three days after the gaming day during which the variance was discovered. The report shall indicate the cause of the variance and shall contain any documentation required to support the stated explanation.

H. Accounting controls.

1. A cashier shall begin a shift with an imprest amount of sports betting inventory, consisting of currency and coin. No funds shall be added to or removed from the sports betting inventory during a shift except:

a. In collection of sports wagers;

b. In order to make change for a player buying a sports betting ticket;

c. In collection for the issuance of sports betting vouchers;

d. In payment of winning or properly canceled or refunded sports betting tickets;

e. In payment of sports betting vouchers; or

f. In exchanges with the cashiers' cage, a satellite cage, or sports betting lounge booth vault supported by proper documentation which documentation shall be sufficient for accounting reconciliation purposes.

2. A sports betting count sheet shall be completed and signed by a supervisor, and the following information, at a minimum, shall be recorded on the count sheet at the beginning of a shift:

a. The date, time, and shift of preparation;

b. The denomination of currency and coin in the sports betting inventory issued to the cashier;

c. The total amount of each denomination of currency and coin in the sports betting inventory issued to the cashier;

d. The sports betting window number to which the cashier is assigned; and

e. The signature of the sports betting shift supervisor.

3. A cashier assigned to a cashier window shall count and verify the sports betting inventory at the sports betting vault and ensure that the inventory agrees with the count sheet. The cashier shall sign the count sheet attesting to the accuracy of the information on the count sheet. The sports betting inventory shall be placed in a cashier's drawer and transported directly to the appropriate sports betting lounge booth window by the cashier.

4. If the system generated sports betting window net receipts for a shift do not agree with the sports betting count sheet total plus the sports betting inventory, the shift supervisor shall record any overage or shortage. If the count does not agree, the cashier and the shift supervisor shall attempt to determine the cause of the discrepancy in the count. Any discrepancy that cannot be resolved by the cashier and the shift supervisor shall be submitted in writing immediately to the department.

5. If a discrepancy identified in subdivision G 4 of this section is more than $500, within three days the facility operator shall submit a report to the department that includes the:

a. Date on which the discrepancy occurred;

b. Shift during which the discrepancy occurred;

c. Name of the cashier;

d. Name of the supervisor;

e. Window number; and

f. Amount of the discrepancy.

6. A sports betting shift supervisor shall:

a. Compare the cashier window net for each shift as generated by the terminal, and

b. If the cashier window net agrees with the sports betting count sheet total plus the sports betting inventory:

(1) Certify the count on the sports betting count sheet, and

(2) Sign the sports betting count sheet attesting to its accuracy.

11VAC5-90-200. Information security system.

A facility operator shall implement, maintain, regularly review and revise, and comply with a comprehensive information security system, the purpose of which (i) shall be to take reasonable steps to protect the confidentiality, integrity, and availability of personal information of individuals who place a wager with the facility operator and (ii) shall contain administrative, technical, and physical safeguards appropriate to the size, complexity, nature, and scope of the operations and the sensitivity of the personal information owned, licensed, maintained, handled, or otherwise in the possession of the facility operator.

11VAC5-90-210. System integrity and security assessment.

A. Within 90 days after beginning operations and annually thereafter, a facility operator shall engage an independent certified testing laboratory to perform a system integrity and security assessment of its casino gaming operations, including any sports betting operations not already reviewed in compliance with 11VAC5-70-200.

B. The scope of the integrity and security assessment shall include, at a minimum:

1. A vulnerability assessment of internal, external, and wireless networks with the intent of identifying vulnerabilities of all devices, systems, and applications transferring, storing, or processing personally identifiable information or other sensitive information connected to or present on the networks;

2. A penetration test of all internal, external, and wireless networks to confirm if identified vulnerabilities of all devices, systems, platforms, and applications are susceptible to compromise;

3. A technical security control assessment against the provisions of the gaming law and this chapter consistent with generally accepted professional standards and as approved by the director;

4. An evaluation of information security services, cloud services, payment services (financial institutions, payment processors, etc.), location services, and any other services that may be offered directly by the facility operator or involve the use of third parties; and

5. Any other specific criteria or standards for the integrity and security assessment required by the director.

C. The independent certified testing laboratory shall issue a report on its assessment and submit it to the director. The report shall include, at a minimum the:

1. Scope of review;

2. Name and company affiliation of any individual who conducted the assessment;

3. Date of assessment;

4. Findings;

5. Recommended corrective action, if any; and

6. Facility operator's response to the findings and recommended corrective action.

VA.R. Doc. No. R21-6662; Filed January 14, 2022, 11:04 a.m.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Final Regulation

Title of Regulation: **12VAC5-71. Regulations Governing Virginia Newborn Screening Services (amending 12VAC5-71-30).**

Statutory Authority: §§ 32.1-12 and 32.1-67 of the Code of Virginia.

Effective Date: March 16, 2022.

Agency Contact: Robin Buskey, Policy Analyst, Office of Family Health Services, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7253, FAX (804) 864-7022, or email robin.buskey@vdh.virginia.gov.

Summary:

The amendments add spinal muscular atrophy (SMA) and X-linked adrenoleukodystrophy (X-ALD) to the newborn screening panel. The additions of SMA and X-ALD to the newborn screening panel have been recommended by the Virginia Genetics Advisory Committee. On the national level, these disorders have been added to the core panel of 35 genetic disorders included in the Recommended Uniform Screening Panel of the U.S. Secretary of Health and Human Services Advisory Committee on Heritable Disorders in Newborns and Children.

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

12VAC5-71-30. Core panel of heritable disorders and genetic diseases.

A. The Virginia Newborn Screening System, which includes the Virginia Newborn Screening Program, the Virginia Early Hearing Detection and Intervention Program, and the Virginia critical congenital heart disease screening, shall ensure that the core panel of heritable disorders and genetic diseases for which newborn screening is conducted is consistent with but not necessarily identical to the U.S. Department of Health and Human Services Secretary's Recommended Uniform Screening Panel.

B. The department shall review, at least biennially, national recommendations and guidelines and may propose changes to the core panel of heritable disorders and genetic diseases for which newborn dried-blood-spot screening tests are conducted.

C. The Virginia Genetics Advisory Committee may be consulted and provide advice to the commissioner on proposed changes to the core panel of heritable disorders and genetic diseases for which newborn dried-blood-spot screening tests are conducted.

D. Infants under six months of age who are born in Virginia shall be screened in accordance with the provisions set forth in this chapter for the following heritable disorders and genetic diseases, which are identified through newborn dried-blood-spot screening tests:

1. Argininosuccinic aciduria (ASA);

2. Beta-Ketothiolase deficiency (BKT);

3. Biotinidase deficiency (BIOT);

4. Carnitine uptake defect (CUD);

5. Classical galactosemia (galactose-1-phosphate uridyltransferase deficiency) (GALT);

6. Citrullinemia type I (CIT-I);

7. Congenital adrenal hyperplasia (CAH);

8. Cystic fibrosis (CF);

9. Glutaric acidemia type I (GA I);

10. Hb S beta-thalassemia (Hb F,S,A);

11. Hb SC-disease (Hb F,S,C);

12. Hb SS-disease (sickle cell anemia) (Hb F, S);

13. Homocystinuria (HCY);

14. Isovaleric acidemia (IVA);

15. Long chain L-3-Hydroxy acyl-CoA dehydrogenase deficiency (LCHAD);

16. Maple syrup urine disease (MSUD);

17. Medium-chain acyl-CoA dehydrogenase deficiency (MCAD);

18. Methylmalonic acidemia (Methylmalonyl-CoA mutase deficiency) (MUT);

19. Methylmalonic acidemia (Adenosylcobalamin synthesis deficiency) (CBL A, CBL B);

20. Multiple carboxylase deficiency (MCD);

21. Phenylketonuria (PKU);

22. Primary congenital hypothyroidism (CH);

23. Propionic acidemia (PROP);

24. Severe combined immunodeficiency (SCID);

25. Tyrosinemia type I (TYR I);

26. Trifunctional protein deficiency (TFP);

27. Very long-chain acyl-CoA dehydrogenase deficiency (VLCAD);

28. 3-hydroxy 3-methyl glutaric aciduria (HMG);

29. 3-Methylcrotonyl-CoA carboxylase deficiency (3-MCC);

30. Pompe disease; ~~and~~

31. Mucopolysaccharidosis type I (MPS I);

32. Spinal muscular atrophy (SMA); and

33. X-linked adrenoleukodystrophy (X-ALD).

E. Infants born in Virginia shall be screened for hearing loss in accordance with provisions set forth in §§ 32.1-64.1 and 32.1-64.2 of the Code of Virginia and as governed by 12VAC5-80.

F. Newborns born in Virginia shall be screened for critical congenital heart disease in accordance with provisions set forth in §§ 32.1-65.1 and 32.1-67 of the Code of Virginia and as governed by 12VAC5-71-210 through 12VAC5-71-260.

VA.R. Doc. No. R19-5996; Filed January 12, 2022, 7:04 p.m.

STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Proposed Regulation

Title of Regulation: **12VAC35-46. Regulations for Children's Residential Facilities (amending 12VAC35-46-10; adding 12VAC35-46-1150 through 12VAC35-46-1250).**

Statutory Authority: §§ 37.2-203 and 37.2-408 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: April 15, 2022.

Agency Contact: Ruth Anne Walker, Director of Regulatory Affairs, Department of Behavioral Health and Developmental Services, Jefferson Building, 1220 Bank Street, 4th Floor, Richmond, VA 23219, telephone (804) 225-2252, FAX (804) 371-4609, TDD (804) 371-8977, or email ruthanne.walker@dbhds.virginia.gov.

Basis: Section 37.2-203 of the Code of Virginia gives the State Board of Behavioral Health and Developmental Services the authority to adopt regulations that may be necessary to carry out the provisions of Title 37.2 of the Code of Virginia.

Purpose: Substance related disorders affect the individual, an individual's family, the workplace, and the general community, therefore the department must incorporate best practices in licensing regulations in order to promote remission and recovery from the disease of addiction. Regulations that promote remission and recovery from the disease of addiction are essential to protect the health and welfare of citizens.

Substance use disorders (SUDs) among children, adolescents, and their families pose particular challenges for the community. Given the differences in developmental and emotional growth between youth and adults, the complex needs of this population are remarkably different from those of the traditional adult treatment population, requiring different expertise and guidance. In addition, many adolescents who abuse drugs have a history of physical, emotional, or sexual abuse, or other trauma. Behavioral therapies, delivered by trained clinicians, can help an adolescent stay off drugs by strengthening his motivation to change. The ASAM criteria is designed to provide specific substance use disorder treatment guidance to counselors, clinicians, and case managers. Level 3.5 programming is specifically designed for youth and adults that require 24-hour care and treatment to begin and sustain a recovery process. This type of guidance can significantly improve the treatment outcomes of youth in need of residential services.

Substance: This regulatory action aligns the regulation with the ASAM Levels of Care Criteria, which ensures individualized, clinically driven, participant-directed, and outcome-informed treatment. The regulatory action provides the necessary definitions for the newly aligned services to be provided and creates staff, program admission, discharge, and co-occurring enhanced program criteria for ASAM levels of care 3.5 and 3.1.

Issues: The primary advantage of the regulatory change to the Regulations for Children's Residential Facilities is that citizens of the Commonwealth will receive more effective treatment of substance use disorders. This is an advantage to the public, the agency, and the Commonwealth. The primary disadvantage is that some providers may experience a financial burden in order to comply with the new regulation. There are no known disadvantages to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 14 (as amended, July 16, 2018). The analysis presented represents DPB's best estimate of these economic impacts.[1]

Summary of the Proposed Amendments to Regulation. The State Board of Behavioral Health and Developmental Services (Board) proposes to amend the licensing regulation for children's residential facilities to align with the American Society of Addiction Medicine (ASAM) Levels of Care Criteria. The proposed amendments were mandated by the 2020 Appropriation Act and implemented via an emergency regulation; the Board now seeks to make those changes permanent. The proposed changes are intended to ensure individualized, clinically driven, participant-directed, and outcome-informed treatment.

Background. Item 318.B of Chapter 1289, 2020 Virginia Acts of Assembly, directs the Department of Behavioral Health and Developmental Services (DBHDS) to promulgate emergency regulations to: (i) ensure that licensing regulations support high quality community-based mental health services and align with the changes being made to the Medicaid behavioral health regulations for the services funded in this Act that support evidence-based, trauma-informed, prevention-focused and cost-effective services for members across the lifespan; and (ii) amend the licensing regulations to align with the American Society of Addiction Medicine Levels of Care Criteria or an equivalent set of criteria into substance use licensing regulations to ensure the provision of outcome-oriented and strengths-based care in the treatment of addiction."[2] Accordingly, the proposed changes were initially implemented via an emergency regulation that became effective February 2021.[3]

DBHDS reports that Virginia's children and adolescents face significant risks and challenges relating to substance use and addiction. The 2017 Virginia Youth Survey conducted by the Virginia Department of Health found that approximately three percent of respondents indicated that they used marijuana before age 11 and almost 10% drank alcohol before age 11. The same survey found that over 30% of high school students reported using alcohol in the past 30 days. The survey also indicated that 25% of respondents reported binge drinking, 20% reported using marijuana, and approximately three percent reported using heroin in a 30 day period.[4]

DBHDS reports that ASAM Levels of Care Criteria are the "most widely used and comprehensive guidelines" for addiction treatment.[5] In addition, the federal Substance Abuse and Mental Health Services Administration (SAMHSA) also recommends ASAM standards.[6] The proposed amendments would add definitions for certain terms as they appear in the ASAM Criteria and add specific service delivery requirements for residential facilities to meet the ASAM standards of care. In addition, two new documents would be partially incorporated by reference into the regulation, making those specific sections of the documents a legally enforceable part of the Virginia Administrative Code: the ASAM: Treatment for Addictive, Substance-Related and Co-Occurring Conditions, Third Edition and the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition.[7]

Accordingly, definitions would be added for "clinically managed, medium-intensity residential care" and "clinically managed, low-intensity residential care," as well as for "allied health professional," "medication assisted treatment," and "motivational enhancements." Specifically, "clinically managed, medium-intensity residential care" would mean "a substance use treatment program that offers 24-hour supportive treatment of children with significant psychological and social problems by credentialed addiction treatment professionals in an interdisciplinary treatment approach. The children served by clinically managed, medium-intensity residential care are children who are not sufficiently stable to benefit from outpatient treatment regardless of intensity of service." The proposed amendments would include new sections (1160-1200) that establish staffing criteria, programmatic requirements, admission criteria, discharge criteria, and residential co-occurring enhanced programs.

Similarly, "clinically managed low-intensity care" would be defined to mean "providing an ongoing therapeutic environment for children requiring some structured support in which treatment is directed toward applying recovery skills; preventing relapse; improving emotional functioning; promoting personal responsibility; reintegrating the child into work, education, and family environments; and strengthening adaptive skills that may not have been achieved or have been diminished during the child's active addiction. A clinically managed, low-intensity residential care is also designed for the child suffering from chronic, long-term alcoholism or drug addiction and affords an extended period of time to establish sound recovery and a solid support system." As before, the proposed amendments include new sections (1210-1250) that would establish staffing criteria, programmatic requirements, admissions and discharge criteria, and co-occurring enhanced programs.

DBHDS reports that many children's residential providers are already familiar with ASAM levels of care because this is how they must bill to receive reimbursement for addiction treatment services from the Department of Medical Assistance Services (DMAS). This has been the case since April 1, 2017, when DMAS promulgated its Addiction and Recovery Treatment Services (ARTS), a regulation that adopted ASAM level of care for billing purposes.[8] The ARTS program offers an enhanced substance use disorder treatment benefit to Medicaid recipients by expanding access to a comprehensive continuum of addiction treatment services for all enrolled members in Medicaid, Family Access to Medical Insurance Security (FAMIS), FAMIS MOMS (for uninsured pregnant women),

including expanded community-based addiction and recovery treatment services and coverage of inpatient detoxification and residential substance use disorder treatment.[9]

Estimated Benefits and Costs.[10] The proposed amendments would primarily benefit youth receiving substance use disorder treatment at children's residential facilities in Virginia by providing comprehensive services in a manner commensurate to their individual needs. To the extent that children's residential facilities accept Medicaid and have been in compliance with DMAS' requirements for provider reimbursement, they would face no new costs. Children's residential facilities that do not currently accept Medicaid would be required to meet the ASAM Criteria as adopted by the proposed amendments. As a result, they may incur costs if they have to expand the scope of treatment provided, especially if they need to provide training to current employees.

Businesses and Other Entities Affected. DBHDS reports that there are 59 children's residential facilities throughout the Commonwealth, six of which offer substance use disorder treatment services. Those six facilities have already transitioned to ASAM licenses and would be affected by the proposed changes.[11] Of the children's residential facilities that provide substance use disorder services, only those that do not participate in Medicaid would face new requirements and incur costs to comply with the new requirements. In addition, some facilities that accept Medicaid may also incur costs if DBHDS' staff inspections reveal that they have not implemented the ASAM Criteria correctly and need to make changes to comply with the proposed requirements.

DBHDS also reports that the agency would incur costs relating to training providers and conducting additional inspections. Specifically, DBHDS would issue conditional licenses for six months and conduct an inspection to ensure regulatory compliance after the initial six months. The outcome of those inspections would determine if an additional inspection is required later that year. Additionally, the agency would need to provide technical assistance to providers, to include issuing corrective action plans and confirming their implementation. DBHDS estimates requiring one additional full-time specialist to absorb the increased workload associated with this regulatory change.[12]

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.[13] An 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. As noted above, the proposed amendments could increase costs for private children's residential facilities that do not accept Medicaid but do offer substance use disorder treatment, although the number of such facilities and the magnitude of the costs are unknown. Thus, an adverse impact is indicated.

Small Businesses[14] Affected.[15] The proposed amendments appear to adversely affect small businesses; however, the number of affected entities that are small businesses is unknown.

Types and Estimated Number of Small Businesses Affected. The proposed amendments would affect the six private children's residential facilities that have ASAM licenses; however, the number of affected entities that are small businesses is unknown.

Costs and Other Effects. Children's residential facilities that do not participate in Medicaid would face the highest costs since they would face new requirements. Children's residential facilities that participate in Medicaid would only face higher costs if they are found to be implementing the ASAM Criteria incorrectly and need to invest in training or hire additional personnel to correctly implement the requirements. Thus, an adverse economic impact[16] on children's residential facilities is indicated to the extent that they face new requirements that result in new 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[17] Affected.[18] The proposed amendments potentially affect all 132 localities, since the facilities serve individuals from all parts of the state. The proposed amendments do not introduce costs for local governments. Consequently, an adverse economic impact[19] is not indicated for any localities.

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 would not affect the value of children's residential facilities. Even if some facilities incur costs to implement changes or provide training, they would benefit by maintaining compliance with DMAS' reimbursement requirements and/or the requirements of this regulation. The proposed amendments do not affect real estate development costs.

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[1]Section 2.2-4007.04 of the Code of Virginia requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

[2]See https://budget.lis.virginia.gov/item/2020/1/HB30/Chapter/1/318/.

[3]See https://townhall.virginia.gov/l/ViewStage.cfm?stageid=9016. The emergency regulation is currently scheduled to expire on August 19, 2022.

[4]See https://www.vdh.virginia.gov/virginia-youth-survey/data-tables/. The proposed amendments, especially the incorporation of medication assisted treatment, are particularly relevant for opioid use disorder. In 2017, 12.6% of high school students reported ever taking prescription pain medication without a doctor's prescription or differently than how a doctor told them to use it.

[5]ASAM's website indicates that it is a professional medical society, founded in 1954, representing over 6,000 physicians, clinicians and associated professionals in the field of addiction medicine. ASAM describes its mission as being dedicated to increasing access and improving the quality of addiction treatment, educating physicians and the public, supporting research and

prevention, and promoting the appropriate role of physicians in the care of patients with addiction. For additional information, see https://www.asam.org/about-us.

[6]SAMHSA is an agency within the U.S. Department of Health and Human Services whose mission is to reduce the impact of substance abuse and mental illness on America's communities. For more information about SAMHSA, see their website: https://www.samhsa.gov/.

[7]This appears to be the same as The ASAM Criteria: Treatment Criteria for Addictive, Substance-Related, and Co-Occurring Conditions, Third Edition.

[8]See https://townhall.virginia.gov/L/ViewAction.cfm?actionid=4692. The changes made in that action simply indicate that facilities will be reimbursed as per 12VAC30-130-5000 et seq. DMAS regulations pertaining to clinically managed low-intensity residential services can be found in section 5110 (https://law.lis.virginia.gov/admincode/title12/agency30/chapter130/section5110/) and clinically managed medium intensity residential services (adolescent) can be found in section 5130 (https://law.lis.virginia.gov/admincode/title12/agency30/chapter130/section5130/.) The amendments proposed by DBHDS do not appear to be more stringent than DMAS' requirements.

[9]For additional information on ARTS, see https://www.dmas.virginia.gov/for-providers/addiction-and-recovery-treatment-services/ .

[10]The Economic Impact Analysis compares the proposed regulation to the regulation in the Virginia Administrative Code. The emergency regulation is: 1) not in the Virginia Administrative Code (see http://law.lis.virginia.gov/admincode) and 2) temporary. Thus, the Economic Impact Analysis assesses the impact of changing the permanent regulations. Consequently, to the extent that the proposed text matches the emergency text, some of the benefits and costs described here have likely already accrued.

[11]Email to DPB from DBHDS dated December 22, 2021. The email also noted that DBHDS does not collect information on whether providers accept Medicaid.

[12]Agency Background Document, see page 5: https://townhall.virginia.gov/l/GetFile.cfm?File=65\5564\9363\AgencyStatement_DBHDS_9363_v2.pdf. The costs to the agency reflect this regulatory action, as well as costs arising from Action 5563/Stage 9364, which implements ASAM Criteria for other providers. See https://townhall.virginia.gov/l/viewstage.cfm?stageid=9364.

[13]Pursuant to Code § 2.2-4007.04 D: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

[14]Pursuant to § 2.2-4007.04, 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."

[15]If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

[16]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.

[17]"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.

[18]Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

[19]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.

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

Summary:

Pursuant to Item 318 of Chapter 1289 of the 2020 Acts of Assembly (Appropriation Act of 2020), the proposed amendments align Virginia children's residential facilities licensing regulations with the American Society of Addiction Medicine (ASAM) Levels of Care Criteria or an equivalent set of criteria to ensure the provision of outcome-oriented and strengths-based care in the treatment of addiction to ensure individualized, clinically driven, participant-directed, and outcome-informed treatment. The regulatory action provides the necessary definitions for the newly aligned services to be provided and creates staff, program admission, discharge, and co-occurring enhanced program criteria for ASAM levels of care 3.5 and 3.1.

12VAC35-46-10. Definitions.

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

"Allegation" means an accusation that a facility is operating without a license or receiving public funds for services it is not certified to provide.

"Allied health professional" means a professional who is involved with the delivery of health or related services pertaining to the identification, evaluation, and prevention of diseases and disorders, such as a certified substance abuse counselor, certified substance abuse counseling assistant, peer recovery support specialist, certified nurse aide, or occupational therapist.

"Annual" means within 13 months of the previous event or occurrence.

"Applicable state regulation" means any regulation that the department determines applies to the facility. The term includes, but is not necessarily limited to, regulations promulgated by the Departments of Education, Health, Housing and Community Development, or other state agencies.

"Applicant" means the person, corporation, partnership, association, or public agency that has applied for a license.

"ASAM" means the American Society of Addiction Medicine.

"Aversive stimuli" means the physical forces (e.g., sound, electricity, heat, cold, light, water, or noise) or substances (e.g., hot pepper sauce or pepper spray) measurable in duration and intensity that when applied to a resident are noxious or painful to the resident but in no case shall the term "aversive stimuli" include striking or hitting the individual with any part of the body or with an implement or pinching, pulling, or shaking the resident.

"Behavior support" means those principles and methods employed by a provider to help a child achieve positive behavior and to address and correct a child's inappropriate behavior in a constructive and safe manner in accordance with written policies and procedures governing program expectations, treatment goals, child and staff safety and security, and the child's individualized service plan.

"Behavior support assessment" means identification of a resident's behavior triggers, successful intervention strategies, anger and anxiety management options for calming, techniques for self-management, and specific goals that address the targeted behaviors that lead to emergency safety interventions.

"Body cavity search" means any examination of a resident's rectal or vaginal cavities, except the performance of medical procedures by medical personnel.

"Brain injury" means any injury to the brain that occurs after birth, but before age 65, that is acquired through traumatic or nontraumatic insults. Nontraumatic insults may include~~, but are not limited to,~~ anoxia, hypoxia, aneurysm, toxic exposure, encephalopathy, surgical interventions, tumor, and stroke. Brain injury does not include hereditary, congenital, or degenerative brain disorders, or injuries induced by birth trauma.

"Brain Injury Waiver" means a Virginia Medicaid home and community-based waiver for persons with brain injury approved by the Centers for Medicare and Medicaid Services.

"Care" or "treatment" means a set of individually planned interventions, training, habilitation, or supports that help a resident obtain or maintain an optimal level of functioning, reduce the effects of disability or discomfort, or ameliorate symptoms, undesirable changes, or conditions specific to physical, mental, behavioral, or social functioning.

"Child" means any person legally defined as a child under state law. The term includes residents and other children coming into contact with the resident or facility (e.g., visitors). When the term is used, the requirement applies to every child at the facility regardless of whether the child has been admitted to the facility for care (e.g., ~~staff/child~~ staff to child ratios apply to all children present even though some may not be residents).

"Child-placing agency" means any person licensed to place children in foster homes or adoptive homes or a local board of social services authorized to place children in foster homes or adoptive homes.

"Children's residential facility" or "facility" means a publicly or privately operated facility, other than a private family home, where 24-hour per day care is provided to children separated from their legal guardians and is required to be licensed or certified by the Code of Virginia except:

1. Any facility licensed by the Department of Social Services as a child-caring institution as of January 1, 1987, and that receives public funds; and

2. Acute-care private psychiatric hospitals serving children that are licensed by the Department of Behavioral Health and Developmental Services under the Rules and Regulations for ~~the~~ Licensing ~~of~~ Providers ~~of Mental Health, Mental Retardation and Substance Abuse, the Individual and Family Developmental Disabilities Support Waiver, and Residential Brain Injury~~ by the Department of Behavioral Health and Developmental Services, 12VAC35-105.

"Clinically managed, low-intensity residential care" means providing an ongoing therapeutic environment for children requiring some structured support in which treatment is directed toward applying recovery skills; preventing relapse; improving emotional functioning; promoting personal responsibility; reintegrating the child into work, education, and family environments; and strengthening adaptive skills that may not have been achieved or have been diminished during the child's active addiction. A clinically managed, low-intensity residential care is also designed for the child suffering from chronic, long-term alcoholism or drug addiction and affords an extended period of time to establish sound recovery and a solid support system.

"Clinically managed, medium-intensity residential care" means a substance use treatment program that offers 24-hour supportive treatment of children with significant psychological and social problems by credentialed addiction treatment professionals in an interdisciplinary treatment approach. The children served by clinically managed, medium-intensity residential care are children who are not sufficiently stable to benefit from outpatient treatment regardless of intensity of service.

"Commissioner" means the Commissioner of the Department of Behavioral Health and Developmental Services or his authorized agent.

"Complaint" means an accusation against a licensed facility regarding an alleged violation of regulations or law.

"Contraband" means any item prohibited by law or by the rules and regulations of the department, or any item that conflicts with the program or safety and security of the facility or individual residents.

"Corporal punishment" means punishment administered through the intentional inflicting of pain and discomfort to the body through actions such as, but not limited to (i) striking or

hitting with any part of the body or with an implement; or (ii) any similar action that normally inflicts pain or discomfort.

"Counseling" means certain formal treatment interventions such as individual, family, and group modalities, that provide for support and problem solving. Such interventions take place between provider staff and resident families or groups and are aimed at enhancing appropriate psychosocial functioning or personal sense of well-being.

"Corrective action plan" means the provider's pledged corrective action in response to cited areas of noncompliance documented by the department. A corrective action plan must be completed within a specified time.

"Crisis" means any acute emotional disturbance in which a resident presents an immediate danger to self or others or is at risk of serious mental or physical health deterioration caused by acute mental distress, behavioral or situational factors, or acute substance abuse related problems.

"Crisis intervention" means those activities aimed at the rapid management of a crisis.

"Day" means calendar day unless the context clearly indicates otherwise.

"Department" or "DBHDS" means the Department of Behavioral Health and Developmental Services ~~(DBHDS)~~.

"Developmental disability" means a severe, chronic disability of an individual that (i) is attributable to a mental or physical impairment or a combination of mental and physical impairments other than a sole diagnosis of mental illness; (ii) is manifested before the individual reaches 22 years of age; (iii) is likely to continue indefinitely; (iv) results in substantial functional limitations in three or more of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency; and (v) reflects the individual's need for a combination and sequence of special interdisciplinary or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated. An individual from birth to nine years of age, inclusive, who has a substantial developmental delay or specific congenital or acquired condition may be considered to have a developmental disability without meeting three or more of the criteria described in clauses (i) through (v) if the individual without services and supports has a high probability of meeting those criteria later in life.

"Diagnostic and Statistical Manual of Mental Disorders" or "DSM" means the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition, DSM-5, of the American Psychiatric Association.

"DOE" means the Department of Education.

"Emergency" means a sudden, generally unexpected occurrence or set of circumstances demanding immediate action. Emergency does not include regularly scheduled time off for permanent staff or other situations that should reasonably be anticipated.

"Emergency admission" means the sudden, unplanned, unexpected admittance of a child who needs immediate care or a court-ordered placement.

"Goal" means expected results or conditions that usually involve a long period of time and that are written in behavioral terms in a statement of relatively broad scope. Goals provide guidance in establishing specific short-term objectives directed toward the attainment of the goal.

"Good character and reputation" means findings have been established and knowledgeable and objective people agree that the individual maintains business or professional, family, and community relationships that are characterized by honesty, fairness, truthfulness, and dependability, and has a history or pattern of behavior that demonstrates that the individual is suitable and able to care for, supervise, and protect children. Relatives by blood or marriage, and persons who are not knowledgeable of the individual, such as recent acquaintances, shall not be considered objective references.

"Group home" means a children's residential facility that is a community-based, homelike single dwelling, or its acceptable equivalent, other than the private home of the operator, and serves up to 12.

"Health record" means the file maintained by the provider that contains personal health information.

"Human research" means any systematic investigation including research development, testing, and evaluation, utilizing human subjects, that is designed to develop or contribute to generalized knowledge. Human research shall not include research exempt from federal research regulations pursuant to 45 CFR 46.101(b).

"Immediately" means directly without delay.

"Independent living program" means a competency-based program that is specifically approved by the department to provide the opportunity for the residents to develop the skills necessary to live successfully on their own following completion of the program.

"Individualized service plan" means a written plan of action developed and modified at intervals to meet the needs of a specific resident. It specifies measurable short and long-term goals, objectives, strategies, and time frames for reaching the goals and the individuals responsible for carrying out the plan.

"Intellectual disability" means ~~mental retardation~~ a disability originating before 18 years of age, characterized concurrently by (i) significant subaverage intellectual functioning as demonstrated by performance on a standardized measure of

intellectual functioning administered in conformity with accepted professional practice that is at least two standard deviations below the mean and (ii) significant limitations in adaptive behavior as expressed in conceptual, social, and practical adaptive skills.

"Legal guardian" means the natural or adoptive parents or other person, agency, or institution that has legal custody of a child.

"License" means a document verifying approval to operate a children's residential facility and that indicates the status of the facility regarding compliance with applicable state regulations.

"Live-in staff" means staff who are required to be on duty for a period of 24 consecutive hours or more during each work week.

"Living unit" means the space in which a particular group of children in care of a residential facility reside. A living unit contains sleeping areas, bath and toilet facilities, and a living room or its equivalent for use by the residents of the unit. Depending upon its design, a building may contain one living unit or several separate living units.

"Mechanical restraint" means the use of a mechanical device that cannot be removed by the individual to restrict the freedom of movement or functioning of a limb or a portion of an individual's body when that behavior places him or others at imminent risk.

"Medication" means prescribed and over-the-counter drugs.

"Medication administration" means the direct application of medications by injection, inhalation, or ingestion or any other means to a resident by (i) persons legally permitted to administer medications; or (ii) the resident at the direction and in the presence of persons legally permitted to administer medications.

"Medication assisted treatment" or "MAT" means the use of U.S. Food and Drug Administration-approved medications in combination with counseling and behavioral therapies to provide treatment of substance use disorders.

"Medication error" means an error made in administering a medication to a resident including the following: (i) the wrong medication is given to the resident; (ii) the wrong resident is given the medication; (iii) the wrong dosage is given to a resident; (iv) medication is given to a resident at the wrong time or not at all; and (v) the proper method is not used to give the medication to the resident. A medication error does not include a resident's refusal of offered medication.

~~"Mental retardation" ("intellectual disability") means a disability originating before the age of 18 years characterized concurrently by (i) significantly subaverage intellectual functioning as demonstrated by performance on a standardized measure of intellectual functioning, administered in conformity with accepted professional practice, that is at least two standard deviations below the mean; and (ii) significant limitations in adaptive behavior as expressed as conceptual, social, and practical adaptive skills (§ 37.2-100 of the Code of Virginia). According to the American Association of Intellectual Disabilities (AAID) definition, these impairments should be assessed in the context of the individual's environment, considering cultural and linguistic diversity as well as differences in communication, and sensory motor and behavioral factors. Within an individual limitations often coexist with strengths. The purpose of describing limitations is to develop a profile of needed supports. With personalized supports over a sustained period, the functioning of an individual will improve. In some organizations the term "intellectual disability" is used instead of "mental retardation."~~

"Motivational enhancement" means a person-centered approach that is collaborative, employs strategies to strengthen motivation for change, increases engagement in substance use services, resolves ambivalence about changing substance use behaviors, and supports individuals to set goals to change their substance use.

"Neurobehavioral services" means the assessment, evaluation, and treatment of cognitive, perceptual, behavioral, and other impairments caused by brain injury, that affect an individual's ability to function successfully in the community.

"Objective" means expected short-term results or conditions that must be met in order to attain a goal. Objectives are stated in measurable, behavioral terms and have a specified time for achievement.

"On-duty" means that period of time during which a staff person is responsible for the supervision of one or more children.

~~"On-site"~~ "On-site" means services that are delivered by the provider and are an integrated part of the overall service delivery system.

"Parent" means a natural or adoptive parent or surrogate parent appointed pursuant to DOE's regulations governing special education programs for students with disabilities.~~"~~ "Parent" means either parent unless the facility has been provided documentation that there is a legally binding instrument, a state law, or court order governing such matters as divorce, separation, or custody, that provides to the contrary.

"Pat down" means a thorough external body search of a clothed resident.

"Personal health information" means oral, written, or otherwise recorded information that is created or received by an entity relating to either an individual's physical or mental health or the provision of or payment for health care to an individual.

"Placement" means an activity by any person that provides assistance to a parent or legal guardian in locating and effecting

the movement of a child to a foster home, adoptive home, or children's residential facility.

"Premises" means the tracts of land on which any part of a residential facility for children is located and any buildings on such tracts of land.

"Provider" means any person, entity, or organization, excluding an agency of the federal government by whatever name or designation, that delivers (i) residential services to children with mental illness, ~~mental retardation (intellectual disability)~~ developmental disability, or substance abuse; or (ii) residential services for persons with brain injury.

"Record" means up-to-date written or automated information relating to one resident. This information includes social data, agreements, all correspondence relating to the care of the resident, service plans with periodic revisions, aftercare plans and discharge summary, and any other data related to the resident.

"Resident" means a person admitted to a children's residential facility for supervision, care, training, or treatment on a 24-hour per day basis.

"Residential treatment program" means 24-hour, supervised, medically necessary, out-of-home programs designed to provide necessary support and address mental health, behavioral, substance abuse, cognitive, or training needs of a child or adolescent in order to prevent or minimize the need for more intensive inpatient treatment. Services include, but shall not be limited to, assessment and evaluation, medical treatment (including medication), individual and group counseling, neurobehavioral services, and family therapy necessary to treat the child. The service provides active treatment or training beginning at admission related to the resident's principle diagnosis and admitting symptoms. These services do not include interventions and activities designed only to meet the supportive nonmental health special needs including~~, but not limited to,~~ personal care, habilitation, or academic educational needs of the resident.

"Respite care facility" means a facility that is specifically approved to provide short-term, periodic residential care to children accepted into its program in order to give the parents or legal guardians temporary relief from responsibility for their direct care.

"Rest day" means a period of not less than 24 consecutive hours during which a staff person has no responsibility to perform duties related to the facility.

"Restraint" means the use of a mechanical device, medication, physical intervention, or hands-on hold to prevent an individual from moving his body to engage in a behavior that places him or others at imminent risk. There are three kinds of restraints:

1. Mechanical restraint means the use of a mechanical device that cannot be removed by the individual to restrict the freedom of movement or functioning of a limb or a portion of an individual's body when that behavior places him or others at imminent risk.

2. Pharmacological restraint means the use of a medication that is administered involuntarily for the emergency control of an individual's behavior when that individual's behavior places him or others at imminent risk and the administered medication is not a standard treatment for the individual's medical or psychiatric condition.

3. Physical restraint, also referred to as manual hold, means the use of a physical intervention or hands-on hold to prevent an individual from moving his body when that individual's behavior places him or others at imminent risk.

"Routine admission" means the admittance of a child following evaluation of an application for admission and execution of a written placement agreement.

"Rules of conduct" means a listing of a facility's rules or regulations that is maintained to inform residents and others about behaviors that are not permitted and the consequences applied when the behaviors occur.

"Sanitizing agent" means any substance approved by the Environmental Protection Agency to destroy bacteria.

"Seclusion" means the involuntary placement of an individual alone in an area secured by a door that is locked or held shut by a staff person by physically blocking the door, or by any other physical or verbal means so that the individual cannot leave it.

"Self-admission" means the admittance of a child who seeks admission to a temporary care facility as permitted by Virginia statutory law without completing the requirements for "routine admission."

"Serious incident" means:

1. Any accident or injury requiring medical attention by a physician;

2. Any illness that requires hospitalization;

3. Any overnight absence from the facility without permission;

4. Any runaway; or

5. Any event that affects, or potentially may affect, the health, safety, or welfare of any resident being served by the provider.

"Serious injury" means any injury resulting in bodily hurt, damage, harm, or loss that requires medical attention by a licensed physician.

"Service" ~~or "services"~~ means planned individualized interventions intended to reduce or ameliorate mental illness, ~~mental retardation (intellectual disability)~~ developmental disability, or substance abuse through care, treatment, training,

habilitation, or other supports that are delivered by a provider to individuals with mental illness, ~~mental retardation (intellectual disability)~~ developmental disability, or substance abuse. Services include residential services, including those for persons with brain injury.

"Severe weather" means extreme environment or climate conditions that pose a threat to the health, safety, or welfare of residents.

"Social skills training" means activities aimed at developing and maintaining interpersonal skills.

"Strategies" means a series of steps and methods used to meet goals and objectives.

"Strip search" means a visual inspection of the body of a resident when that resident's outer clothing or total clothing is removed and an inspection of the removed clothing. Strip searches are conducted for the detection of contraband.

"Structured program of care" means a comprehensive planned daily routine including appropriate supervision that meets the needs of each resident both individually and as a group.

"Student/intern" means an individual who simultaneously is affiliated with an educational institution and a residential facility. Every student/intern who is not an employee is either a volunteer or contractual service provider depending upon the relationship among the student/intern, educational institution, and facility.

"Substantial compliance" means that while there may be noncompliance with one or more regulations that represents minimal risk, compliance clearly and obviously exists with most of the regulations as a whole.

"Systemic deficiency" means violations documented by the department that demonstrate defects in the overall operation of the facility or one or more of its components.

"Target population" means individuals with a similar, specified characteristic or disability.

"Temporary contract worker" means an individual who is not a direct salaried employee of the provider but is employed by a third party and is not a consistently scheduled staff member.

"Therapy" means provision of direct diagnostic, preventive, and treatment services where functioning is threatened or affected by social and psychological stress or health impairment.

"Time out" means the involuntary removal of a resident by a staff person from a source of reinforcement to a different open location for a specified period of time or until the problem behavior has subsided to discontinue or reduce the frequency of problematic behavior.

"Treatment" means individually planned, sound, and therapeutic interventions that are intended to improve or maintain functioning of an individual receiving services in those areas that show impairment as the result of mental disability, substance addiction, or physical impairment. In order to be considered sound and therapeutic, the treatment must conform to current acceptable professional practice.

"Variance" means temporary or permanent waiver of compliance with a regulation or portion of a regulation, or permission to meet the intent of the regulation by a method other than that specified in the regulation, when the department, in its sole discretion, determines (i) enforcement will create an undue hardship and (ii) resident care will not be adversely affected.

"Volunteers" means any individual or group who of their own free will, and without any financial gain, provides goods and services to the program without compensation.

12VAC35-46-1150. (Reserved).

12VAC35-46-1160. Clinically managed, medium-intensity residential services staff criteria.

A clinically managed, medium-intensity residential care program shall meet the following staff requirements. The program shall:

1. Ensure the availability of emergency consultation with a licensed physician by telephone or in person in case of emergency related to an individual's substance use disorder, available 24 hours a day, seven days a week. The program shall also provide staff 24 hours a day;

2. Provide licensed clinicians who are able to obtain and interpret information regarding the signs and symptoms of intoxication and withdrawal, as well as the appropriate monitoring and treatment of those conditions and how to facilitate entry into ongoing care;

3. Provide appropriately trained staff who are competent to implement physician-approved protocols for the child's or adolescent's observation, supervision, and treatment, including over the counter medications for symptomatic relief, determination for the appropriate level of care, and facilitation of the child's or adolescent's transition to continuing care;

4. Provide staff training that shall include at a minimum the requirements within 12VAC35-46-310, and all staff administering over the counter medications shall complete the training program approved by the Board of Nursing and required by subsection L of § 54.1-3408 of the Code of Virginia;

5. Provide access, as needed, to medical evaluation and consultation, which shall be available 24 hours a day to monitor the safety and outcome of withdrawal management in this setting, in accordance with the provider's written criteria for admission and discharge as required by 12VAC35-46-640 and 12VAC35-46-765; and

6. Ensure all clinical staff are qualified by training and experience and appropriately licensed, certified, or registered by the appropriate health regulatory board to serve individuals admitted to the service.

12VAC35-46-1170. Clinically managed, medium-intensity residential services program criteria.

A clinically managed, medium-intensity residential care program shall meet the following programmatic requirements. The program shall:

1. Provide daily clinical services, including a range of cognitive, behavioral, and other therapies in individual or group therapy, programming, and psychoeducation as deemed appropriate by a licensed professional and included in an assessment and treatment plan;

2. Provide counseling and clinical interventions to teach a child or adolescent the skills needed for daily productive activity, prosocial behavior, and reintegration into family and community;

3. Provide motivational enhancement and engagement strategies appropriate to the child's or adolescent's stage of readiness to change and level of comprehension;

4. Have direct affiliations with other easily accessible levels of care or coordinate through referral to more or less intensive levels of care and other services;

5. Provide family and caregiver treatment services as deemed appropriate by a licensed professional and included in an assessment and treatment plan;

6. Provide educational, vocational, and informational programming adaptive to individual needs;

7. Utilize random drug screening to monitor progress and reinforce treatment gains as appropriate to an individual treatment plan;

8. Ensure and document that the length of stay is determined by the child's or adolescent's condition and functioning;

9. Make medication assisted treatment (MAT) available for all individuals. MAT may be provided by facility staff or coordinated through alternative resources;

10. Provide educational services in accordance with state law to maintain the educational and intellectual development of the child or adolescent while they are admitted to the service. When indicated, additional educational opportunities shall be provided to remedy deficits in the educational level of children or adolescents who have fallen behind because of their involvement with alcohol and other drugs;

11. Ensure that all children and adolescents served by the residential service have access to the substance use treatment program; and

12. Provide daily clinical services to assess and address the child's or adolescent's withdrawal status and service needs. This may include nursing or medical monitoring, use of medications to alleviate symptoms, or individual or group therapy or programming specific to withdrawal and withdrawal support.

12VAC35-46-1180. Clinically managed, medium-intensity residential services admission criteria.

A. A clinically managed, medium-intensity residential care program provides treatment for children who have impaired functioning across a broad range of psychosocial domains, including disruptive behaviors, delinquency and juvenile justice involvement, educational difficulties, family conflicts and chaotic home situations, developmental immaturity, and psychological problems.

B. Before a clinically managed, medium-intensity residential service program may admit a child or adolescent, the child or adolescent shall meet the criteria for admission as defined by the provider's policies. The provider's policy regarding admission shall at a minimum require the child or adolescent to:

1. Meet diagnostic criteria for a substance use disorder or addictive disorder of moderate to high severity as defined by the DSM; and

2. Meet the admission criteria of Level 3.5 of ASAM, including the specific criteria for adolescent populations.

12VAC35-46-1190. Clinically managed, medium-intensity residential services discharge criteria.

Before a clinically managed, medium-intensity residential service program may discharge or transfer a child or adolescent, the child or adolescent shall meet the criteria for discharge or transfer as defined by the provider's policies, which shall include provisions for the discharge or transfer of children or adolescents who have:

1. Achieved the goals of the treatment services and no longer require ASAM 3.5 level of care;

2. Been unable to achieve the goals of the child's or adolescent's treatment but could achieve the child's or adolescent's goals with a different type of treatment; or

3. Achieved the child's or adolescent's original treatment goals but have developed new treatment challenges that can only be adequately addressed in a different type of treatment.

12VAC35-46-1200. Clinically managed, medium-intensity residential services co-occurring enhanced programs.

A. Clinically managed, medium-intensity residential services co-occurring enhanced programs shall offer psychiatric services, medication evaluation, and laboratory services. Such services shall be available by telephone within eight hours and onsite or closely coordinated offsite within 24 hours.

B. Clinically managed, medium-intensity residential services co-occurring enhanced programs shall be staffed by appropriately credentialed mental health professionals, including addiction psychiatrists, who are able to assess and treat co-occurring mental disorders and who have specialized training in behavior management techniques. All clinical staff shall be qualified by training and experience and appropriately licensed, certified, or registered by the appropriate health regulatory board to serve individuals admitted to the service.

C. Clinically managed, medium-intensity residential services co-occurring enhanced programs shall offer planned clinical activities designed to stabilize the child's or adolescent's mental health problems and psychiatric symptoms and to maintain such stabilization, including medication education and management and motivational and engagement strategies. Goals of therapy shall apply to both the substance use disorder and any co-occurring mental disorder.

12VAC35-46-1210. Clinically managed, low-intensity residential services staff criteria.

A clinically managed, low-intensity residential services program shall meet the following staff requirements. The program shall:

1. Offer telephone or in-person consultation with a physician and emergency services, available 24 hours a day, seven days a week by the clinically managed, low-intensity residential services provider. The program shall also provide allied health professional staff present onsite 24 hours a day;

2. Have clinical staff, with the credentials described in subdivision 3 of this section, who are knowledgeable about the biological and psychosocial dimensions of substance use disorder and their treatment and are able to identify the signs and symptoms of acute psychiatric conditions;

3. Have a team comprised of appropriately trained and credentialed medical, addiction, and mental health professionals; and

4. Have staff that shall be knowledgeable about child or adolescent development and experienced in engaging and working with children or adolescents.

5. Ensure all clinical staff are qualified by training and experience and appropriately licensed, certified, or registered by the appropriate health regulatory board to serve individuals admitted to the service.

12VAC35-46-1220. Clinically managed, low-intensity residential services program criteria.

A clinically managed, low-intensity residential services program shall meet the following programmatic requirements. The program shall:

1. Offer a minimum of five hours a week of professionally directed treatment in addition to other treatment services offered to children or adolescents, such as partial hospitalization or intensive outpatient treatment. Services shall be designed to stabilize the child's or adolescent's substance use disorder, improve the child's or adolescent's ability to structure, and organize the tasks of daily living and recovery;

2. Collaborate with care providers to develop an individual treatment plan for each child or adolescent with time-specific goals and objectives;

3. Provide counseling and clinical monitoring to support successful initial involvement in regular, productive daily activity;

4. Provide case management services;

5. Provide motivational interventions appropriate to the child's or adolescent's stage of readiness to change and level of comprehension;

6. Maintain direct affiliations with other easily accessible levels of care or coordinate through referral to more or less intensive levels of care and other services. Include the ability to arrange for needed procedures as appropriate to the severity and urgency of the child's or adolescent's condition;

7. Provide family and caregiver treatment and peer recovery support services as deemed appropriate by a licensed professional and included in an assessment and treatment plan;

8. Provide addiction pharmacotherapy and the ability to arrange for pharmacotherapy for psychiatric medications;

9. Utilize random drug screening to monitor progress and reinforce treatment gains;

10. Ensure that all children and adolescents served by the residential service have access to the substance use treatment program; and

11. Make MAT available for all children. MAT may be provided by facility staff or coordinated through alternative resources.

12VAC35-46-1230. Clinically managed, low-intensity residential services admission criteria.

Before a clinically managed, low-intensity residential service program may admit a child or adolescent, the child or adolescent shall meet the criteria for admission as defined by the provider's policies. The provider's policy regarding admission shall at a minimum require the child or adolescent to:

1. Meet diagnostic criteria for a substance use disorder or addictive disorder of moderate to high severity as defined by the DSM; and

2. Meet the admission criteria of Level 3.1 of ASAM, including the specific criteria of adolescent populations.

12VAC35-46-1240. Clinically managed, low-intensity residential services discharge criteria.

Before a clinically managed, low-intensity residential service program may discharge or transfer a child or adolescent, the child or adolescent shall meet the criteria for discharge or transfer as defined by the provider's policies, which shall include provisions for the discharge or transfer of children or adolescents who have:

1. Achieved the goals of the treatment services and no longer require ASAM 3.1 level of care;

2. Been unable to achieve the goals of the child's or adolescent's treatment but could achieve the child's or adolescent's goals with a different type of treatment; or

3. Achieved the child's or adolescent's original treatment goals but have developed new treatment challenges that can only be adequately addressed in a different type of treatment.

12VAC35-46-1250. Clinically managed, low-intensity residential services co-occurring enhanced programs.

A. Clinically managed, low-intensity residential services co-occurring enhanced programs shall offer appropriate psychiatric services, including medication evaluation and laboratory services. Such services shall be provided onsite or closely coordinated offsite, as appropriate to the severity and urgency of the child's or adolescent's mental condition.

B. Clinically managed, low-intensity residential services co-occurring enhanced programs shall be staffed by appropriately credentialed mental health professionals who are able to assess and treat co-occurring disorders with the capacity to involve addiction-trained psychiatrists.

C. Clinically managed, low-intensity residential services co-occurring enhanced programs shall offer planned clinical activities that are designed to stabilize the child's or adolescent's mental health problems and psychiatric symptoms and to maintain such stabilization, including medication education and management and motivational and engagement strategies. Goals of therapy shall apply to both the substance use disorder and any co-occurring mental disorder.

DOCUMENTS INCORPORATED BY REFERENCE (12VAC35-46)

Report of Tuberculosis Screening, Virginia Department of Health,
http://www.vdh.virginia.gov/epidemiology/DiseasePrevention/Programs/Tuberculosis/Forms/documents/Form2.pdf.

U.S. Department of Health and Human Services and U.S. Department of Agriculture Dietary Guidelines for Americans, 6th Edition, January 2005, U.S. Government Printing Office, Washington, D.C.

The ASAM: Treatment for Addictive, Substance-Related and Co-Occuring Conditions, Third Edition, American Society of Addiction Medicine, 11400 Rockville Pike, Suite 200, Rockville, MD 20852, asam.org.

Diagnostic and Statistical Manual of Mental Disorders, 5th Edition. DSM-5, American Psychiatric Association, 800 Maine Avenue, SW, Suite 900 Washington, DC 20024, psychiatry.org

VA.R. Doc. No. R21-6440; Filed January 13, 2022, 12:17 p.m.

Proposed Regulation

Title of Regulation: **12VAC35-105. Rules and Regulations for Licensing Providers by the Department of Behavioral Health and Developmental Services (amending 12VAC35-105-20, 12VAC35-105-30, 12VAC35-105-1360 through 12VAC35-105-1390, 12VAC35-105-1410).**

Statutory Authority: §§ 37.2-302 and 37.2-400 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: April 15, 2022.

Agency Contact: Ruth Anne Walker, Director of Regulatory Affairs, Department of Behavioral Health and Developmental Services, Jefferson Building, 1220 Bank Street, 4th Floor, Richmond, VA 23219, telephone (804) 225-2252, FAX (804) 371-4609, TDD (804) 371-8977, or email ruthanne.walker@dbhds.virginia.gov.

Basis: Section 37.2-203 of the Code of Virginia authorizes the State Board of Behavioral Health and Developmental Services to adopt regulations that may be necessary to carry out the provisions of Title 37.2 of the Code of Virginia.

Purpose: The purpose of this regulatory action is to align the Department of Behavioral Health and Developmental Services (DBHDS) Licensing regulations with ongoing interagency efforts to enhance Virginia's behavioral health services system. The changes in this regulatory action will ensure that DBHDS's regulations for behavioral health providers align with changes to Medicaid funded behavioral health services in the Commonwealth by eliminating licensing provisions that conflict with Medicaid service expectations and creating new licensed services for those newly funded services that cannot be nested under an existing DBHDS licensed service.

Substance: The substantive provisions of this regulatory action include (i) the creation of a service definition and license for mental health intensive outpatient service; (ii) a revised definition of substance abuse intensive outpatient service; (iii) the creation of assertive community treatment (ACT) as a newly licensed service in place of the previously licensed program for assertive community treatment (PACT) service, which includes modification of the licensing requirements to align with the ACT service model and ensure that providers licensed to provide ACT services meet a basic level of fidelity to the ACT model; and (iv) removal of the provisions of the regulations related to intensive community treatment (ICT) as it will no longer be a licensed service.

Issues: The primary advantages of this regulatory action to the public are (i) ensuring that Virginians have access to a continuum of high quality behavioral health services, (ii) ensuring that a base level of model fidelity is adhered to by providers of ACT, and (iii) aligning DBHDS licensing regulations and Medicaid service expectations to ensure that the licensing and funding of behavioral health services are congruent. The aligning of DBHDS and Department of Medical Assistance Services regulations regarding behavioral health enhancement initiatives will prove an advantage to the Commonwealth because a continuum of publicly funded, high quality, community-based behavioral health services will reduce the need for more costly inpatient hospitalization. There are no known disadvantages to the public or the Commonwealth to these regulatory changes.

Department of Planning and Budget's Economic Impact Analysis:

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 14 (as amended, July 16, 2018). The analysis presented represents DPB's best estimate of these economic impacts.[1]

Summary of the Proposed Amendments to Regulation. The State Board of Behavioral Health and Developmental Services (Board) proposes to align the licensing regulation with changes to Medicaid behavioral health regulations by: 1) removing provisions that would conflict with newly funded behavioral health services and 2) establishing new licensed services for those newly funded behavioral health services that cannot be nested under an existing department license. The proposed amendments were mandated by the 2020 Appropriation Act and implemented via an emergency regulation; the Board now seeks to make those changes permanent. The proposed changes are intended to ensure that the licensing regulation supports high quality community-based mental health services.

Background. Item 313.YYY of Chapter 1289, 2020 Virginia Acts of Assembly, included the following requirements for the Department of Medical Assistance Services (DMAS):[2]

> Effective on or after January 1, 2021, DMAS shall implement programmatic changes and reimbursement rates for the following services: assertive community treatment, multi-systemic therapy and family functional therapy.
>
> Effective on or after July 1, 2021, DMAS shall implement programmatic changes and reimbursement rates for the following services: intensive outpatient services, partial hospitalization programs, mobile crisis intervention services, 23 hour temporary observation services, crisis stabilization services and residential crisis stabilization unit services.

In addition, Item 318.B of Chapter 1289, 2020 Virginia Acts of Assembly, directs the Department of Behavioral Health and Developmental Services (DBHDS) to promulgate emergency regulations to: "ensure that licensing regulations support high quality community-based mental health services and align with the changes being made to the Medicaid behavioral health regulations for the services funded in this Act that support evidence-based, trauma-informed, prevention-focused and cost-effective services for members across the lifespan... The department shall seek input from [DMAS] and other stakeholders to align with the implementation plan for changes being made to the Medicaid behavioral health regulations."[3] Accordingly, the proposed changes were initially implemented via an emergency regulation that became effective February 2021.[4]

The most substantive amendments are summarized below:

> The following definitions would be added to explain each type of service: Assertive community treatment service (ACT), Mental health partial hospitalization service, Mental health intensive outpatient service (MH-IOP), Mental health outpatient service, Substance abuse partial hospitalization service, Substance abuse intensive outpatient service, Substance abuse outpatient service
>
> Definitions for intensive community treatment (ICT) service, program of assertive community (PACT) service, outpatient service and partial hospitalization service would be removed.
>
> In section 30, Licensing, ACT and MH-IOP would be added to the list of licenses issued by DBHDS. License titles for ICT and PACT would be removed.[5] Licenses corresponding to the three substance abuse definitions are addressed in a concurrent action (per footnote 3.)
>
> Sections 1360-1410, which currently pertain to ICT and PACT would be revised to reflect the requirements for ACT instead. These requirements cover admission and discharge, treatment teams and staffing requirements, contacts, daily operation and progress notes, and service requirements. The proposed changes include: Adding personality disorder and brain injury to the list of sole diagnoses that render an individual ineligible for ACT services. Requiring that a Vocational Specialist be a registered qualified mental health professional (QMHP) with demonstrated expertise in vocational services through experience or education. Requiring that the ACT co-occurring disorder specialist be a licensed mental health professional (LMHP), registered QMHP, or Certified Substance Abuse Specialist with training or experience working with adults with co-occurring serious mental illness and substance use disorder. Requiring that a peer recovery specialist must be a Certified Peer Recovery Specialist (CPRS) or certify as a CPRS within the first year of employment. Allowing a Psychiatric Nurse Practitioner practicing within the scope of practice of a Psychiatric Nurse Practitioner to fill the psychiatrist position on an ACT team. Requiring that the ACT team leader be a LMHP or a registered Qualified Mental Health

Professional-Adult if already employed as a team leader prior to July 1, 2020.

Minimum staff to individual ratios for ACT teams would be defined based on the size of the team and the team's caseload. The proposed maximum caseloads are 50 individuals for a small team, 74 individuals for a medium team, and 120 individuals for a large team. The corresponding staffing requirements would be at least one staff member per eight individuals for the small teams, and at least one staff member per nine individuals for the medium and large teams, in addition to a psychiatric care provider and a program assistant. The proposed amendments also include specific requirements for the number of generalist clinical staff and nurse staff based on team size.

The proposed amendments would require ACT teams to have responsibility for directly responding to psychiatric crises, including meeting the following criteria: The team must be available to individuals in crisis 24 hours per day, seven days per week, including in person when needed as determined by the team; The team must be the first-line crisis evaluator and responder for individuals serviced by the team; and The team must have access to the practical, individualized crisis plans developed to help them address crises for each individual receiving services.

The proposed amendments would add the following three additional services that providers must provide and document consistent with the individual's assessment and individual treatment plan: Assistance in developing and maintaining natural supports and social relationships; Medication education, assistance, and support; and Peer support services, such as coaching, mentoring, assistance with self-advocacy and self-direction, and modeling recovery practices.

Estimated Benefits and Costs. The proposed amendments are intended to benefit individuals receiving publicly funded behavioral health services by providing high quality, community-based services. By providing a continuum of community-based behavioral health services, DBHDS and DMAS aim to reduce the need for more costly inpatient hospitalization.[6] Individuals receiving these services may also benefit from avoiding inpatient hospitalization, which may be more disruptive to their lives and/or be more heavily stigmatized.

DBHDS reports that they would incur costs related to the promulgation of regulations, training for providers, and conducting additional inspections. Specifically, DBHDS would issue conditional licenses for six months and conduct an inspection to ensure regulatory compliance. DBHDS anticipates needing to conduct approximately 250 initial inspections after the first six month period. The outcome of those inspections would determine if an additional inspection is required later that year. Additional new initial inspections may be required if there are new providers as a result of this regulatory change. The agency would also need to provide technical assistance to providers, to include issuing corrective action plans and confirming implementation of the plans.

DBHDS-licensed providers of ICT or PACT who participate in the state's Medicaid program would have to transition their care model to ACT. These providers would likely face one-time costs for additional staff training on ACT and new ongoing costs associated with staffing requirements for the treatment teams, including the provision of 24-hour crisis services. Providers are likely to face challenges recruiting and retaining trained professionals. DBHDS reports that positions such as the psychiatrist, nursing staff, and licensed mental health professionals have long been difficult to recruit and retain due to a) overall nationwide workforce shortage, b) the intensive nature of the model and c) the significant disparity in salary that one with the aforementioned qualifications could secure in less intensive, more traditional settings. While inspections have not yet occurred, the Office of Licensing has had individual meetings with the vast majority of ACT providers in conjunction with DMAS to discuss transition plans and work through potential barriers.[7]

Businesses and Other Entities Affected. The proposed amendments affect community services boards (CSB) and private providers in the Commonwealth. Prior to the transition, DBHDS licensed approximately 12 ICT teams (six private providers and six CSBs) and 32 PACT teams (all CSBs). The Department's Office of Licensing licenses approximately 42 ACT Teams. Of those, 38 are operated by CSBs. One ICT team is still licensed and operated by a CSB.[8]

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.[9] An 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. As noted above, the proposed amendments would require providers to invest in training and likely expand their staff to meet the treatment team staffing requirements. Thus, an adverse impact is indicated.

Small Businesses[10] Affected.[11] The proposed amendments appear to adversely affect small businesses; however, the number of affected entities that are small businesses is unknown.

Types and Estimated Number of Small Businesses Affected. The proposed amendments could affect the four private providers that have ACT licenses if they accept Medicaid; however, DBHDS does not have any data to indicate the number of affected entities that are small businesses.

Costs and Other Effects. Providers that participate in Medicaid and are licensed by DBHDS to provide mental health treatment services as described above would face additional costs relating to training and hiring staff. Thus, an adverse economic impact[12] on these providers is indicated.

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] Many CSBs (which are funded in part by local governments) provide behavioral health services, including PACT and ICT, and would be affected similarly to private providers. Most teams run by CSBs appear to have already transitioned to the ACT license and treatment model. Additional funds may be needed to support the staffing requirements in the proposed amendments; however, those costs may be covered by Medicaid reimbursements for the new licensed services. Thus, the total cost to localities as a result of the proposed amendments is unknown. DBHDS reports that no locality would be disproportionately affected. Consequently, an adverse economic impact[15] is indicated for local governments in general.

Projected Impact on Employment. Based on the treatment team staffing requirements in the proposed amendments, the proposed amendments would likely increase the demand for credentialed mental health professionals, allied health professionals, and nurses by CSBs and private providers. However, there are only 42 licensed ACT teams so far and positions such as the psychiatrist, nursing staff, and licensed mental health professionals have long been difficult to recruit and retain. Thus, although the proposed changes require more hiring, any practical impact on employment is likely to be small in magnitude.

Effects on the Use and Value of Private Property. The proposed requirements increase costs to private DBHDS licensed providers, but also allow them to continue receiving reimbursements from DMAS. Consequently, the value of these providers is unlikely to be affected. The proposed amendments do not affect real estate development costs.

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[1]Section 2.2-4007.04 of the Code of Virginia requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

[2]See https://budget.lis.virginia.gov/item/2020/1/HB30/Chapter/1/313/

[3]See https://budget.lis.virginia.gov/item/2020/1/HB30/Chapter/1/318/. This chapter is being amended concurrently via another action to align it with the American Society of Addiction Medicine Levels of Care Criteria. See: https://townhall.virginia.gov/L/ViewAction.cfm?actionid=5563.

[4]See https://townhall.virginia.gov/L/ViewStage.cfm?stageid=9017. The emergency regulation is currently scheduled to expire on August 19, 2022.

[5]Unlike occupational and professional licensing boards, DBHDS licenses apply to residential facilities that "offer services to individuals who have mental illness, a developmental disability, or substance abuse (substance use disorders) or have brain injury." A facility (provider) has multiple licenses depending on the services they provide.

[6]The changes in this action are part of a broader redesign of the state's behavioral health services that is expected to create savings for the Medicaid program. See https://www.virginiaaba.org/wp-content/uploads/2021/03/MSR-2021-059-002-W-Attachment-Medicaid-Bulletin-V1.0-dtd-030121.pdf.

[7]Email to DPB from DBHDS, December 21, 2021.

[8]Email to DPB from DBHDS, December 22, 2021. The email also noted that DBHDS does not collect information on whether providers accept Medicaid and that some CSBs operate multiple ACT teams.

[9]Pursuant to Code § 2.2-4007.04 D: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

[10]Pursuant to § 2.2-4007.04, 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]If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

[12]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.

[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]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.

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

Summary:

Pursuant to Item 318 of Chapter 1289 of the 2020 Acts of Assembly (2020 Appropriation Act) and to align the department's licensing regulations with anticipated changes to Medicaid behavioral health regulations in Item 313 of Chapter 1289, the proposed amendments remove provisions that would conflict with newly funded behavioral health services and establish new licensed services for those newly funded behavioral health services that cannot be nested under an existing department license, including substantive changes to the existing license requirements for Program for Assertive Community Treatment (PACT) services, which are inconsistent with the Assertive Community Treatment (ACT) services that will be funded as part of Behavioral Health Enhancement.

The proposed amendments include (i) the creation of a service definition and license for mental health intensive

outpatient service; (ii) a revised definition of substance abuse intensive outpatient service; (iii) the creation of assertive community treatment (ACT) as a newly licensed service in place of the previously licensed program for assertive community treatment (PACT) service, which includes modification of the licensing requirements to align with the ACT service model and ensure that providers licensed to provide ACT services meet a basic level of fidelity to the ACT model; and (iv) the removal of the provisions of the regulations related to intensive community treatment (ICT) as it will no longer be a licensed service.

12VAC35-105-20. Definitions and units of measurement.

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

"Abuse" means any act or failure to act by an employee or other person responsible for the care of an individual in a facility or program operated, licensed, or funded by the department, excluding those operated by the Virginia Department of Corrections, that was performed or was failed to be performed knowingly, recklessly, or intentionally, and that caused or might have caused physical or psychological harm, injury, or death to an individual receiving care or treatment for mental illness, developmental disabilities, or substance abuse. Examples of abuse include acts such as:

1. Rape, sexual assault, or other criminal sexual behavior;

2. Assault or battery;

3. Use of language that demeans, threatens, intimidates, or humiliates the individual;

4. Misuse or misappropriation of the individual's assets, goods, or property;

5. Use of excessive force when placing an individual in physical or mechanical restraint;

6. Use of physical or mechanical restraints on an individual that is not in compliance with federal and state laws, regulations, and policies, professional accepted standards of practice, or his individualized services plan; or

7. Use of more restrictive or intensive services or denial of services to punish an individual or that is not consistent with his individualized services plan.

"Activities of daily living" or "ADLs" means personal care activities and includes bathing, dressing, transferring, toileting, grooming, hygiene, feeding, and eating. An individual's degree of independence in performing these activities is part of determining the appropriate level of care and services.

"Admission" means the process of acceptance into a service as defined by the provider's policies.

"Assertive community treatment service" or "ACT" means a self-contained interdisciplinary community-based team of medical, behavioral health, and rehabilitation professionals who use a team approach to meet the needs of an individual with severe and persistent mental illness. ACT teams:

1. Provide person-centered services addressing the breadth of an individual's needs, helping him achieve his personal goals;

2. Serve as the primary provider of all the services that an individual receiving ACT services needs;

3. Maintain a high frequency and intensity of community-based contacts;

4. Maintain a very low individual-to-staff ratio;

5. Offer varying levels of care for all individuals receiving ACT services, and appropriately adjust service levels according to each individual's needs over time;

6. Assist individuals in advancing toward personal goals with a focus on enhancing community integration and regaining valued roles, such as worker, family member, resident, spouse, tenant, or friend;

7. Carry out planned assertive engagement techniques, including rapport-building strategies, facilitating meeting basic needs, and motivational interviewing techniques;

8. Monitor the individual's mental status and provide needed supports in a manner consistent with the individual's level of need and functioning;

9. Deliver all services according to a recovery-based philosophy of care; and

10. Promote self-determination, respect for the individual receiving ACT as an individual in such individual's own right, and engage peers in promoting recovery and regaining meaningful roles and relationships in the community.

"Authorized representative" means a person permitted by law or 12VAC35-115 to authorize the disclosure of information or consent to treatment and services or participation in human research.

"Behavior intervention" means those principles and methods employed by a provider to help an individual receiving services to achieve a positive outcome and to address challenging behavior in a constructive and safe manner. Behavior intervention principles and methods shall be employed in accordance with the individualized services plan and written policies and procedures governing service expectations, treatment goals, safety, and security.

"Behavioral treatment plan," "functional plan," or "behavioral support plan" means any set of documented procedures that are an integral part of the individualized services plan and are developed on the basis of a systematic data collection, such as a functional assessment, for the purpose of assisting individuals to achieve the following:

1. Improved behavioral functioning and effectiveness;

2. Alleviation of symptoms of psychopathology; or

3. Reduction of challenging behaviors.

"Brain injury" means any injury to the brain that occurs after birth~~, but before age 65,~~ that is acquired through traumatic or nontraumatic insults. Nontraumatic insults may include anoxia, hypoxia, aneurysm, toxic exposure, encephalopathy, surgical interventions, tumor, and stroke. Brain injury does not include hereditary, congenital, or degenerative brain disorders or injuries induced by birth trauma.

"Care," "treatment," or "support" means the individually planned therapeutic interventions that conform to current acceptable professional practice and that are intended to improve or maintain functioning of an individual receiving services delivered by a provider.

"Case management service" or "support coordination service" means services that can include assistance to individuals and their family members in accessing needed services that are responsive to the individual's needs. Case management services include identifying potential users of the service; assessing needs and planning services; linking the individual to services and supports; assisting the individual directly to locate, develop, or obtain needed services and resources; coordinating services with other providers; enhancing community integration; making collateral contacts; monitoring service delivery; discharge planning; and advocating for individuals in response to their changing needs. "Case management service" does not include assistance in which the only function is maintaining service waiting lists or periodically contacting or tracking individuals to determine potential service needs.

"Clinical experience" means providing direct services to individuals with mental illness or the provision of direct geriatric services or special education services. Experience may include supervised internships, practicums, and field experience.

"Commissioner" means the Commissioner of the Department of Behavioral Health and Developmental Services.

"Community gero-psychiatric residential services" means 24-hour care provided to individuals with mental illness, behavioral problems, and concomitant health problems who are usually age 65 or older in a geriatric setting that is less intensive than a psychiatric hospital but more intensive than a nursing home or group home. Services include assessment and individualized services planning by an interdisciplinary services team, intense supervision, psychiatric care, behavioral treatment planning and behavior interventions, nursing, and other health related services.

"Complaint" means an allegation of a violation of this chapter or a provider's policies and procedures related to this chapter.

"Co-occurring disorders" means the presence of more than one and often several of the following disorders that are identified independently of one another and are not simply a cluster of symptoms resulting from a single disorder: mental illness, a developmental disability, substance abuse (substance use disorders), or brain injury.

"Co-occurring services" means individually planned therapeutic treatment that addresses in an integrated concurrent manner the service needs of individuals who have co-occurring disorders.

"Corrective action plan" means the provider's pledged corrective action in response to cited areas of noncompliance documented by the regulatory authority.

"Correctional facility" means a facility operated under the management and control of the Virginia Department of Corrections.

"Crisis" means a deteriorating or unstable situation often developing suddenly or rapidly that produces acute, heightened, emotional, mental, physical, medical, or behavioral distress.

"Crisis stabilization" means direct, intensive nonresidential or residential direct care and treatment to nonhospitalized individuals experiencing an acute crisis that may jeopardize their current community living situation. Crisis stabilization is intended to avert hospitalization or rehospitalization; provide normative environments with a high assurance of safety and security for crisis intervention; stabilize individuals in crisis; and mobilize the resources of the community support system, family members, and others for ongoing rehabilitation and recovery.

"Day support service" means structured programs of training, assistance, and specialized supervision in the acquisition, retention, or improvement of self-help, socialization, and adaptive skills for adults with a developmental disability provided to groups or individuals in nonresidential community-based settings. Day support services may provide opportunities for peer interaction and community integration and are designed to enhance the following: self-care and hygiene, eating, toileting, task learning, community resource utilization, environmental and behavioral skills, social skills, medication management, prevocational skills, and transportation skills. The term "day support service" does not include services in which the primary function is to provide employment-related services, general educational services, or general recreational services.

"Department" means the Virginia Department of Behavioral Health and Developmental Services.

"Developmental disability" means a severe, chronic disability of an individual that (i) is attributable to a mental or physical impairment or a combination of mental and physical impairments other than a sole diagnosis of mental illness; (ii)

is manifested before the individual reaches 22 years of age; (iii) is likely to continue indefinitely; (iv) results in substantial functional limitations in three or more of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency; and (v) reflects the individual's need for a combination and sequence of special interdisciplinary or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated. An individual from birth to nine years of age, inclusive, who has a substantial developmental delay or specific congenital or acquired condition may be considered to have a developmental disability without meeting three or more of the criteria described in clauses (i) through (v) if the individual without services and supports has a high probability of meeting those criteria later in life.

"Developmental services" means planned, individualized, and person-centered services and supports provided to individuals with developmental disabilities for the purpose of enabling these individuals to increase their self-determination and independence, obtain employment, participate fully in all aspects of community life, advocate for themselves, and achieve their fullest potential to the greatest extent possible.

"Direct care position" means any position that includes responsibility for (i) treatment, case management, health, safety, development, or well-being of an individual receiving services or (ii) immediately supervising a person in a position with this responsibility.

"Discharge" means the process by which the individual's active involvement with a service is terminated by the provider, individual, or authorized representative.

"Discharge plan" means the written plan that establishes the criteria for an individual's discharge from a service and identifies and coordinates delivery of any services needed after discharge.

"Dispense" means to deliver a drug to an ultimate user by or pursuant to the lawful order of a practitioner, including the prescribing and administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery (§ 54.1-3400 et seq. of the Code of Virginia).

"Emergency service" means unscheduled and sometimes scheduled crisis intervention, stabilization, and referral assistance provided over the telephone or face-to-face, if indicated, available 24 hours a day and seven days per week. Emergency services also may include walk-ins, home visits, jail interventions, and preadmission screening activities associated with the judicial process.

"Group home or community residential service" means a congregate service providing 24-hour supervision in a community-based home having eight or fewer residents. Services include supervision, supports, counseling, and training in activities of daily living for individuals whose individualized services plan identifies the need for the specific types of services available in this setting.

"HCBS Waiver" means a Medicaid Home and Community Based Services Waiver.

"Home and noncenter based" means that a service is provided in the individual's home or other noncenter-based setting. This includes noncenter-based day support, supportive in-home, and intensive in-home services.

"Individual" or "individual receiving services" means a current direct recipient of public or private mental health, developmental, or substance abuse treatment, rehabilitation, or habilitation services and includes the terms "consumer," "patient," "resident," "recipient," or "client". When the term is used in this chapter, the requirement applies to every individual receiving licensed services from the provider.

"Individualized services plan" or "ISP" means a comprehensive and regularly updated written plan that describes the individual's needs, the measurable goals and objectives to address those needs, and strategies to reach the individual's goals. An ISP is person-centered, empowers the individual, and is designed to meet the needs and preferences of the individual. The ISP is developed through a partnership between the individual and the provider and includes an individual's treatment plan, habilitation plan, person-centered plan, or plan of care, which are all considered individualized service plans.

"Informed choice" means a decision made after considering options based on adequate and accurate information and knowledge. These options are developed through collaboration with the individual and his authorized representative, as applicable, and the provider with the intent of empowering the individual and his authorized representative to make decisions that will lead to positive service outcomes.

"Informed consent" means the voluntary written agreement of an individual, or that individual's authorized representative, to surgery, electroconvulsive treatment, use of psychotropic medications, or any other treatment or service that poses a risk of harm greater than that ordinarily encountered in daily life or for participation in human research. To be voluntary, informed consent must be given freely and without undue inducement; any element of force, fraud, deceit, or duress; or any form of constraint or coercion.

"Initial assessment" means an assessment conducted prior to or at admission to determine whether the individual meets the service's admission criteria; what the individual's immediate service, health, and safety needs are; and whether the provider has the capability and staffing to provide the needed services.

"Inpatient psychiatric service" means intensive 24-hour medical, nursing, and treatment services provided to individuals with mental illness or substance abuse (substance

use disorders) in a hospital as defined in § 32.1-123 of the Code of Virginia or in a special unit of such a hospital.

"Instrumental activities of daily living" or "IADLs" means meal preparation, housekeeping, laundry, and managing money. A person's degree of independence in performing these activities is part of determining appropriate level of care and services.

"Intellectual disability" means a disability originating before 18 years of age, characterized concurrently by (i) significant subaverage intellectual functioning as demonstrated by performance on a standardized measure of intellectual functioning administered in conformity with accepted professional practice that is at least two standard deviations below the mean and (ii) significant limitations in adaptive behavior as expressed in conceptual, social, and practical adaptive skills.

~~"Intensive community treatment service" or "ICT" means a self-contained interdisciplinary team of at least five full-time equivalent clinical staff, a program assistant, and a full-time psychiatrist that:~~

~~1. Assumes responsibility for directly providing needed treatment, rehabilitation, and support services to identified individuals with severe and persistent mental illness, especially those who have severe symptoms that are not effectively remedied by available treatments or who because of reasons related to their mental illness resist or avoid involvement with mental health services;~~

~~2. Minimally refers individuals to outside service providers;~~

~~3. Provides services on a long-term care basis with continuity of caregivers over time;~~

~~4. Delivers 75% or more of the services outside program offices; and~~

~~5. Emphasizes outreach, relationship building, and individualization of services.~~

"Intensive in-home service" means family preservation interventions for children and adolescents who have or are at-risk of serious emotional disturbance, including individuals who also have a diagnosis of developmental disability. Intensive in-home service is usually time-limited and is provided typically in the residence of an individual who is at risk of being moved to out-of-home placement or who is being transitioned back home from an out-of-home placement. The service includes 24-hour per day emergency response; crisis treatment; individual and family counseling; life, parenting, and communication skills; and case management and coordination with other services.

"Intermediate care facility/individuals with intellectual disability" or "ICF/IID" means a facility or distinct part of a facility certified by the Virginia Department of Health as meeting the federal certification regulations for an intermediate care facility for individuals with intellectual disability and persons with related conditions and that addresses the total needs of the residents, which include physical, intellectual, social, emotional, and habilitation, providing active treatment as defined in 42 CFR 435.1010 and 42 CFR 483.440.

"Investigation" means a detailed inquiry or systematic examination of the operations of a provider or its services regarding an alleged violation of regulations or law. An investigation may be undertaken as a result of a complaint, an incident report, or other information that comes to the attention of the department.

"Licensed mental health professional" or "LMHP" means a physician, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker, licensed substance abuse treatment practitioner, licensed marriage and family therapist, certified psychiatric clinical nurse specialist, licensed behavior analyst, or licensed psychiatric/mental health nurse practitioner.

"Location" means a place where services are or could be provided.

"Medically managed withdrawal services" means detoxification services to eliminate or reduce the effects of alcohol or other drugs in the individual's body.

"Mandatory outpatient treatment order" means an order issued by a court pursuant to § 37.2-817 of the Code of Virginia.

"Medical detoxification" means a service provided in a hospital or other 24-hour care facility under the supervision of medical personnel using medication to systematically eliminate or reduce effects of alcohol or other drugs in the individual's body.

"Medical evaluation" means the process of assessing an individual's health status that includes a medical history and a physical examination of an individual conducted by a licensed medical practitioner operating within the scope of his license.

"Medication" means prescribed or over-the-counter drugs or both.

"Medication administration" means the direct application of medications by injection, inhalation, ingestion, or any other means to an individual receiving services by (i) persons legally permitted to administer medications or (ii) the individual at the direction and in the presence of persons legally permitted to administer medications.

"Medication assisted treatment (Opioid treatment service)" means an intervention strategy that combines outpatient treatment with the administering or dispensing of synthetic narcotics, such as methadone or buprenorphine (suboxone), approved by the federal Food and Drug Administration for the

purpose of replacing the use of and reducing the craving for opioid substances, such as heroin or other narcotic drugs.

"Medication error" means an error in administering a medication to an individual and includes when any of the following occur: (i) the wrong medication is given to an individual, (ii) the wrong individual is given the medication, (iii) the wrong dosage is given to an individual, (iv) medication is given to an individual at the wrong time or not at all, or (v) the wrong method is used to give the medication to the individual.

"Medication storage" means any area where medications are maintained by the provider, including a locked cabinet, locked room, or locked box.

"Mental Health Community Support Service " or "MCHSS" means the provision of recovery-oriented services to individuals with long-term, severe mental illness. MHCSS includes skills training and assistance in accessing and effectively utilizing services and supports that are essential to meeting the needs identified in the individualized services plan and development of environmental supports necessary to sustain active community living as independently as possible. MHCSS may be provided in any setting in which the individual's needs can be addressed, skills training applied, and recovery experienced.

"Mental health intensive outpatient service" means a structured program of skilled treatment services focused on maintaining and improving functional abilities through a time-limited, interdisciplinary approach to treatment. This service is provided over a period of time for individuals requiring more intensive services than an outpatient service can provide and may include individual, family, or group counseling or psychotherapy; skill development and psychoeducational activities; certified peer support services; medication management; and psychological assessment or testing.

"Mental health outpatient service" means treatment provided to individuals on an hourly schedule, on an individual, group, or family basis, and usually in a clinic or similar facility or in another location. Mental health outpatient services may include diagnosis and evaluation, screening and intake, counseling, psychotherapy, behavior management, psychological testing and assessment, laboratory, and other ancillary services, medical services, and medication services. Mental health outpatient service specifically includes:

1. Mental health services operated by a community services board or a behavioral health authority established pursuant to Chapter 5 (§ 37.2-500 et seq.) or Chapter 6 (§ 37.2-600 et seq.) of Title 37.2 of the Code of Virginia;

2. Mental health services contracted by a community services board or a behavioral health authority established pursuant to Chapter 5 (§ 37.2-500 et seq.) or Chapter 6 (§ 37.2-600 et seq.) of Title 37.2 of the Code of Virginia; or

3. Mental health services that are owned, operated, or controlled by a corporation organized pursuant to the provisions of either Chapter 9 (§ 13.1-601 et seq.) or Chapter 10 (§13.1-801 et seq.) of Title 13.1 of the Code of Virginia.

"Mental health partial hospitalization service" means time-limited active treatment interventions that are more intensive than outpatient services, designed to stabilize and ameliorate acute symptoms, and serve as an alternative to inpatient hospitalization or to reduce the length of a hospital stay. Partial hospitalization is provided through a minimum of 20 hours per week of skilled treatment services focused on individuals who require intensive, high coordinated, structured, and interdisciplinary ambulatory treatment within a stable environment that is of greater intensity than intensive outpatient, but of lesser intensity than inpatient.

"Mental illness" means a disorder of thought, mood, emotion, perception, or orientation that significantly impairs judgment, behavior, capacity to recognize reality, or ability to address basic life necessities and requires care and treatment for the health, safety, or recovery of the individual or for the safety of others.

"Missing" means a circumstance in which an individual is not physically present when and where he should be and his absence cannot be accounted for or explained by his supervision needs or pattern of behavior.

"Neglect" means the failure by a person, or a program or facility operated, licensed, or funded by the department, excluding those operated by the Department of Corrections, responsible for providing services to do so, including nourishment, treatment, care, goods, or services necessary to the health, safety, or welfare of an individual receiving care or treatment for mental illness, developmental disabilities, or substance abuse.

"Neurobehavioral services" means the assessment, evaluation, and treatment of cognitive, perceptual, behavioral, and other impairments caused by brain injury that affect an individual's ability to function successfully in the community.

~~"Outpatient service" means treatment provided to individuals on an hourly schedule, on an individual, group, or family basis, and usually in a clinic or similar facility or in another location. Outpatient services may include diagnosis and evaluation, screening and intake, counseling, psychotherapy, behavior management, psychological testing and assessment, laboratory and other ancillary services, medical services, and medication services. "Outpatient service" specifically includes:~~

~~1. Services operated by a community services board or a behavioral health authority established pursuant to Chapter 5 (§ 37.2 500 et seq.) or Chapter 6 (§ 37.2 600 et seq.) of Title 37.2 of the Code of Virginia;~~

~~2. Services contracted by a community services board or a behavioral health authority established pursuant to Chapter~~

~~5 (§ 37.2-500 et seq.) or Chapter 6 (§ 37.2-600 et seq.) of Title 37.2 of the Code of Virginia; or~~

~~3. Services that are owned, operated, or controlled by a corporation organized pursuant to the provisions of either Chapter 9 (§ 13.1-601 et seq.) or Chapter 10 (§ 13.1-801 et seq.) of Title 13.1 of the Code of Virginia.~~

~~"Partial hospitalization service" means time-limited active treatment interventions that are more intensive than outpatient services, designed to stabilize and ameliorate acute symptoms, and serve as an alternative to inpatient hospitalization or to reduce the length of a hospital stay. Partial hospitalization is focused on individuals with serious mental illness, substance abuse (substance use disorders), or co-occurring disorders at risk of hospitalization or who have been recently discharged from an inpatient setting.~~

"Person-centered" means focusing on the needs and preferences of the individual; empowering and supporting the individual in defining the direction for his life; and promoting self-determination, community involvement, and recovery.

~~"Program of assertive community treatment service" or "PACT" means a self-contained interdisciplinary team of at least 10 full-time equivalent clinical staff, a program assistant, and a full-time or part-time psychiatrist that:~~

~~1. Assumes responsibility for directly providing needed treatment, rehabilitation, and support services to identified individuals with severe and persistent mental illnesses, including those who have severe symptoms that are not effectively remedied by available treatments or who because of reasons related to their mental illness resist or avoid involvement with mental health services;~~

~~2. Minimally refers individuals to outside service providers;~~

~~3. Provides services on a long-term care basis with continuity of caregivers over time;~~

~~4. Delivers 75% or more of the services outside program offices; and~~

~~5. Emphasizes outreach, relationship building, and individualization of services.~~

"Provider" means any person, entity, or organization, excluding an agency of the federal government by whatever name or designation, that delivers (i) services to individuals with mental illness, developmental disabilities, or substance abuse (substance use disorders) or (ii) residential services for individuals with brain injury. The person, entity, or organization shall include a hospital as defined in § 32.1-123 of the Code of Virginia, community services board, behavioral health authority, private provider, and any other similar or related person, entity, or organization. It shall not include any individual practitioner who holds a license issued by a health regulatory board of the Department of Health Professions or who is exempt from licensing pursuant to §§ 54.1-2901, 54.1-3001, 54.1-3501, 54.1-3601, and 54.1-3701 of the Code of Virginia.

"Psychosocial rehabilitation service" means a program of two or more consecutive hours per day provided to groups of adults in a nonresidential setting. Individuals must demonstrate a clinical need for the service arising from a condition due to mental, behavioral, or emotional illness that results in significant functional impairments in major life activities. This service provides education to teach the individual about mental illness, substance abuse, and appropriate medication to avoid complication and relapse and opportunities to learn and use independent skills and to enhance social and interpersonal skills within a consistent program structure and environment. Psychosocial rehabilitation includes skills training, peer support, vocational rehabilitation, and community resource development oriented toward empowerment, recovery, and competency.

"Qualified developmental disability professional" or "QDDP" means a person who possesses at least one year of documented experience working directly with individuals who have a developmental disability and who possesses one of the following credentials: (i) a doctor of medicine or osteopathy licensed in Virginia, (ii) a registered nurse licensed in Virginia, (iii) a licensed occupational therapist, or (iv) completion of at least a bachelor's degree in a human services field, including sociology, social work, special education, rehabilitation counseling, or psychology.

"Qualified mental health professional" or "QMHP" means a person who by education and experience is professionally qualified and registered by the Board of Counseling in accordance with 18VAC115-80 to provide collaborative mental health services for adults or children. A QMHP shall not engage in independent or autonomous practice. A QMHP shall provide such services as an employee or independent contractor of the department or a provider licensed by the department.

"Qualified mental health professional-adult" or "QMHP-A" means a person who by education and experience is professionally qualified and registered with the Board of Counseling in accordance with 18VAC115-80 to provide collaborative mental health services for adults. A QMHP-A shall provide such services as an employee or independent contractor of the department or a provider licensed by the department. A QMHP-A may be an occupational therapist who by education and experience is professionally qualified and registered with the Board of Counseling in accordance with 18VAC115-80.

"Qualified mental health professional-child" or "QMHP-C" means a person who by education and experience is professionally qualified and registered with the Board of Counseling in accordance with 18VAC115-80 to provide collaborative mental health services for children. A QMHP-C shall provide such services as an employee or independent

contractor of the department or a provider licensed by the department. A QMHP-C may be an occupational therapist who by education and experience is professionally qualified and registered with the Board of Counseling in accordance with 18VAC115-80.

"Qualified mental health professional-eligible" or "QMHP-E" means a person receiving supervised training in order to qualify as a QMHP in accordance with 18VAC115-80 and who is registered with the Board of Counseling.

"Qualified paraprofessional in mental health" or "QPPMH" means a person who must meet at least one of the following criteria: (i) registered with the United States Psychiatric Association (USPRA) as an Associate Psychiatric Rehabilitation Provider (APRP); (ii) has an associate's degree in a related field (social work, psychology, psychiatric rehabilitation, sociology, counseling, vocational rehabilitation, human services counseling) and at least one year of experience providing direct services to individuals with a diagnosis of mental illness; (iii) licensed as an occupational therapy assistant, and supervised by a licensed occupational therapist, with at least one year of experience providing direct services to individuals with a diagnosis of mental illness; or (iv) has a minimum of 90 hours classroom training and 12 weeks of experience under the direct personal supervision of a QMHP-A providing services to individuals with mental illness and at least one year of experience (including the 12 weeks of supervised experience).

"Quality improvement plan" means a detailed work plan developed by a provider that defines steps the provider will take to review the quality of services it provides and to manage initiatives to improve quality. A quality improvement plan consists of systematic and continuous actions that lead to measurable improvement in the services, supports, and health status of the individuals receiving services.

"Recovery" means a journey of healing and transformation enabling an individual with a mental illness to live a meaningful life in a community of his choice while striving to achieve his full potential. For individuals with substance abuse (substance use disorders), recovery is an incremental process leading to positive social change and a full return to biological, psychological, and social functioning. For individuals with a developmental disability, the concept of recovery does not apply in the sense that individuals with a developmental disability will need supports throughout their entire lives although these may change over time. With supports, individuals with a developmental disability are capable of living lives that are fulfilling and satisfying and that bring meaning to themselves and others whom they know.

"Referral" means the process of directing an applicant or an individual to a provider or service that is designed to provide the assistance needed.

"Residential crisis stabilization service" means (i) providing short-term, intensive treatment to nonhospitalized individuals who require multidisciplinary treatment in order to stabilize acute psychiatric symptoms and prevent admission to a psychiatric inpatient unit; (ii) providing normative environments with a high assurance of safety and security for crisis intervention; and (iii) mobilizing the resources of the community support system, family members, and others for ongoing rehabilitation and recovery.

"Residential service" means providing 24-hour support in conjunction with care and treatment or a training program in a setting other than a hospital or training center. Residential services provide a range of living arrangements from highly structured and intensively supervised to relatively independent requiring a modest amount of staff support and monitoring. Residential services include residential treatment, group homes, supervised living, residential crisis stabilization, community gero-psychiatric residential, ICF/IID, sponsored residential homes, medical and social detoxification, neurobehavioral services, and substance abuse residential treatment for women and children.

"Residential treatment service" means providing an intensive and highly structured mental health, substance abuse, or neurobehavioral service, or services for co-occurring disorders in a residential setting, other than an inpatient service.

"Respite care service" means providing for a short-term, time-limited period of care of an individual for the purpose of providing relief to the individual's family, guardian, or regular care giver. Persons providing respite care are recruited, trained, and supervised by a licensed provider. These services may be provided in a variety of settings including residential, day support, in-home, or a sponsored residential home.

"Restraint" means the use of a mechanical device, medication, physical intervention, or hands-on hold to prevent an individual receiving services from moving his body to engage in a behavior that places him or others at imminent risk. There are three kinds of restraints:

1. Mechanical restraint means the use of a mechanical device that cannot be removed by the individual to restrict the individual's freedom of movement or functioning of a limb or portion of an individual's body when that behavior places him or others at imminent risk.

2. Pharmacological restraint means the use of a medication that is administered involuntarily for the emergency control of an individual's behavior when that individual's behavior places him or others at imminent risk and the administered medication is not a standard treatment for the individual's medical or psychiatric condition.

3. Physical restraint, also referred to as manual hold, means the use of a physical intervention or hands-on hold to prevent an individual from moving his body when that individual's behavior places him or others at imminent risk.

"Restraints for behavioral purposes" means using a physical hold, medication, or a mechanical device to control behavior or involuntary restrict the freedom of movement of an individual in an instance when all of the following conditions are met: (i) there is an emergency; (ii) nonphysical interventions are not viable; and (iii) safety issues require an immediate response.

"Restraints for medical purposes" means using a physical hold, medication, or mechanical device to limit the mobility of an individual for medical, diagnostic, or surgical purposes, such as routine dental care or radiological procedures and related post-procedure care processes, when use of the restraint is not the accepted clinical practice for treating the individual's condition.

"Restraints for protective purposes" means using a mechanical device to compensate for a physical or cognitive deficit when the individual does not have the option to remove the device. The device may limit an individual's movement, for example, bed rails or a gerichair, and prevent possible harm to the individual or it may create a passive barrier, such as a helmet to protect the individual.

"Restriction" means anything that limits or prevents an individual from freely exercising his rights and privileges.

"Risk management" means an integrated system-wide program to ensure the safety of individuals, employees, visitors, and others through identification, mitigation, early detection, monitoring, evaluation, and control of risks.

"Root cause analysis" means a method of problem solving designed to identify the underlying causes of a problem. The focus of a root cause analysis is on systems, processes, and outcomes that require change to reduce the risk of harm.

"Screening" means the process or procedure for determining whether the individual meets the minimum criteria for admission.

"Seclusion" means the involuntary placement of an individual alone in an area secured by a door that is locked or held shut by a staff person, by physically blocking the door, or by any other physical means so that the individual cannot leave it.

"Serious incident" means any event or circumstance that causes or could cause harm to the health, safety, or well-being of an individual. The term "serious incident" includes death and serious injury.

"Level I serious incident" means a serious incident that occurs or originates during the provision of a service or on the premises of the provider and does not meet the definition of a Level II or Level III serious incident. Level I serious incidents do not result in significant harm to individuals, but may include events that result in minor injuries that do not require medical attention or events that have the potential to cause serious injury, even when no injury occurs. "Level II serious incident" means a serious incident that occurs or originates during the provision of a service or on the premises of the provider that results in a significant harm or threat to the health and safety of an individual that does not meet the definition of a Level III serious incident.

"Level II serious incident" includes a significant harm or threat to the health or safety of others caused by an individual. Level II serious incidents include:

1. A serious injury;

2. An individual who is or was missing;

3. An emergency room visit;

4. An unplanned psychiatric or unplanned medical hospital admission of an individual receiving services other than licensed emergency services, except that a psychiatric admission in accordance with the individual's Wellness Recovery Action Plan shall not constitute an unplanned admission for the purposes of this chapter;

5. Choking incidents that require direct physical intervention by another person;

6. Ingestion of any hazardous material; or

7. A diagnosis of:

a. A decubitus ulcer or an increase in severity of level of previously diagnosed decubitus ulcer;

b. A bowel obstruction; or

c. Aspiration pneumonia.

"Level III serious incident" means a serious incident whether or not the incident occurs while in the provision of a service or on the provider's premises and results in:

1. Any death of an individual;

2. A sexual assault of an individual; or

3. A suicide attempt by an individual admitted for services, other than licensed emergency services, that results in a hospital admission.

"Serious injury" means any injury resulting in bodily hurt, damage, harm, or loss that requires medical attention by a licensed physician, doctor of osteopathic medicine, physician assistant, or nurse practitioner.

"Service" means (i) planned individualized interventions intended to reduce or ameliorate mental illness, developmental disabilities, or substance abuse (substance use disorders) through care, treatment, training, habilitation, or other supports that are delivered by a provider to individuals with mental illness, developmental disabilities, or substance abuse (substance use disorders). Services include outpatient services, intensive in-home services, opioid treatment services, inpatient psychiatric hospitalization, community gero-psychiatric residential services, assertive community treatment and other clinical services; day support, day treatment, partial hospitalization, psychosocial rehabilitation, and habilitation services; case management services; and supportive residential, special school, halfway house, in-home services,

crisis stabilization, and other residential services; and (ii) planned individualized interventions intended to reduce or ameliorate the effects of brain injury through care, treatment, or other supports provided in residential services for persons with brain injury.

"Shall" means an obligation to act is imposed.

"Shall not" means an obligation not to act is imposed.

"Skills training" means systematic skill building through curriculum-based psychoeducational and cognitive-behavioral interventions. These interventions break down complex objectives for role performance into simpler components, including basic cognitive skills such as attention, to facilitate learning and competency.

"Social detoxification service" means providing nonmedical supervised care for the individual's natural process of withdrawal from use of alcohol or other drugs.

"Sponsored residential home" means a service where providers arrange for, supervise, and provide programmatic, financial, and service support to families or persons (sponsors) providing care or treatment in their own homes for individuals receiving services.

"State board" means the State Board of Behavioral Health and Developmental Services. The board has statutory responsibility for adopting regulations that may be necessary to carry out the provisions of Title 37.2 of the Code of Virginia and other laws of the Commonwealth administered by the commissioner or the department.

"State methadone authority" means the Virginia Department of Behavioral Health and Developmental Services that is authorized by the federal Center for Substance Abuse Treatment to exercise the responsibility and authority for governing the treatment of opiate addiction with an opioid drug.

"Substance abuse (substance use disorders)" means the use of drugs enumerated in the Virginia Drug Control Act (§ 54.1-3400 et seq.) without a compelling medical reason or alcohol that (i) results in psychological or physiological dependence or danger to self or others as a function of continued and compulsive use or (ii) results in mental, emotional, or physical impairment that causes socially dysfunctional or socially disordering behavior; and (iii), because of such substance abuse, requires care and treatment for the health of the individual. This care and treatment may include counseling, rehabilitation, or medical or psychiatric care.

"Substance abuse intensive outpatient service" means structured treatment provided ~~in a concentrated manner for two or more consecutive hours per day to groups of individuals in a nonresidential setting. This service is provided over a period of time for individuals requiring~~ to individuals who require more intensive services than is normally provided in an outpatient service ~~can provide. Substance abuse intensive outpatient services include multiple group therapy sessions during the week, individual and family therapy, individual monitoring, and case management.~~ but do not require inpatient services. Treatment consists primarily of counseling and education about addiction-related and mental health challenges delivered a minimum of nine to 19 hours of services per week for adults or six to 19 hours of services per week for children and adolescents. Within this level of care, an individual's needs for psychiatric and medical services are generally addressed through consultation and referrals.

"Substance abuse outpatient services" means a center based substance abuse treatment delivered to individuals for fewer than nine hours of service per weeks for adults or fewer than six hours per week for adolescents on an individual, group or family basis. Substance abuse outpatient services may include diagnosis and evaluation, screening and intake, counseling, psychotherapy, behavior management, psychological testing and assessment, laboratory and other ancillary services, medical services, and medication services. Substance abuse outpatient service includes substance abuse services or an office practice that provides professionally directed aftercare, individual, and other addiction services to individuals according to a predetermined regular schedule of fewer than nine contact hours a week. Substance abuse outpatient service also includes:

1. Substance abuse services operated by a community services board or a behavioral health authority established pursuant to Chapter 5 (§ 37.2-500 et seq.) or Chapter 6 (§ 37.2-600 et seq.) of Title 37.2 of the Code of Virginia;

2. Substance abuse services contracted by a community services board or a behavioral health authority established pursuant to Chapter 5 (§ 37.2-500 et seq.) or Chapter 6 (§ 37.2-600 et seq.) of Title 37.2 of the Code of Virginia;

3. Substance abuse services that are owned, operated, or controlled by a corporation organized pursuant to the provisions of either Chapter 9 (§ 13.1-601 et seq.) or Chapter 10 (§13.1-801 et seq.) of Title 13.1 of the Code of Virginia.

"Substance abuse partial hospitalization services" means a short-term, nonresidential substance use treatment program provided for a minimum of 20 hours a week that uses multidisciplinary staff and is provided for individuals who require a more intensive treatment experience than intensive outpatient treatment but who do not require residential treatment. This level of care is designed to offer highly structured intensive treatment to those individual whose condition is sufficiently stable so as not to require 24-hour-per-day monitoring and care, but whose illness has progressed so as to require consistent near-daily treatment intervention.

"Substance abuse residential treatment for women with children service" means a 24-hour residential service providing an intensive and highly structured substance abuse service for women with children who live in the same facility.

"Suicide attempt" means a nonfatal, self-directed, potentially injurious behavior with an intent to die as a result of the behavior regardless of whether it results in injury.

"Supervised living residential service" means the provision of significant direct supervision and community support services to individuals living in apartments or other residential settings. These services differ from supportive in-home service because the provider assumes responsibility for management of the physical environment of the residence, and staff supervision and monitoring are daily and available on a 24-hour basis. Services are provided based on the needs of the individual in areas such as food preparation, housekeeping, medication administration, personal hygiene, treatment, counseling, and budgeting.

"Supportive in-home service" (formerly supportive residential) means the provision of community support services and other structured services to assist individuals, to strengthen individual skills, and that provide environmental supports necessary to attain and sustain independent community residential living. Services include drop-in or friendly-visitor support and counseling to more intensive support, monitoring, training, in-home support, respite care, and family support services. Services are based on the needs of the individual and include training and assistance. These services normally do not involve overnight care by the provider; however, due to the flexible nature of these services, overnight care may be provided on an occasional basis.

"Systemic deficiency" means violations of regulations documented by the department that demonstrate multiple or repeat defects in the operation of one or more services.

"Therapeutic day treatment for children and adolescents" means a treatment program that serves (i) children and adolescents from birth through 17 years of age and under certain circumstances up to 21 years of age with serious emotional disturbances, substance use, or co-occurring disorders or (ii) children from birth through seven years of age who are at risk of serious emotional disturbance, in order to combine psychotherapeutic interventions with education and mental health or substance abuse treatment. Services include: evaluation; medication education and management; opportunities to learn and use daily living skills and to enhance social and interpersonal skills; and individual, group, and family counseling.

"Time out" means the involuntary removal of an individual by a staff person from a source of reinforcement to a different, open location for a specified period of time or until the problem behavior has subsided to discontinue or reduce the frequency of problematic behavior.

"Volunteer" means a person who, without financial remuneration, provides services to individuals on behalf of the provider.

12VAC35-105-30. Licenses.

A. Licenses are issued to providers who offer services to individuals who have mental illness, a developmental disability, or substance abuse (substance use disorders) or have brain injury and are receiving residential services.

B. Providers shall be licensed to provide specific services as defined in this chapter or as determined by the commissioner. These services include:

1. Assertive community treatment (ACT);

2. Case management;

~~2. Community gero-psychiatric residential;~~ 3. ICF/IID;

~~3.~~ 4. Community intermediate care facility-MR;

~~4.~~ 5. Residential crisis stabilization;

~~5.~~ 6. Nonresidential crisis stabilization;

~~6.~~ 7. Day support;

~~7.~~ 8. Day treatment, includes therapeutic day treatment for children and adolescents;

~~8. Group home and community residential;~~

9. Emergency;

10. Group home and community residential;

11. Inpatient psychiatric;

~~10. Intensive community treatment (ICT);~~

~~11.~~ 12. Intensive in-home;

~~12.~~ 13. Managed withdrawal, including medical detoxification and social detoxification;

~~13.~~ 14. Mental health community support;

~~14.~~ 15. Mental health intensive outpatient;

16. Mental health outpatient;

17. Mental health partial hospitalization;

18. Opioid treatment/medication assisted treatment;

~~15. Emergency;~~

~~16. Outpatient;~~

~~17. Partial hospitalization;~~

~~18. Program of assertive community treatment (PACT);~~

19. Psychosocial rehabilitation;

~~20.~~ 20. Residential treatment;

~~21.~~ 21. Respite care;

~~22.~~ 22. Sponsored residential home;

~~23. Substance abuse residential treatment for women with children;~~

~~24.~~ 23. Substance abuse intensive outpatient;

24. Substance abuse outpatient;

25. Substance abuse partial hospitalization;

26. Substance abuse residential treatment for women with children;

27. Supervised living residential; and

~~26.~~ 28. Supportive in-home.

C. A license addendum shall describe the services licensed, the disabilities of individuals who may be served, the specific locations where services are to be provided or administered, and the terms and conditions for each service offered by a licensed provider. For residential and inpatient services, the license identifies the number of individuals each residential location may serve at a given time.

Article 7
~~Intensive Community Treatment and Program of~~ Assertive Community Treatment Services

12VAC35-105-1360. Admission and discharge criteria.

A. Individuals must meet the following admission criteria:

1. Diagnosis of a severe and persistent mental illness, predominantly schizophrenia, other psychotic disorder, or bipolar disorder that seriously impairs functioning in the community. Individuals with a sole diagnosis of a substance ~~addiction or abuse~~ use disorder or developmental disability ~~are not eligible for services~~, personality disorder, traumatic brain injury, or an autism spectrum disorder are not the intended service recipients and should not be referred to ACT if they do not have a co-occurring psychiatric disorder.

2. Significant challenges to community integration without intensive community support including persistent or recurrent difficulty with one or more of the following:

a. Performing practical daily living tasks;

b. Maintaining employment at a self-sustaining level or consistently carrying out homemaker roles; or

c. Maintaining a safe living situation.

3. High service needs indicated due to one or more of the following:

a. Residence in a state hospital or other psychiatric hospital but clinically assessed to be able to live in a more independent situation if intensive services were provided or anticipated to require extended hospitalization, if more intensive services are not available;

b. Multiple admissions to or at least one recent long-term stay (30 days or more) in a state hospital or other acute psychiatric hospital inpatient setting within the past two years; or a recent history of more than four interventions by psychiatric emergency services per year;

c. Persistent or very recurrent severe major symptoms (e.g., affective, psychotic, suicidal);

d. Co-occurring substance addiction or abuse of significant duration (e.g., greater than six months);

e. High risk or a recent history (within the past six months) of criminal justice involvement (e.g., arrest or incarceration);

f. Ongoing difficulty meeting basic survival needs or residing in substandard housing, homeless, or at imminent risk of becoming homeless; or

g. Inability to consistently participate in traditional office-based services.

B. Individuals receiving ~~PACT or ICT~~ ACT services should not be discharged for failure to comply with treatment plans or other expectations of the provider, except in certain circumstances as outlined. Individuals must meet at least one of the following criteria to be discharged:

1. Change in the individual's residence to a location out of the service area;

~~2. Death of the individual;~~

~~3.~~ 2. Incarceration of the individual for a period to exceed a year or long-term hospitalization (more than one year); however, the provider is expected to prioritize these individuals for ~~PACT or ICT~~ ACT services upon the individual's anticipated return to the community if the individual wishes to return to services and the service level is appropriate to his needs;

~~4. Choice of the individual with the provider responsible for revising the ISP to meet any concerns of the individual leading to the choice of discharge~~ 3. The individual and, if appropriate, the legally responsible person, choose to withdraw from services and documented attempts by the program to re-engage the individual with the service have not been successful; or

~~5. Significant sustained recovery by the individual in all major role areas with minimal team contact and support for at least two years as determined by both the individual and ICT or PACT team~~ 4. The individual and team determine that ACT services are no longer needed based on the attainment of goals as identified in the person centered plan and a less intensive level of care would adequately address current goals.

12VAC35-105-1370. Treatment team and staffing plan.

A. ~~Services~~ ACT services are delivered by interdisciplinary teams.

~~1. PACT and ICT teams shall include the following positions:~~

a. Team Leader - one full-time QMHP-A with at least three years experience in the provision of mental health services to adults with serious mental illness. The team leader shall oversee all aspects of team operations and shall routinely provide direct services to individuals in the community.

b. Nurses - PACT and ICT nurses shall be full time employees or contractors with the following minimum qualifications: A registered nurse (RN) shall have one year of experience in the provision of mental health services to adults with serious mental illness. A licensed practical nurse (LPN) shall have three years of experience in the provision of mental health services to adults with serious mental illness. ICT teams shall have at least one qualified full time nurse. PACT teams shall have at least three qualified full time nurses at least one of whom shall be a qualified RN.

c. One full time vocational specialist and one full time substance abuse specialist. These staff members shall provide direct services to individuals in their area of specialty and provide leadership to other team members to also assist individuals with their self identified employment or substance abuse recovery goals.

d. Peer specialists - one or more full time equivalent QPPMH or QMHP-A who is or has been a recipient of mental health services for severe and persistent mental illness. The peer specialist shall be a fully integrated team member who provides peer support directly to individuals and provides leadership to other team members in understanding and supporting individuals' recovery goals.

e. Program assistant - one full time person with skills and abilities in medical records management shall operate and coordinate the management information system, maintain accounts and budget records for individual and program expenditures, and provide receptionist activities.

f. Psychiatrist - one physician who is board certified in psychiatry or who is board eligible in psychiatry and is licensed to practice medicine in Virginia. An equivalent ratio to 20 minutes (.008 FTE) of psychiatric time for each individual served must be maintained. The psychiatrist shall be a fully integrated team member who attends team meetings and actively participates in developing and implementing each individual ISP.

2. QMHP-A and mental health professional standards:

a. At least 80% of the clinical employees or contractors not including the program assistant or psychiatrist, shall be QMHP-As qualified to provide the services described in 12VAC35-105-1410.

b. Mental health professionals - At least half of the clinical employees or contractors not including the team leader or nurses and including the peer specialist if that person holds such a degree, shall hold a master's degree in a human service field.

3. Staffing capacity:

a. An ICT team shall have at least five full-time equivalent clinical employees or contractors. A PACT team shall have at least 10 full-time equivalent clinical employees or contractors.

b. ICT and PACT teams shall include a minimum number of employees (counting contractors but not counting the psychiatrist and program assistant) to maintain an employee to individual ratio of at least 1:10.

c. ICT teams may serve no more than 80 individuals. PACT teams may serve no more than 120 individuals.

d. A transition plan shall be required of PACT teams that will allow for "start up" when newly forming teams are not in full compliance with the PACT model relative to staffing patterns and individuals receiving services capacity.

B. ICT and PACT teams shall meet daily Monday through Friday or at least four days per week to review and plan routine services and to address or prevent emergency and crisis situations.

1. ACT teams shall have sufficient staffing composition to meet the varying needs of individuals served by the team as required by this section. Each ACT team shall meet the following minimum position and staffing requirements:

a. Team leader. There shall be one full-time LMHP with three years of work experience in the provision of mental health services to adults with serious mental illness; a resident who is under the supervision of a licensed professional counselor in accordance with 18VAC115-20-10 and who is registered with the Virginia Board of Counseling with three years of experience in the provision of mental health services to adults with serious mental illness; a resident in psychology who is under supervision of a licensed clinical psychologist and is registered with the Virginia Board of Psychology in accordance with 18VAC125-20-10 and who has three years of experience in the provision of mental health services to adults with serious mental illness; a supervisee, in social work who is under the supervision of a licensed clinical social worker and who is registered with the Virginia Board of Social Work in accordance with 18VAC140-20-10 and who has three years of experience in the provision of mental health services to adults with serious mental illness; or one full-time registered QMHP-A with at least three years of experience in the provision of mental health services to adults with serious mental illness who was employed by the provider as a team leader prior to July 1, 2020. The team leader shall oversee all aspects of team operations and shall provide direct services to individuals in the community.

b. Nurses. ACT nurses shall be full-time employees or contractors with the following minimum qualifications: a registered nurse shall have one year of experience in the

provision of mental health services to adults with serious mental illness; or a licensed practical nurse shall have three years of experience in the provision of mental health services to adults with serious mental illness.

(1) Small ACT teams shall have at least one full-time nurse, who shall be either an RN or an LPN;

(2) Medium ACT teams shall have at least one full-time RN, and at least one additional full-time nurse who shall be an LPN or RN; and

(3) Large ACT teams shall have at least one full-time RN and at least two additional full-time nurses who shall be LPNs or RNs.

c. Vocational specialist. There shall be one or more full-time vocational specialist, who shall be a registered QMHP with demonstrated expertise in vocational services through experience or education.

d. Co-occurring disorder specialist. There shall be one or more full-time co-occurring disorder specialists, who shall be a LMHP; a resident who is under the supervision of a licensed professional counselor in accordance with 18VAC115-20-10 and who is registered with the Virginia Board of Counseling; a resident in psychology who is under supervision of a licensed clinical psychologist and is registered with the Virginia Board of Psychology in accordance with 18VAC125-20-10; a supervisee in social work who is under the supervision of a licensed clinical social worker and who is registered with the Virginia Board of Social Work in accordance with 18VAC140-20-10; registered QMHP; or certified substance abuse specialist (CSAC) with training or experience working with adults with co-occurring serious mental illness and substance use disorder.

e. ACT peer specialists. There shall be one full-time equivalent peer recovery specialists who is or has been a recipient of mental health services for severe and persistent mental illness. The peer specialist shall be certified as a peer recovery specialist in accordance with 12VAC35-250, or shall become certified in the first year of employment. The peer specialist shall be a fully integrated team member who provides peer support directly to individuals and provides leadership to other team members in understanding and supporting each individual's recovery goals.

f. Program assistant. There shall be one full-time or two part-time program assistants with skills and abilities in medical records management shall operate and coordinate the management information system, maintain accounts and budget records for individual and program expenditures, and perform administrative support activities.

g. Psychiatric care provider. There shall be one physician who is board certified in psychiatry or who is board eligible in psychiatry and is licensed to practice medicine in Virginia or a psychiatric nurse practitioner practicing within the scope of practice as defined in 18VAC90-30-120. An equivalent ratio of 16 hours of psychiatric time per 50 individuals served must be maintained. The psychiatric care provider shall be a fully integrated team member who attends team meetings and actively participates in developing and implementing each individual ISP.

h. Generalist clinical staff. There shall be additional clinical staff with the knowledge, skill, and ability required, based on the population and age of individuals being served, to carry out rehabilitation and support functions, at least 50% of whom shall be LMHPs, QMHP-As, QMHP-Es, or QPPMHs.

(1) Small ACT teams shall have at least one generalist clinical staff;

(2) Medium ACT teams shall have at least two generalist clinical staff; and

(3) Large ACT teams shall have at least three generalist clinical staff.

2. Staff-to-individual ratios for ACT Teams:

a. Small ACT teams shall maintain a caseload of no more than 50 individuals and shall maintain at least one staff member per eight individuals, in addition to a psychiatric care provider and a program assistant.

b. Medium ACT teams shall maintain a caseload of no more than 74 individuals and shall maintain at least one staff member per nine individuals, in addition to a psychiatric care provider and a program assistant.

c. Large ACT teams shall maintain a caseload of no more than 120 individuals and shall maintain at least one staff member per nine individuals, in addition to a psychiatric care provider and a program assistant.

~~C. ICT teams shall operate a minimum of eight hours per day, five days per week and shall provide services on a case-by-case basis in the evenings and on weekends. PACT~~ B. ACT teams shall be available to individuals 24 hours per day and shall operate a minimum of 12 hours each weekday and eight hours each weekend day and each holiday.

~~D.~~ C. The ~~ICT or PACT~~ ACT team shall make crisis services directly available 24 hours a day but may arrange coverage through another crisis services provider if the team coordinates with the crisis services provider daily.

D. The ~~PACT~~ ACT team shall operate an after-hours on-call system and shall be available to individuals by telephone ~~or~~ and in person when needed as determined by the team.

E. ACT teams in development may submit a transition plan to the department for approval that will allow for "start-up" when newly forming teams are not in full compliance with the ACT model relative to staffing patterns and individuals

receiving services capacity. Approved transition plans shall be limited to a six-month period.

12VAC35-105-1380. Contacts.

A. The ~~ICT and PACT~~ ACT team shall ~~have the capacity to~~ provide multiple contacts per week to individuals experiencing severe symptoms or significant problems in daily living~~, for an aggregate average of three contacts per individual per week~~.

B. Each individual receiving ~~ICT or PACT~~ ACT services shall be seen face-to-face by an employee or contractor~~; or the employee or contractor should attempt to make contact~~ as specified in the individual's ISP. Providers shall document all attempts to make contact, and if contact is not made, the reasons why contact was not made.

12VAC35-105-1390. ~~ICT and PACT~~ ACT service daily operation and progress notes.

A. ~~ICT teams and PACT~~ ACT teams shall conduct ~~daily~~ organizational meetings Monday through Friday at least four days per week at a regularly scheduled time to review the status of all individuals and the outcome of the most recent employee or contractor contact, assign daily and weekly tasks to employees and contractors, revise treatment plans as needed, plan for emergency and crisis situations, and to add service contacts that are identified as needed.

B. A daily log that provides a roster of individuals served in the ~~ICT or PACT~~ ACT services program and documentation of services provided and contacts made with them shall be maintained and utilized in the ~~daily~~ team meeting. Daily logs shall not be considered progress notes.

C. There shall also be ~~at least a weekly~~ individual progress ~~note~~ notes documenting services provided in accordance with the ISP ~~or attempts to engage the individual in services.~~ each time the individual receives services, which shall be included within the individual's record. ACT teams shall also document within the individual's record attempts at outreach and engagement.

12VAC35-105-1410. Service requirements.

~~Providers~~ ACT teams shall document that the following services are provided consistent with the individual's assessment and ISP.

1. Ongoing assessment to ascertain the needs, strengths, and preferences of the individual;

2. Case management;

3. Nursing;

4. Support for wellness self-management, including the development and implementation of individual recovery plans, symptom assessment, and recovery education;

5. Psychopharmacological treatment, administration, and monitoring;

6. ~~Substance abuse assessment and treatment for individuals with a co-occurring diagnosis of mental illness and substance abuse~~ Co-occurring diagnosis substance use disorder services that are nonconfrontational, trauma informed, person-centered, consider interactions of mental illness and substance use, and have goals determined by the individual;

7. ~~Individual supportive therapy~~ Empirically supported interventions and psychotherapy;

8. ~~Skills training in activities of daily living, social skills, interpersonal relationships, and leisure time~~ Psychiatric rehabilitation, which may include skill-building, coaching, and facilitating access to necessary resources to help individuals with personal care, safety skills, money management, grocery shopping, cooking, food safety and storage, purchasing and caring for clothing, household maintenance and cleaning skills, social skills, and use of transportation and other community resources;

9. ~~Supportive in-home services; 10.~~ Work-related services ~~to help find and maintain employment~~ that follow evidence-based supported employment principles, such as direct assistance with job development, locating preferred jobs, assisting the individual through the application process, and communicating with employers;

~~11.~~ 10. Support for resuming education;

~~12.~~ 11. Support, education, consultation, and skill-teaching to family members ~~and~~, significant others, and broader natural support systems, which shall be directed exclusively to the well-being and benefit of the individual;

~~13.~~ 12. Collaboration with families and ~~assistance to individuals with children~~ development of family and other natural supports;

13. Assistance in obtaining and maintaining safe, decent, and affordable housing that follows the individual's preferences in level of independence and location, consistent with an evidence-based supportive housing model;

14. Direct support to help individuals ~~secure and maintain decent, affordable housing that is integrated into the broader community and to~~ obtain legal and advocacy services, financial support, money-management services, medical and dental services, transportation, and natural supports in the community; ~~and~~

15. ~~Mobile crisis~~ Crisis assessment, interventions to prevent or resolve potential crises, and admission to and discharge from psychiatric hospitals;

16. Assistance in developing and maintaining natural supports and social relationships;

17. Medication education, assistance, and support; and

18. Peer support services, such as coaching, mentoring, assistance with self-advocacy and self-direction, and modeling recovery practices.

VA.R. Doc. No. R21-6076; Filed January 13, 2022, 12:21 p.m.

Proposed Regulation

Title of Regulation: **12VAC35-105. Rules and Regulations for Licensing Providers by the Department of Behavioral Health and Developmental Services (amending 12VAC35-105-20, 12VAC35-105-30, 12VAC35-105-925 through 12VAC35-105-960, 12VAC35-105-980 through 12VAC35-105-1110; adding 12VAC35-105-935, 12VAC35-105-945, 12VAC35-105-965, 12VAC35-105-1420 through 12VAC35-105-1820).**

Statutory Authority: §§ 37.2-302 and 37.2-400 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: April 15, 2022.

Agency Contact: Ruth Anne Walker, Director of Regulatory Affairs, Department of Behavioral Health and Developmental Services, Jefferson Building, 1220 Bank Street, 4th Floor, Richmond, VA 23219, telephone (804) 225-2252, FAX (804) 371-4609, TDD (804) 371-8977, or email ruthanne.walker@dbhds.virginia.gov.

Basis: Section 37.2-203 of the Code of Virginia gives the State Board of Behavioral Health and Developmental Services the authority to adopt regulations that may be necessary to carry out the provisions of Title 37.2 of the Code of Virginia.

Purpose: The purpose of this regulatory action is to align Virginia's licensing regulations with the American Society of Addiction Medicine Levels of Care Criteria (ASAM) levels of care criteria. This alignment is necessary to incorporate best practices into the licensing regulations in order to promote remission and recovery from the disease of addiction. Regulations that promote remission and recovery from the disease of addiction are essential to protecting the health and welfare of citizens of Virginia. Substance related disorders affect individuals needing or receiving services, their families, the workplace, and the general community. An essential component of Virginia's efforts to address the opioid epidemic is ensuring that a range of quality, evidence-based, substance use related services that span the spectrum of levels of care are available throughout the Commonwealth. The alignment of Virginia's licensing regulations with the ASAM criteria will help advance that effort.

Substance: This regulatory action amends the Licensing Regulations to align with the ASAM Levels of Care Criteria that ensure individualized, clinically driven, individual-directed, and outcome-informed treatment. The regulatory action provides the necessary definitions for the newly aligned services to be provided and creates staff, program, admission, discharge, and co-occurring enhanced program criteria for ASAM levels of care, including medically managed intensive inpatient services, medically monitored intensive inpatient services, clinically managed high-intensity residential services, clinically managed population-specific high-intensity residential services, clinically managed low-intensity residential services, substance abuse partial hospitalization services, substance abuse intensive outpatient services, substance abuse outpatient services, and medication assisted opioid treatment services.

Issues: The primary advantage of the regulatory change is a licensing regulation that incorporates best practices related to treatment of substance related conditions, which in turn will result in citizens receiving more effective treatment of substance related conditions. This is an advantage to the public, the agency, and the Commonwealth. The primary disadvantage is that some providers may experience a financial burden in order to comply with the new regulation. There are no known disadvantages to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 14 (as amended, July 16, 2018). The analysis presented represents DPB's best estimate of these economic impacts.[1]

Summary of the Proposed Amendments to Regulation. The State Board of Behavioral Health and Developmental Services (Board) proposes to amend the licensing regulation for providers of substance use disorder treatment to align with the American Society of Addiction Medicine (ASAM) Levels of Care Criteria. The proposed amendments were mandated by the 2020 Appropriation Act and implemented via an emergency regulation; the Board now seeks to make those changes permanent. The proposed changes are intended to ensure individualized, clinically driven, participant-directed, and outcome-informed treatment.

Background. Item 318.B of Chapter 1289, 2020 Virginia Acts of Assembly, directs the Department of Behavioral Health and Developmental Services (DBHDS) to promulgate emergency regulations to: "i) ensure that licensing regulations support high quality community-based mental health services and align with the changes being made to the Medicaid behavioral health regulations for the services funded in this Act that support evidence-based, trauma-informed, prevention-focused and cost-effective services for members across the lifespan; and ii) amend the licensing regulations to align with the American Society of Addiction Medicine Levels of Care Criteria or an equivalent set of criteria into substance use licensing regulations to ensure the provision of outcome-oriented and strengths-based care in the treatment of addiction."[2] Accordingly, the proposed changes were initially implemented via an emergency regulation that became effective February 2021.[3]

DBHDS reports that in addition to the mandate from the General Assembly, this regulatory action is needed to incorporate best practices into the licensing regulation in order to promote recovery from substance-related disorders, which affect individuals, their families, their workplaces, and the general community. Executive Order 9 (2016) issued by former Governor McAuliffe declared the opioid addiction crisis a public health emergency in Virginia. In November 2016, the State Health Commissioner declared the Virginia opioid addiction crisis a Public Health Emergency.[4] The declaration largely came in response to the growing number of overdoses attributed to opioid use.[5] In September 2018, Governor Northam issued Executive Order 21 (2018) establishing an Advisory Commission on Opioids and Addiction.[6]

DBHDS reports that ASAM Levels of Care Criteria are the "most widely used and comprehensive guidelines" for addiction treatment.[7] In addition, the federal Substance Abuse and Mental Health Services Administration (SAMHSA) also recommends ASAM standards.[8] Department staff state that ASAM standards would ensure individualized, clinically driven, participant-directed and outcome-informed treatment and this would improve the quality of care provided in affected facilities.

The most substantive amendments are summarized below.

The following definitions would be added to explain each type of service under the ASAM Levels of Care Criteria: Medically managed intensive inpatient service, Medically monitored intensive inpatient treatment, Medication assisted opioid treatment services, Clinically managed high-intensity residential care, Clinically managed population-specific high-intensity residential services, Clinically managed low-intensity residential care, Substance abuse partial hospitalization service, Substance abuse intensive outpatient service, Substance abuse outpatient service, Mental health partial hospitalization service, Mental health intensive outpatient service, Mental health outpatient service.

Other new definitions proposed include credentialed addiction treatment professional, allied health professional, intensity of service, medication assisted treatment, and motivational enhancements.[9] Definitions for outpatient service and partial hospitalization would be removed.

In section 30, Licensing, the new license titles that correspond to the new service definitions (listed in point 1) would be added to the list of licenses issued by DBHDS.[10] License titles that are no longer used would be removed.

Sections 925-1010, relating to medication assisted opioid treatment services, would be revised extensively to add specific requirements as per the ASAM Criteria and remove older requirements that would be superseded. These sections would also be updated to incorporate the federal Certification and Treatment Standards for Opioid Treatment Programs (42 CFR Part 8 Subpart C), which are already required of opioid treatment providers.[11]

Sections 1430-1820 would be added to the regulation. These sections cover the requirements for staffing, programming, admission, discharge, and co-occurring enhanced programs for each of the services listed in point 1, except medication assisted opioid treatment services (addressed in point 4) and the three mental health related services, which are addressed in a separate concurrent action.[2]

Two new documents would be partially incorporated by reference into the regulation, making those specific sections of the documents a legally enforceable part of the Virginia Administrative Code: the ASAM: Treatment for Addictive, Substance-Related and Co-Occurring Conditions, Third Edition and the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition.[12]

DBHDS reports that many providers are already familiar with ASAM levels of care because this is how they must bill to receive reimbursement for addiction treatment services from the Department of Medical Assistance Services (DMAS). This has been the case since April 1, 2017, when DMAS promulgated its Addiction and Recovery Treatment Services (ARTS), a regulation that adopted ASAM level of care for billing purposes.[13] The ARTS program offers an enhanced substance use disorder treatment benefit to Medicaid recipients by expanding access to a comprehensive continuum of addiction treatment services for all enrolled members in Medicaid, Family Access to Medical Insurance Security (FAMIS), FAMIS MOMS (for uninsured pregnant women), including expanded community-based addiction and recovery treatment services and coverage of inpatient detoxification and residential substance use disorder treatment.[14]

Estimated Benefits and Costs.[15] DBHDS staff state that ASAM standards would ensure individualized, clinically driven, participant-directed, and outcome-informed treatment. From a licensing standpoint, the Department's Office of Licensing welcomes these standards as it would be easier to hold providers accountable and to issue a corrective action plan if a deficiency is identified. This office observes that these standards are much more service specific than the current regulation and believes they will increase the quality of services provided. Thus, the proposed amendments would directly benefit individuals seeking treatment for substance-related disorders, as well as their families, workplaces, and the general community.

As mentioned previously, providers that participate in the state's Medicaid program have already adopted the ASAM Criteria. DMAS has required third-party administrative verification that providers were in compliance with the ASAM criteria for payment. Therefore, any provider utilizing Medicaid as a payer should be in compliance with these regulations and not incur any costs. However, some providers could incur some costs if a DBHDS inspection reveals that the ASAM Criteria were not being implemented correctly and recommends changes. Providers who do not participate in Medicaid and whose services do not meet these requirements

may incur some costs related to hiring and training staff in the use of the ASAM criteria. Hiring costs may be mitigated to the extent that providers were previously offering the same services under a different license title.[16]

DBHDS has reported that they would incur costs related to the promulgation of regulations, training for providers, and conducting additional inspections. They expect to absorb these costs with existing resources.

Businesses and Other Entities Affected. The Department's Office of Licensing reports that there are 256 residential facilities that have transitioned to the new ASAM licenses, including 41 licensed opioid treatment providers.[17] As mentioned previously, the extent to which any given facility would be affected by the proposed changes depends on whether they had already implemented ASAM requirements.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.[18] An 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. As noted above, aligning the regulation with the ASAM Criteria would create costs related to hiring and training staff for DBHDS-licensed providers who do not participate in Medicaid. Thus, an adverse impact is indicated.

Small Businesses[19] Affected.[20] The proposed amendments appear to adversely affect small businesses; however, the number of affected entities that are small businesses is unknown.

Types and Estimated Number of Small Businesses Affected. The proposed amendments would affect up to 256 substance use disorder treatment providers; however, the number of affected entities that are small businesses is unknown.

Costs and Other Effects. Substance use disorder treatment providers that do not participate in Medicaid would face the highest costs since they would face new requirements. Providers that participate in Medicaid would only face higher costs if they are found to be implementing the ASAM Criteria incorrectly and need to invest in training or hire additional personnel to correctly implement the requirements. Thus, an adverse economic impact[21] on providers of substance use disorder treatment is indicated to the extent that they face new requirements that result in new 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[22] Affected.[23] The proposed amendments potentially affect all 132 localities, since the facilities serve individuals from all parts of the state. The proposed amendments do not introduce costs for local governments. Consequently, an adverse economic impact[24] is not indicated for any localities.

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 would not affect the value of substance use disorder treatment providers. Even if some facilities incur costs to implement changes or provide training, they would benefit by maintaining compliance with DMAS' reimbursement requirements and/or the requirements of this regulation. The proposed amendments do not affect real estate development costs.

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[1]Section 2.2-4007.04 of the Code of Virginia requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

[2]See https://budget.lis.virginia.gov/item/2020/1/HB30/Chapter/1/318/. This chapter is being amended concurrently via another action to align it with new Medicaid behavioral health requirements: https://townhall.virginia.gov/l/ViewAction.cfm?actionid=5565.

[3]See https://townhall.virginia.gov/l/ViewStage.cfm?stageid=9015. The emergency regulation is currently scheduled to expire on August 19, 2022.

[4]See https://www.vdh.virginia.gov/commissioner/declaration-of-public-health-emergency/.

[5]See https://www.governor.virginia.gov/newsroom/all-releases/2018/february/headline-822715-en.html. Also from this release: "The infectious disease consequences of addiction in terms of poor health, death, and costs extend well beyond the more publicized overdoses, fractured lives and social networks," said Jack Barber, MD, Interim Commissioner of the Department of Behavioral Health and Developmental Services. "Without effective prevention and treatment strategies, infectious diseases can make recovery from addiction almost impossible."

[6]See https://www.hhr.virginia.gov/commissions-and-working-groups/governors-advisory-commission-on-opioids/.

[7]ASAM's website indicates that it is a professional medical society, founded in 1954, representing over 6,000 physicians, clinicians and associated professionals in the field of addiction medicine. ASAM describes its mission as being dedicated to increasing access and improving the quality of addiction treatment, educating physicians and the public, supporting research and prevention, and promoting the appropriate role of physicians in the care of patients with addiction. For additional information, see https://www.asam.org/about-us.

[8]SAMHSA is an agency within the U.S. Department of Health and Human Services whose mission is to reduce the impact of substance abuse and mental illness on America's communities. For more information about SAMHSA, see their website: https://www.samhsa.gov/.

[9]"Medication assisted treatment" and "medication assisted opioid treatment services" listed in point 1 are distinct terms.

[10]Unlike occupational and professional licensing boards, DBHDS licenses apply to residential facilities that "offer services to individuals who have mental illness, a developmental disability, or substance abuse (substance use disorders) or have brain injury." A facility (provider) has multiple licenses depending on the services they provide.

[11]In an email to DPB dated December 15, 2021, DBHDS specifically reported that they are incorporating the federal requirements into the regulation for clarity and to ensure all requirements are in one place for providers, making the requirements easier to understand.

[12]This appears to be the same as The ASAM Criteria: Treatment Criteria for Addictive, Substance-Related, and Co-Occurring Conditions, Third Edition.

[13]See https://townhall.virginia.gov/L/ViewAction.cfm?actionid=4692. The changes made in that action simply indicate that facilities will be reimbursed

as per 12VAC30-130-5000 et seq. (https://law.lis.virginia.gov/admincodefull/title12/agency30/chapter130/partXX/) The amendments proposed by DBHDS do not appear to be more stringent than DMAS' requirements.

[14]For additional information on ARTS, see https://www.dmas.virginia.gov/for-providers/addiction-and-recovery-treatment-services/ .

[15]The Economic Impact Analysis compares the proposed regulation to the regulation in the Virginia Administrative Code. The emergency regulation is: 1) not in the Virginia Administrative Code (see http://law.lis.virginia.gov/admincode) and 2) temporary. Thus, the Economic Impact Analysis assesses the impact of changing the permanent regulations. Consequently, to the extent that the proposed text matches the emergency text, some of the benefits and costs described here have likely already accrued.

[16]DBHDS provided the following crosswalk mapping the new ASAM licenses with prior DBHDS licenses: https://www.dbhds.virginia.gov/assets/document-library/archive/library/licensing/ol - arts asam crosswalk to license from provider manual with license numbers.pdf

[17]Email to DPB from DBHDS dated December 22, 2021. The email also noted that DBHDS does not collect information on whether providers accept Medicaid.

[18]Pursuant to § 2.2-4007.04 D: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

[19]Pursuant to § 2.2-4007.04, 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."

[20]If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

[21]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.

[22]"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.

[23]§ 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

[24]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.

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

Summary:

Pursuant to Item 318 of Chapter 1289 of the 2020 Acts of Assembly (Appropriation Act of 2020), the proposed amendments align Virginia provider licensing regulations with the American Society of Addiction Medicine (ASAM) Levels of Care Criteria or an equivalent set of criteria to ensure the provision of outcome-oriented and strengths-based care in the treatment of addiction to ensure individualized, clinically driven, participant-directed, and outcome-informed treatment. Additionally, some proposed amendments align the regulation with 42 CFR Part 8 Subpart C requirements for opioid treatment programs, including (i) staffing and programs, (ii) special services for pregnant individuals, (iii) drug screening, and (iv) take-home medications and theft or diversion detection procedures for treatment providers.

12VAC35-105-20. Definitions ~~and units of measurement~~.

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

"Abuse" means any act or failure to act by an employee or other person responsible for the care of an individual in a facility or program operated, licensed, or funded by the department, excluding those operated by the Virginia Department of Corrections, that was performed or was failed to be performed knowingly, recklessly, or intentionally, and that caused or might have caused physical or psychological harm, injury, or death to an individual receiving care or treatment for mental illness, developmental disabilities, or substance abuse. Examples of abuse include acts such as:

1. Rape, sexual assault, or other criminal sexual behavior;

2. Assault or battery;

3. Use of language that demeans, threatens, intimidates, or humiliates the individual;

4. Misuse or misappropriation of the individual's assets, goods, or property;

5. Use of excessive force when placing an individual in physical or mechanical restraint;

6. Use of physical or mechanical restraints on an individual that is not in compliance with federal and state laws, regulations, and policies, professional accepted standards of practice, or his individualized services plan; or

7. Use of more restrictive or intensive services or denial of services to punish an individual or that is not consistent with his individualized services plan.

"Activities of daily living" or "ADLs" means personal care activities and includes bathing, dressing, transferring, toileting, grooming, hygiene, feeding, and eating. An individual's degree

of independence in performing these activities is part of determining the appropriate level of care and services.

"Admission" means the process of acceptance into a service as defined by the provider's policies.

"Allied health professional" means a professional who is involved with the delivery of health or related services pertaining to the identification, evaluation, and prevention of diseases and disorders, such as a certified substance abuse counselor, certified substance abuse counseling assistant, peer recovery support specialist, certified nurse aide, or occupational therapist.

"ASAM" means the American Society of Addiction Medicine.

"Authorized representative" means a person permitted by law or 12VAC35-115 to authorize the disclosure of information or consent to treatment and services or participation in human research.

"Behavior intervention" means those principles and methods employed by a provider to help an individual receiving services to achieve a positive outcome and to address challenging behavior in a constructive and safe manner. Behavior intervention principles and methods shall be employed in accordance with the individualized services plan and written policies and procedures governing service expectations, treatment goals, safety, and security.

"Behavioral treatment plan," "functional plan," or "behavioral support plan" means any set of documented procedures that are an integral part of the individualized services plan and are developed on the basis of a systematic data collection, such as a functional assessment, for the purpose of assisting individuals to achieve the following:

1. Improved behavioral functioning and effectiveness;

2. Alleviation of symptoms of psychopathology; or

3. Reduction of challenging behaviors.

"Brain injury" means any injury to the brain that occurs after birth, but before age 65, that is acquired through traumatic or nontraumatic insults. Nontraumatic insults may include anoxia, hypoxia, aneurysm, toxic exposure, encephalopathy, surgical interventions, tumor, and stroke. Brain injury does not include hereditary, congenital, or degenerative brain disorders or injuries induced by birth trauma.

"Care," "treatment," or "support" means the individually planned therapeutic interventions that conform to current acceptable professional practice and that are intended to improve or maintain functioning of an individual receiving services delivered by a provider.

"Case management service" or "support coordination service" means services that can include assistance to individuals and their family members in accessing needed services that are responsive to the individual's needs. Case management services include identifying potential users of the service; assessing needs and planning services; linking the individual to services and supports; assisting the individual directly to locate, develop, or obtain needed services and resources; coordinating services with other providers; enhancing community integration; making collateral contacts; monitoring service delivery; discharge planning; and advocating for individuals in response to their changing needs. "Case management service" does not include assistance in which the only function is maintaining service waiting lists or periodically contacting or tracking individuals to determine potential service needs.

"Clinical experience" means providing direct services to individuals with mental illness or the provision of direct geriatric services or special education services. Experience may include supervised internships, practicums, and field experience.

"Clinically managed high-intensity residential care" means a substance use treatment program that offers 24-hour supportive treatment of individuals with significant psychological and social problems by credentialed addiction treatment professionals in an interdisciplinary treatment approach. A clinically managed high-intensity residential care program provides treatment to individuals who present with significant challenges, such as physical, sexual, or emotional trauma; past criminal or antisocial behaviors, with a risk of continued criminal behavior; an extensive history of treatment; inadequate anger management skills; extreme impulsivity; and antisocial value system.

"Clinically managed low-intensity residential care" means providing an ongoing therapeutic environment for individuals requiring some structured support in which treatment is directed toward applying recovery skills; preventing relapse; improving emotional functioning; promoting personal responsibility; reintegrating the individual into work, education, and family environments; and strengthening and developing adaptive skills that may not have been achieved or have been diminished during the individual's active addiction. A clinically managed low-intensity residential care program also provides treatment for individuals suffering from chronic, long-term alcoholism or drug addiction and affords an extended period of time to establish sound recovery and a solid support system.

"Clinically managed population specific high-intensity residential services" means a substance use treatment program that provides a structured recovery environment in combination with high-intensity clinical services provided in a manner to meet the functional limitations of individuals. The functional limitations of individuals who are placed within this level of care are primarily cognitive and can be either temporary or permanent.

"Commissioner" means the Commissioner of the Department of Behavioral Health and Developmental Services.

"Community gero-psychiatric residential services" means 24-hour care provided to individuals with mental illness, behavioral problems, and concomitant health problems who are usually age 65 or older in a geriatric setting that is less intensive than a psychiatric hospital but more intensive than a nursing home or group home. Services include assessment and individualized services planning by an interdisciplinary services team, intense supervision, psychiatric care, behavioral treatment planning and behavior interventions, nursing, and other health related services.

"Complaint" means an allegation of a violation of this chapter or a provider's policies and procedures related to this chapter.

"Co-occurring disorders" means the presence of more than one and often several of the following disorders that are identified independently of one another and are not simply a cluster of symptoms resulting from a single disorder: mental illness, a developmental disability, substance abuse (substance use disorders), or brain injury.

"Co-occurring services" means individually planned therapeutic treatment that addresses in an integrated concurrent manner the service needs of individuals who have co-occurring disorders.

"Corrective action plan" means the provider's pledged corrective action in response to cited areas of noncompliance documented by the regulatory authority.

"Correctional facility" means a facility operated under the management and control of the Virginia Department of Corrections.

"Credentialed addiction treatment professional" means a person who possesses one of the following credentials issued by the appropriate health regulatory board: (i) an addiction-credentialed physician or physician with experience or training in addiction medicine; (ii) a licensed nurse practitioner or a licensed physician assistant with experience or training in addiction medicine; (iii) a licensed psychiatrist; (iv) a licensed clinical psychologist; (v) a licensed clinical social worker; (vi) a licensed professional counselor; (vii) a licensed psychiatric clinical nurse specialist; (viii) a licensed psychiatric nurse practitioner; (ix) a licensed marriage and family therapist; (x) a licensed substance abuse treatment practitioner; (xi) a resident who is under the supervision of a licensed professional counselor (18VAC115-20-10), licensed marriage and family therapist (18VAC115-50-10), or licensed substance abuse treatment practitioner (18VAC115-60-10) and is registered with the Virginia Board of Counseling; (xii) a resident in psychology who is under supervision of a licensed clinical psychologist and is registered with the Virginia Board of Psychology (18VAC125-20-10); or (xiii) a supervisee in social work who is under the supervision of a licensed clinical social worker and is registered with the Virginia Board of Social Work (18VAC140-20-10).

"Crisis" means a deteriorating or unstable situation often developing suddenly or rapidly that produces acute, heightened, emotional, mental, physical, medical, or behavioral distress.

"Crisis stabilization" means direct, intensive nonresidential or residential direct care and treatment to nonhospitalized individuals experiencing an acute crisis that may jeopardize their current community living situation. Crisis stabilization is intended to avert hospitalization or rehospitalization; provide normative environments with a high assurance of safety and security for crisis intervention; stabilize individuals in crisis; and mobilize the resources of the community support system, family members, and others for ongoing rehabilitation and recovery.

"Day support service" means structured programs of training, assistance, and specialized supervision in the acquisition, retention, or improvement of self-help, socialization, and adaptive skills for adults with a developmental disability provided to groups or individuals in nonresidential community-based settings. Day support services may provide opportunities for peer interaction and community integration and are designed to enhance the following: self-care and hygiene, eating, toileting, task learning, community resource utilization, environmental and behavioral skills, social skills, medication management, prevocational skills, and transportation skills. The term "day support service" does not include services in which the primary function is to provide employment-related services, general educational services, or general recreational services.

"Department" means the Virginia Department of Behavioral Health and Developmental Services.

"Developmental disability" means a severe, chronic disability of an individual that (i) is attributable to a mental or physical impairment or a combination of mental and physical impairments other than a sole diagnosis of mental illness; (ii) is manifested before the individual reaches 22 years of age; (iii) is likely to continue indefinitely; (iv) results in substantial functional limitations in three or more of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency; and (v) reflects the individual's need for a combination and sequence of special interdisciplinary or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated. An individual from birth to nine years of age, inclusive, who has a substantial developmental delay or specific congenital or acquired condition may be considered to have a developmental disability without meeting three or more of the criteria described in clauses (i) through (v) if the

individual without services and supports has a high probability of meeting those criteria later in life.

"Developmental services" means planned, individualized, and person-centered services and supports provided to individuals with developmental disabilities for the purpose of enabling these individuals to increase their self-determination and independence, obtain employment, participate fully in all aspects of community life, advocate for themselves, and achieve their fullest potential to the greatest extent possible.

"Diagnostic and Statistical Manual of Mental Disorders" or "DSM" means the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition, DSM-5, of the American Psychiatric Association.

"Direct care position" means any position that includes responsibility for (i) treatment, case management, health, safety, development, or well-being of an individual receiving services or (ii) immediately supervising a person in a position with this responsibility.

"Discharge" means the process by which the individual's active involvement with a service is terminated by the provider, individual, or authorized representative.

"Discharge plan" means the written plan that establishes the criteria for an individual's discharge from a service and identifies and coordinates delivery of any services needed after discharge.

"Dispense" means to deliver a drug to an ultimate user by or pursuant to the lawful order of a practitioner, including the prescribing and administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery (§ 54.1-3400 et seq. of the Code of Virginia).

"Emergency service" means unscheduled and sometimes scheduled crisis intervention, stabilization, and referral assistance provided over the telephone or face-to-face, if indicated, available 24 hours a day and seven days per week. Emergency services also may include walk-ins, home visits, jail interventions, and preadmission screening activities associated with the judicial process.

"Group home or community residential service" means a congregate service providing 24-hour supervision in a community-based home having eight or fewer residents. Services include supervision, supports, counseling, and training in activities of daily living for individuals whose individualized services plan identifies the need for the specific types of services available in this setting.

"HCBS Waiver" means a Medicaid Home and Community Based Services Waiver.

"Home and noncenter based" means that a service is provided in the individual's home or other noncenter-based setting. This includes noncenter-based day support, supportive in-home, and intensive in-home services.

"Individual" or "individual receiving services" means a current direct recipient of public or private mental health, developmental, or substance abuse treatment, rehabilitation, or habilitation services and includes the terms "consumer," "patient," "resident," "recipient," or "client". When the term is used in this chapter, the requirement applies to every individual receiving licensed services from the provider.

"Individualized services plan" or "ISP" means a comprehensive and regularly updated written plan that describes the individual's needs, the measurable goals and objectives to address those needs, and strategies to reach the individual's goals. An ISP is person-centered, empowers the individual, and is designed to meet the needs and preferences of the individual. The ISP is developed through a partnership between the individual and the provider and includes an individual's treatment plan, habilitation plan, person-centered plan, or plan of care, which are all considered individualized service plans.

"Informed choice" means a decision made after considering options based on adequate and accurate information and knowledge. These options are developed through collaboration with the individual and his authorized representative, as applicable, and the provider with the intent of empowering the individual and his authorized representative to make decisions that will lead to positive service outcomes.

"Informed consent" means the voluntary written agreement of an individual, or that individual's authorized representative, to surgery, electroconvulsive treatment, use of psychotropic medications, or any other treatment or service that poses a risk of harm greater than that ordinarily encountered in daily life or for participation in human research. To be voluntary, informed consent must be given freely and without undue inducement; any element of force, fraud, deceit, or duress; or any form of constraint or coercion.

"Initial assessment" means an assessment conducted prior to or at admission to determine whether the individual meets the service's admission criteria; what the individual's immediate service, health, and safety needs are; and whether the provider has the capability and staffing to provide the needed services.

"Inpatient psychiatric service" means intensive 24-hour medical, nursing, and treatment services provided to individuals with mental illness or substance abuse (substance use disorders) in a hospital as defined in § 32.1-123 of the Code of Virginia or in a special unit of such a hospital.

"Instrumental activities of daily living" or "IADLs" means meal preparation, housekeeping, laundry, and managing money. A person's degree of independence in performing these activities is part of determining appropriate level of care and services.

"Intellectual disability" means a disability originating before 18 years of age, characterized concurrently by (i) significant subaverage intellectual functioning as demonstrated by

performance on a standardized measure of intellectual functioning administered in conformity with accepted professional practice that is at least two standard deviations below the mean and (ii) significant limitations in adaptive behavior as expressed in conceptual, social, and practical adaptive skills.

"Intensity of service" means the number, type, and frequency of staff interventions and other services provided during treatment at a particular level of care.

"Intensive community treatment service" or "ICT" means a self-contained interdisciplinary team of at least five full-time equivalent clinical staff, a program assistant, and a full-time psychiatrist that:

1. Assumes responsibility for directly providing needed treatment, rehabilitation, and support services to identified individuals with severe and persistent mental illness, especially those who have severe symptoms that are not effectively remedied by available treatments or who because of reasons related to their mental illness resist or avoid involvement with mental health services;

2. Minimally refers individuals to outside service providers;

3. Provides services on a long-term care basis with continuity of caregivers over time;

4. Delivers 75% or more of the services outside program offices; and

5. Emphasizes outreach, relationship building, and individualization of services.

"Intensive in-home service" means family preservation interventions for children and adolescents who have or are at-risk of serious emotional disturbance, including individuals who also have a diagnosis of developmental disability. Intensive in-home service is usually time-limited and is provided typically in the residence of an individual who is at risk of being moved to out-of-home placement or who is being transitioned back home from an out-of-home placement. The service includes 24-hour per day emergency response; crisis treatment; individual and family counseling; life, parenting, and communication skills; and case management and coordination with other services.

"Intermediate care facility/individuals with intellectual disability" or "ICF/IID" means a facility or distinct part of a facility certified by the Virginia Department of Health as meeting the federal certification regulations for an intermediate care facility for individuals with intellectual disability and persons with related conditions and that addresses the total needs of the residents, which include physical, intellectual, social, emotional, and habilitation, providing active treatment as defined in 42 CFR 435.1010 and 42 CFR 483.440.

"Investigation" means a detailed inquiry or systematic examination of the operations of a provider or its services regarding an alleged violation of regulations or law. An investigation may be undertaken as a result of a complaint, an incident report, or other information that comes to the attention of the department.

"Licensed mental health professional" or "LMHP" means a physician, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker, licensed substance abuse treatment practitioner, licensed marriage and family therapist, certified psychiatric clinical nurse specialist, licensed behavior analyst, or licensed psychiatric/mental health nurse practitioner.

"Location" means a place where services are or could be provided.

~~"Medically managed withdrawal services" means detoxification services to eliminate or reduce the effects of alcohol or other drugs in the individual's body.~~

"Mandatory outpatient treatment order" means an order issued by a court pursuant to § 37.2-817 of the Code of Virginia.

"Medical detoxification" means a service provided in a hospital or other 24-hour care facility under the supervision of medical personnel using medication to systematically eliminate or reduce ~~effects~~ the presence of alcohol or other drugs in the individual's body.

"Medical evaluation" means the process of assessing an individual's health status that includes a medical history and a physical examination of an individual conducted by a licensed medical practitioner operating within the scope of his license.

"Medically managed intensive inpatient service" means an organized service delivered in an inpatient setting, including an acute care general hospital, psychiatric unit in a general hospital, or a freestanding psychiatric hospital. This service is appropriate for individuals whose acute biomedical and emotional, behavioral, and cognitive problems are so severe that they require primary medical and nursing care. Services at this level of care are managed by a physician who is responsible for diagnosis, treatment, and treatment plan decisions in collaboration with the individual.

"Medically monitored intensive inpatient treatment" means a substance use treatment program that provides 24-hour care in a facility under the supervision of medical personnel. The care provided includes directed evaluation, observation, medical monitoring, and addiction treatment in an inpatient setting. The care provided may include the use of medication to address the effects of substance use. This service is appropriate for an individual whose subacute biomedical, emotional, behavioral, or cognitive problems are so severe that they require inpatient treatment but who does not need the full resources of an acute

care general hospital or a medically managed intensive inpatient treatment program.

"Medication" means prescribed or over-the-counter drugs or both.

"Medication administration" means the direct application of medications by injection, inhalation, ingestion, or any other means to an individual receiving services by (i) persons legally permitted to administer medications or (ii) the individual at the direction and in the presence of persons legally permitted to administer medications.

"Medication assisted opioid treatment ~~(Opioid treatment service)~~" means an intervention strategy that combines outpatient treatment with the administering or dispensing of synthetic narcotics, such as methadone~~,~~ ~~or~~ buprenorphine (suboxone), or naltrexone approved by the federal Food and Drug Administration for the purpose of replacing the use of and reducing the craving for opioid substances, such as heroin or other narcotic drugs.

"Medication assisted treatment" or "MAT" means the use of U.S. Food and Drug Administration approved medications in combination with counseling and behavioral therapies to provide treatment of substance use disorders. Medication assisted treatment includes medication assisted opioid treatment.

"Medication error" means an error in administering a medication to an individual and includes when any of the following occur: (i) the wrong medication is given to an individual, (ii) the wrong individual is given the medication, (iii) the wrong dosage is given to an individual, (iv) medication is given to an individual at the wrong time or not at all, or (v) the wrong method is used to give the medication to the individual.

"Medication storage" means any area where medications are maintained by the provider, including a locked cabinet, locked room, or locked box.

"Mental Health Community Support Service" or "MCHSS" means the provision of recovery-oriented services to individuals with long-term, severe mental illness. MHCSS includes skills training and assistance in accessing and effectively utilizing services and supports that are essential to meeting the needs identified in the individualized services plan and development of environmental supports necessary to sustain active community living as independently as possible. MHCSS may be provided in any setting in which the individual's needs can be addressed, skills training applied, and recovery experienced.

"Mental health intensive outpatient service" means a structured program of skilled treatment services focused on maintaining and improving functional abilities through a time-limited, interdisciplinary approach to treatment. This service is provided over a period of time for individuals requiring more intensive services than an outpatient service can provide and may include individual, family, or group counseling or psychotherapy; skill development and psychoeducational activities; certified peer support services; medication management; and psychological assessment or testing.

"Mental health outpatient service" means treatment provided to individuals on an hourly schedule, on an individual, group, or family basis, and usually in a clinic or similar facility or in another location. Mental health outpatient services may include diagnosis and evaluation, screening and intake, counseling, psychotherapy, behavior management, psychological testing and assessment, laboratory, and other ancillary services, medical services, and medication services. Mental health outpatient service specifically includes:

1. Mental health services operated by a community services board or a behavioral health authority established pursuant to Chapter 5 (§ 37.2-500 et seq.) or Chapter 6 (§ 37.2-600 et seq.) of Title 37.2 of the Code of Virginia;

2. Mental health services contracted by a community services board or a behavioral health authority established pursuant to Chapter 5 (§ 37.2-500 et seq.) or Chapter 6 (§ 37.2-600 et seq.) of Title 37.2 of the Code of Virginia; or

3. Mental health services that are owned, operated, or controlled by a corporation organized pursuant to the provisions of either Chapter 9 (§ 13.1-601 et seq.) or Chapter 10 (§ 13.1-801 et seq.) of Title 13.1 of the Code of Virginia.

"Mental health partial hospitalization service" means time-limited active treatment interventions that are more intensive than outpatient services, designed to stabilize and ameliorate acute symptoms and serve as an alternative to inpatient hospitalization or to reduce the length of a hospital stay. Partial hospitalization is provided through a minimum of 20 hours per week of skilled treatment services focused on individuals who require intensive, highly coordinated, structured, and interdisciplinary ambulatory treatment within a stable environment that is of greater intensity than intensive outpatient, but of lesser intensity than inpatient.

"Mental illness" means a disorder of thought, mood, emotion, perception, or orientation that significantly impairs judgment, behavior, capacity to recognize reality, or ability to address basic life necessities and requires care and treatment for the health, safety, or recovery of the individual or for the safety of others.

"Missing" means a circumstance in which an individual is not physically present when and where he should be and his absence cannot be accounted for or explained by his supervision needs or pattern of behavior.

"Motivational enhancement" means a person-centered approach that is collaborative, employs strategies to strengthen motivation for change, increases engagement in substance use services, resolves ambivalence about changing substance use

behaviors, and supports individuals to set goals to change their substance use.

"Neglect" means the failure by a person, or a program or facility operated, licensed, or funded by the department, excluding those operated by the Department of Corrections, responsible for providing services to do so, including nourishment, treatment, care, goods, or services necessary to the health, safety, or welfare of an individual receiving care or treatment for mental illness, developmental disabilities, or substance abuse.

"Neurobehavioral services" means the assessment, evaluation, and treatment of cognitive, perceptual, behavioral, and other impairments caused by brain injury that affect an individual's ability to function successfully in the community.

~~"Outpatient service" means treatment provided to individuals on an hourly schedule, on an individual, group, or family basis, and usually in a clinic or similar facility or in another location. Outpatient services may include diagnosis and evaluation, screening and intake, counseling, psychotherapy, behavior management, psychological testing and assessment, laboratory and other ancillary services, medical services, and medication services. "Outpatient service" specifically includes:~~

~~1. Services operated by a community services board or a behavioral health authority established pursuant to Chapter 5 (§ 37.2-500 et seq.) or Chapter 6 (§ 37.2-600 et seq.) of Title 37.2 of the Code of Virginia;~~

~~2. Services contracted by a community services board or a behavioral health authority established pursuant to Chapter 5 (§ 37.2-500 et seq.) or Chapter 6 (§ 37.2-600 et seq.) of Title 37.2 of the Code of Virginia; or~~

~~3. Services that are owned, operated, or controlled by a corporation organized pursuant to the provisions of either Chapter 9 (§ 13.1-601 et seq.) or Chapter 10 (§ 13.1-801 et seq.) of Title 13.1 of the Code of Virginia.~~

~~"Partial hospitalization service" means time limited active treatment interventions that are more intensive than outpatient services, designed to stabilize and ameliorate acute symptoms, and serve as an alternative to inpatient hospitalization or to reduce the length of a hospital stay. Partial hospitalization is focused on individuals with serious mental illness, substance abuse (substance use disorders), or co-occurring disorders at risk of hospitalization or who have been recently discharged from an inpatient setting.~~

"Person-centered" means focusing on the needs and preferences of the individual; empowering and supporting the individual in defining the direction for his life; and promoting self-determination, community involvement, and recovery.

"Program of assertive community treatment service" or "PACT" means a self-contained interdisciplinary team of at least 10 full-time equivalent clinical staff, a program assistant, and a full-time or part-time psychiatrist that:

1. Assumes responsibility for directly providing needed treatment, rehabilitation, and support services to identified individuals with severe and persistent mental illnesses, including those who have severe symptoms that are not effectively remedied by available treatments or who because of reasons related to their mental illness resist or avoid involvement with mental health services;

2. Minimally refers individuals to outside service providers;

3. Provides services on a long-term care basis with continuity of caregivers over time;

4. Delivers 75% or more of the services outside program offices; and

5. Emphasizes outreach, relationship building, and individualization of services.

"Provider" means any person, entity, or organization, excluding an agency of the federal government by whatever name or designation, that delivers (i) services to individuals with mental illness, developmental disabilities, or substance abuse (substance use disorders) or (ii) residential services for individuals with brain injury. The person, entity, or organization shall include a hospital as defined in § 32.1-123 of the Code of Virginia, community services board, behavioral health authority, private provider, and any other similar or related person, entity, or organization. It shall not include any individual practitioner who holds a license issued by a health regulatory board of the Department of Health Professions or who is exempt from licensing pursuant to §§ 54.1-2901, 54.1-3001, 54.1-3501, 54.1-3601, and 54.1-3701 of the Code of Virginia.

"Psychosocial rehabilitation service" means a program of two or more consecutive hours per day provided to groups of adults in a nonresidential setting. Individuals must demonstrate a clinical need for the service arising from a condition due to mental, behavioral, or emotional illness that results in significant functional impairments in major life activities. This service provides education to teach the individual about mental illness, substance abuse, and appropriate medication to avoid complication and relapse and opportunities to learn and use independent skills and to enhance social and interpersonal skills within a consistent program structure and environment. Psychosocial rehabilitation includes skills training, peer support, vocational rehabilitation, and community resource development oriented toward empowerment, recovery, and competency.

"Qualified developmental disability professional" or "QDDP" means a person who possesses at least one year of documented experience working directly with individuals who have a developmental disability and who possesses one of the following credentials: (i) a doctor of medicine or osteopathy licensed in Virginia, (ii) a registered nurse licensed in Virginia, (iii) a licensed occupational therapist, or (iv) completion of at least a bachelor's degree in a human services field, including

sociology, social work, special education, rehabilitation counseling, or psychology.

"Qualified mental health professional" or "QMHP" means a person who by education and experience is professionally qualified and registered by the Board of Counseling in accordance with 18VAC115-80 to provide collaborative mental health services for adults or children. A QMHP shall not engage in independent or autonomous practice. A QMHP shall provide such services as an employee or independent contractor of the department or a provider licensed by the department.

"Qualified mental health professional-adult" or "QMHP-A" means a person who by education and experience is professionally qualified and registered with the Board of Counseling in accordance with 18VAC115-80 to provide collaborative mental health services for adults. A QMHP-A shall provide such services as an employee or independent contractor of the department or a provider licensed by the department. A QMHP-A may be an occupational therapist who by education and experience is professionally qualified and registered with the Board of Counseling in accordance with 18VAC115-80.

"Qualified mental health professional-child" or "QMHP-C" means a person who by education and experience is professionally qualified and registered with the Board of Counseling in accordance with 18VAC115-80 to provide collaborative mental health services for children. A QMHP-C shall provide such services as an employee or independent contractor of the department or a provider licensed by the department. A QMHP-C may be an occupational therapist who by education and experience is professionally qualified and registered with the Board of Counseling in accordance with 18VAC115-80.

"Qualified mental health professional-eligible" or "QMHP-E" means a person receiving supervised training in order to qualify as a QMHP in accordance with 18VAC115-80 and who is registered with the Board of Counseling.

"Qualified paraprofessional in mental health" or "QPPMH" means a person who must meet at least one of the following criteria: (i) registered with the United States Psychiatric Association (USPRA) as an Associate Psychiatric Rehabilitation Provider (APRP); (ii) has an associate's degree in a related field (social work, psychology, psychiatric rehabilitation, sociology, counseling, vocational rehabilitation, human services counseling) and at least one year of experience providing direct services to individuals with a diagnosis of mental illness; (iii) licensed as an occupational therapy assistant, and supervised by a licensed occupational therapist, with at least one year of experience providing direct services to individuals with a diagnosis of mental illness; or (iv) has a minimum of 90 hours classroom training and 12 weeks of experience under the direct personal supervision of a QMHP-A providing services to individuals with mental illness and at least one year of experience (including the 12 weeks of supervised experience).

"Quality improvement plan" means a detailed work plan developed by a provider that defines steps the provider will take to review the quality of services it provides and to manage initiatives to improve quality. A quality improvement plan consists of systematic and continuous actions that lead to measurable improvement in the services, supports, and health status of the individuals receiving services.

"Recovery" means a journey of healing and transformation enabling an individual with a mental illness to live a meaningful life in a community of his choice while striving to achieve his full potential. For individuals with substance abuse (substance use disorders), recovery is an incremental process leading to positive social change and a full return to biological, psychological, and social functioning. For individuals with a developmental disability, the concept of recovery does not apply in the sense that individuals with a developmental disability will need supports throughout their entire lives although these may change over time. With supports, individuals with a developmental disability are capable of living lives that are fulfilling and satisfying and that bring meaning to themselves and others whom they know.

"Referral" means the process of directing an applicant or an individual to a provider or service that is designed to provide the assistance needed.

"Residential crisis stabilization service" means (i) providing short-term, intensive treatment to nonhospitalized individuals who require multidisciplinary treatment in order to stabilize acute psychiatric symptoms and prevent admission to a psychiatric inpatient unit; (ii) providing normative environments with a high assurance of safety and security for crisis intervention; and (iii) mobilizing the resources of the community support system, family members, and others for ongoing rehabilitation and recovery.

"Residential service" means providing 24-hour support in conjunction with care and treatment or a training program in a setting other than a hospital or training center. Residential services provide a range of living arrangements from highly structured and intensively supervised to relatively independent requiring a modest amount of staff support and monitoring. Residential services include residential treatment, group homes, supervised living, residential crisis stabilization, community gero-psychiatric residential, ICF/IID, sponsored residential homes, medical and social detoxification, neurobehavioral services, and substance abuse residential treatment for women and children.

"Residential treatment service" means providing an intensive and highly structured mental health, substance abuse, or neurobehavioral service, or services for co-occurring disorders in a residential setting, other than an inpatient service.

"Respite care service" means providing for a short-term, time-limited period of care of an individual for the purpose of providing relief to the individual's family, guardian, or regular care giver. Persons providing respite care are recruited, trained, and supervised by a licensed provider. These services may be provided in a variety of settings including residential, day support, in-home, or a sponsored residential home.

"Restraint" means the use of a mechanical device, medication, physical intervention, or hands-on hold to prevent an individual receiving services from moving his body to engage in a behavior that places him or others at imminent risk. There are three kinds of restraints:

1. Mechanical restraint means the use of a mechanical device that cannot be removed by the individual to restrict the individual's freedom of movement or functioning of a limb or portion of an individual's body when that behavior places him or others at imminent risk.

2. Pharmacological restraint means the use of a medication that is administered involuntarily for the emergency control of an individual's behavior when that individual's behavior places him or others at imminent risk and the administered medication is not a standard treatment for the individual's medical or psychiatric condition.

3. Physical restraint, also referred to as manual hold, means the use of a physical intervention or hands-on hold to prevent an individual from moving his body when that individual's behavior places him or others at imminent risk.

"Restraints for behavioral purposes" means using a physical hold, medication, or a mechanical device to control behavior or involuntary restrict the freedom of movement of an individual in an instance when all of the following conditions are met: (i) there is an emergency; (ii) nonphysical interventions are not viable; and (iii) safety issues require an immediate response.

"Restraints for medical purposes" means using a physical hold, medication, or mechanical device to limit the mobility of an individual for medical, diagnostic, or surgical purposes, such as routine dental care or radiological procedures and related post-procedure care processes, when use of the restraint is not the accepted clinical practice for treating the individual's condition.

"Restraints for protective purposes" means using a mechanical device to compensate for a physical or cognitive deficit when the individual does not have the option to remove the device. The device may limit an individual's movement, for example, bed rails or a gerichair, and prevent possible harm to the individual or it may create a passive barrier, such as a helmet to protect the individual.

"Restriction" means anything that limits or prevents an individual from freely exercising his rights and privileges.

"Risk management" means an integrated system-wide program to ensure the safety of individuals, employees, visitors, and others through identification, mitigation, early detection, monitoring, evaluation, and control of risks.

"Root cause analysis" means a method of problem solving designed to identify the underlying causes of a problem. The focus of a root cause analysis is on systems, processes, and outcomes that require change to reduce the risk of harm.

"Screening" means the process or procedure for determining whether the individual meets the minimum criteria for admission.

"Seclusion" means the involuntary placement of an individual alone in an area secured by a door that is locked or held shut by a staff person, by physically blocking the door, or by any other physical means so that the individual cannot leave it.

"Serious incident" means any event or circumstance that causes or could cause harm to the health, safety, or well-being of an individual. The term "serious incident" includes death and serious injury.

"Level I serious incident" means a serious incident that occurs or originates during the provision of a service or on the premises of the provider and does not meet the definition of a Level II or Level III serious incident. Level I serious incidents do not result in significant harm to individuals, but may include events that result in minor injuries that do not require medical attention or events that have the potential to cause serious injury, even when no injury occurs. "Level II serious incident" means a serious incident that occurs or originates during the provision of a service or on the premises of the provider that results in a significant harm or threat to the health and safety of an individual that does not meet the definition of a Level III serious incident.

"Level II serious incident" includes a significant harm or threat to the health or safety of others caused by an individual. Level II serious incidents include:

1. A serious injury;

2. An individual who is or was missing;

3. An emergency room visit;

4. An unplanned psychiatric or unplanned medical hospital admission of an individual receiving services other than licensed emergency services, except that a psychiatric admission in accordance with the individual's Wellness Recovery Action Plan shall not constitute an unplanned admission for the purposes of this chapter;

5. Choking incidents that require direct physical intervention by another person;

6. Ingestion of any hazardous material; or

7. A diagnosis of:

a. A decubitus ulcer or an increase in severity of level of previously diagnosed decubitus ulcer;

b. A bowel obstruction; or

c. Aspiration pneumonia.

"Level III serious incident" means a serious incident whether or not the incident occurs while in the provision of a service or on the provider's premises and results in:

1. Any death of an individual;

2. A sexual assault of an individual; or

3. A suicide attempt by an individual admitted for services, other than licensed emergency services, that results in a hospital admission.

"Serious injury" means any injury resulting in bodily hurt, damage, harm, or loss that requires medical attention by a licensed physician, doctor of osteopathic medicine, physician assistant, or nurse practitioner.

"Service" means (i) planned individualized interventions intended to reduce or ameliorate mental illness, developmental disabilities, or substance abuse (substance use disorders) through care, treatment, training, habilitation, or other supports that are delivered by a provider to individuals with mental illness, developmental disabilities, or substance abuse (substance use disorders). Services include outpatient services, intensive in-home services, medication assisted opioid treatment services, inpatient psychiatric hospitalization, community gero-psychiatric residential services, assertive community treatment and other clinical services; day support, day treatment, partial hospitalization, psychosocial rehabilitation, and habilitation services; case management services; and supportive residential, special school, halfway house, in-home services, crisis stabilization, and other residential services; and (ii) planned individualized interventions intended to reduce or ameliorate the effects of brain injury through care, treatment, or other supports provided in residential services for persons with brain injury.

"Shall" means an obligation to act is imposed.

"Shall not" means an obligation not to act is imposed.

"Skills training" means systematic skill building through curriculum-based psychoeducational and cognitive-behavioral interventions. These interventions break down complex objectives for role performance into simpler components, including basic cognitive skills such as attention, to facilitate learning and competency.

~~"Social detoxification service" means providing nonmedical supervised care for the individual's natural process of withdrawal from use of alcohol or other drugs.~~

"Sponsored residential home" means a service where providers arrange for, supervise, and provide programmatic, financial, and service support to families or persons (sponsors) providing care or treatment in their own homes for individuals receiving services.

"State board" means the State Board of Behavioral Health and Developmental Services. The board has statutory responsibility for adopting regulations that may be necessary to carry out the provisions of Title 37.2 of the Code of Virginia and other laws of the Commonwealth administered by the commissioner or the department.

"State methadone authority" means the Virginia Department of Behavioral Health and Developmental Services that is authorized by the federal Center for Substance Abuse Treatment to exercise the responsibility and authority for governing the treatment of opiate addiction with an opioid drug.

"Substance abuse (substance use disorders)" means the use of drugs enumerated in the Virginia Drug Control Act (§ 54.1-3400 et seq.) without a compelling medical reason or alcohol that (i) results in psychological or physiological dependence or danger to self or others as a function of continued and compulsive use or (ii) results in mental, emotional, or physical impairment that causes socially dysfunctional or socially disordering behavior; and (iii), because of such substance abuse, requires care and treatment for the health of the individual. This care and treatment may include counseling, rehabilitation, or medical or psychiatric care.

"Substance abuse intensive outpatient service" means structured treatment provided ~~in a concentrated manner for two or more consecutive hours per day to groups of individuals in a nonresidential setting. This service is provided over a period of time for individuals requiring more intensive services than an outpatient service can provide. Substance abuse intensive outpatient services include multiple group therapy sessions during the week, individual and family therapy, individual monitoring, and case management.~~ to individuals who require more intensive services than is normally provided in an outpatient service but do not require inpatient services. Treatment consists primarily of counseling and education about addiction-related and mental health challenges delivered a minimum of nine to 19 hours of services per week for adults or six to 19 hours of services per week for children and adolescents. Within this level of care an individual's needs for psychiatric and medical services are generally addressed through consultation and referrals.

"Substance abuse outpatient service" means a center based substance abuse treatment delivered to individuals for fewer than nine hours of service per week for adults or fewer than six hours per week for adolescents on an individual, group, or family basis. Substance abuse outpatient services may include diagnosis and evaluation, screening and intake, counseling, psychotherapy, behavior management, psychological testing and assessment, laboratory and other ancillary services, medical services, and medication services. Substance abuse outpatient service includes substance abuse services or an

office practice that provides professionally directed aftercare, individual, and other addiction services to individuals according to a predetermined regular schedule of fewer than nine contact hours a week. Substance abuse outpatient service also includes:

1. Substance abuse services operated by a community services board or a behavioral health authority established pursuant to Chapter 5 (§ 37.2-500 et seq.) or Chapter 6 (§ 37.2-600 et seq.) of Title 37.2 of the Code of Virginia;

2. Substance abuse services contracted by a community services board or a behavioral health authority established pursuant to Chapter 5 (§ 37.2-500 et seq.) or Chapter 6 (§ 37.2-600 et seq.) of Title 37.2 of the Code of Virginia; or

3. Substance abuse services that are owned, operated, or controlled by a corporation organized pursuant to the provisions of either Chapter 9 (§ 13.1-601 et seq.) or Chapter 10 (§ 13.1-801 et seq.) of Title 13.1 of the Code of Virginia.

"Substance abuse partial hospitalization services" means a short-term, nonresidential substance use treatment program provided for a minimum of 20 hours a week that uses multidisciplinary staff and is provided for individuals who require a more intensive treatment experience than intensive outpatient treatment but who do not require residential treatment. This level of care is designed to offer highly structured intensive treatment to those individuals whose condition is sufficiently stable so as not to require 24-hour-per-day monitoring and care, but whose illness has progressed so as to require consistent near-daily treatment intervention.

"Substance abuse residential treatment for women with children service" means a 24-hour residential service providing an intensive and highly structured substance abuse service for women with children who live in the same facility.

"Suicide attempt" means a nonfatal, self-directed, potentially injurious behavior with an intent to die as a result of the behavior regardless of whether it results in injury.

"Supervised living residential service" means the provision of significant direct supervision and community support services to individuals living in apartments or other residential settings. These services differ from supportive in-home service because the provider assumes responsibility for management of the physical environment of the residence, and staff supervision and monitoring are daily and available on a 24-hour basis. Services are provided based on the needs of the individual in areas such as food preparation, housekeeping, medication administration, personal hygiene, treatment, counseling, and budgeting.

"Supportive in-home service" (formerly supportive residential) means the provision of community support services and other structured services to assist individuals, to strengthen individual skills, and that provide environmental supports necessary to attain and sustain independent community residential living. Services include drop-in or friendly-visitor support and counseling to more intensive support, monitoring, training, in-home support, respite care, and family support services. Services are based on the needs of the individual and include training and assistance. These services normally do not involve overnight care by the provider; however, due to the flexible nature of these services, overnight care may be provided on an occasional basis.

"Systemic deficiency" means violations of regulations documented by the department that demonstrate multiple or repeat defects in the operation of one or more services.

"Therapeutic day treatment for children and adolescents" means a treatment program that serves (i) children and adolescents from birth through 17 years of age and under certain circumstances up to 21 years of age with serious emotional disturbances, substance use, or co-occurring disorders or (ii) children from birth through seven years of age who are at risk of serious emotional disturbance, in order to combine psychotherapeutic interventions with education and mental health or substance abuse treatment. Services include: evaluation; medication education and management; opportunities to learn and use daily living skills and to enhance social and interpersonal skills; and individual, group, and family counseling.

"Time out" means the involuntary removal of an individual by a staff person from a source of reinforcement to a different, open location for a specified period of time or until the problem behavior has subsided to discontinue or reduce the frequency of problematic behavior.

"Volunteer" means a person who, without financial remuneration, provides services to individuals on behalf of the provider.

12VAC35-105-30. Licenses.

A. Licenses are issued to providers who offer services to individuals who have mental illness, a developmental disability, or substance abuse (substance use disorders) or have brain injury and are receiving residential services.

B. Providers shall be licensed to provide specific services as defined in this chapter or as determined by the commissioner. These services include:

1. Case management;

2. Clinically managed high-intensity residential care;

3. Clinically managed low-intensity residential care;

4. Clinically managed population specific high-intensity residential;

5. Community gero-psychiatric residential;

~~3.~~ 6. ICF/IID;

~~4.~~ 7. Residential crisis stabilization;

~~5.~~ 8. Nonresidential crisis stabilization;

~~6.~~ 9. Day support;

~~7.~~ 10. Day treatment, includes therapeutic day treatment for children and adolescents;

~~8.~~ 11. Group home and community residential;

~~9.~~ 12. Inpatient psychiatric;

~~10.~~ 13. Intensive community treatment (ICT);

~~11.~~ 14. Intensive in-home;

~~12. Managed withdrawal, including medical detoxification and social detoxification;~~

~~13.~~ 15. Medically managed intensive inpatient service;

16. Medically monitored intensive inpatient treatment;

17. Medication assisted opioid treatment;

18. Mental health community support;

~~14. Opioid treatment/medication assisted treatment;~~

~~15.~~ 19. Mental health intensive outpatient;

20. Mental health outpatient;

21. Mental health partial hospitalization;

22. Emergency;

~~16. Outpatient;~~

~~17. Partial hospitalization;~~

~~18.~~ 23. Program of assertive community treatment (PACT);

~~19.~~ 24. Psychosocial rehabilitation;

~~20.~~ 25. Residential treatment;

~~21.~~ 26. Respite care;

~~22.~~ 27. Sponsored residential home;

~~23.~~ 28. Substance abuse residential treatment for women with children;

~~24.~~ 29. Substance abuse intensive outpatient;

~~25.~~ 30. Substance abuse outpatient;

31. Substance abuse partial hospitalization;

32. Supervised living residential; and

~~26.~~ 33. Supportive in-home.

C. A license addendum shall describe the services licensed, the disabilities of individuals who may be served, the specific locations where services are to be provided or administered, and the terms and conditions for each service offered by a licensed provider. For residential and inpatient services, the license identifies the number of individuals each residential location may serve at a given time.

Article 1
Medication Assisted Opioid Treatment ~~(Opioid Treatment Services)~~

12VAC35-105-925. Standards for the evaluation of new licenses for providers of services to individuals with opioid addiction.

A. Applicants requesting an initial license to provide a service for the treatment of opioid addiction through the use of methadone or any other opioid treatment medication or controlled substance shall supply information to the department that demonstrates the appropriateness of the proposed service in accordance with this section.

B. The proposed site of the service shall comply with § 37.2-406 of the Code of Virginia.

C. In jurisdictions without zoning ordinances, the department shall request that the local governing body advise it as to whether the proposed site is suitable for and compatible with use as an office and the delivery of health care services. The department shall make this request when it notifies the local governing body of a pending application.

D. Applicants shall demonstrate that the building or space to be used to provide the proposed service is suitable for the treatment of opioid addiction by submitting documentation of the following:

1. The proposed site complies with the requirements of the local building regulatory entity;

2. The proposed site complies with local zoning laws or ordinances, including any required business licenses;

3. In the absence of local zoning ordinances, the proposed site is suitable for and compatible with use as offices and the delivery of health care services;

4. In jurisdictions where there are no parking ordinances, the proposed site has sufficient off-street parking to accommodate the needs of the individuals being served and prevent the disruption of traffic flow;

5. The proposed site can accommodate individuals during periods of inclement weather;

6. The proposed site complies with the Virginia Statewide Fire Prevention Code; and

7. The applicant has a written plan to ensure security for storage of methadone at the site, which complies with regulations of the Drug Enforcement Agency (DEA), and the Virginia Board of Pharmacy.

E. Applicants shall submit information to demonstrate that there are sufficient personnel available to meet the following staffing requirements and qualifications:

1. The program sponsor means the person responsible for the operation of the opioid treatment program and who assumes

responsibility for all its employees, including any practitioners, agents, or other persons providing medical, rehabilitative, or counseling at the program at any of its medication units. The program sponsor is responsible for ensuring the program is in continuous compliance with all federal, state, and local laws and regulations.

2. The program director shall be licensed or certified by the applicable Virginia health regulatory board ~~or by a nationally recognized certification board~~ or registered as eligible for this license or certification with relevant training, experience, or both, in the treatment of individuals with opioid addiction~~;~~. The program director is responsible for the day-to-day management of the program.

~~2.~~ 3. The medical director shall be a board-certified addictionologist or have successfully completed or will complete within one year a course of study in opiate addiction that is approved by the department; and:

a. Is responsible for ensuring all medical, psychiatric, nursing, pharmacy, toxicology, and other services offered by the medication assisted opioid treatment provider are conducted in compliance with federal regulations at all times; and

b. Shall be physically present at the program for a sufficient number of hours to ensure regulatory compliance and carry out those duties specifically assigned to the medical director by regulation.

~~3.~~ 4. A minimum of one pharmacist~~;~~.

~~4.~~ 5. Nurses~~;~~.

~~5.~~ 6. Counselors shall be licensed or certified by the applicable Virginia health regulatory board ~~or by a nationally recognized certification board~~ or eligible for this license or certification~~; and~~.

~~6.~~ 7. Personnel to provide support services.

8. Have linkage with or access to psychological, medical, and psychiatric consultation.

9. Have access to emergency medical and psychiatric care through affiliations with more intensive levels of care.

10. Have the ability to conduct or arrange for appropriate laboratory and toxicology tests.

11. Ensure all clinical staff, whether employed by the provider or available through consultation, contract, or other means, are qualified by training and experience and appropriately licensed, certified, or registered by the appropriate health regulatory board to serve individuals admitted to the service.

F. The applicant may provide peer recovery specialists (PRS). Peer recovery specialists shall be professionally qualified by education and experience in accordance with 12VAC35-105-250. A registered peer recovery specialist shall be a PRS registered with the Board of Counseling in accordance with 18VAC115-70 and provide such services as an employee or independent contractor of DBHDS, a provider licensed by the DBHDS, a practitioner licensed by or holding a permit issued from the Department of Health Professions, or a facility licensed by the Virginia Department of Health.

G. If there is a change in or loss of any staff in the positions listed, or any change in the provider's ability to comply with the requirements, in subsection E of this section, the provider shall formally notify the Substance Abuse and Mental Health Services Administration (SAMHSA) and DBHDS. The provider shall also submit a plan to SAMHSA and DBHDS for immediate coverage within three weeks.

H. Applicants shall submit a description for the proposed service that includes:

1. Proposed mission, philosophy, and goals of the provider;

2. Care, treatment, and services to be provided, including a comprehensive discussion of levels of care provided and alternative treatment strategies offered;

3. Proposed hours and days of operation;

4. Plans for ~~on site~~ onsite security and services adequate to ensure the safety of patients, staff, and property; and

5. A diversion control plan for dispensed medications, including policies for use of drug screens.

~~G.~~ I. Applicants shall, in addition to the requirements of 12VAC35-105-580 C 2, provide documentation of their capability to provide the following services and support directly or by arrangement with other specified providers when such services and supports are (i) requested by an individual being served or (ii) identified as an individual need, based on the assessment conducted in accordance with 12VAC35-105-60 B and included in the individualized services plan:

1. General.

~~2.~~ a. Psychological services;

b. Social services;

~~3.~~ c. Vocational services;

~~4.~~ d. Educational services, including HIV/AIDS education and other health education services; and

~~5.~~ e. Employment services.

2. Initial medical examination services.

3. Special services for pregnant patients.

4. Initial and periodic, individualized, patient-centered assessment and treatment services.

5. Counseling services.

6. Drug abuse testing services.

7. Case management services, including medical monitoring and coordination, with onsite and offsite treatment services provided as needed.

~~H.~~ J. Applicants shall submit documentation of contact with community services boards or behavioral health authorities in their service areas to discuss their plans for operating in the area and to develop joint agreements, as appropriate.

~~I.~~ K. Applicants shall provide policies and procedures that shall address assessment, administration, and regulation of medication and dose levels appropriate to the individual. The policies and procedures shall at a minimum require that each individual served ~~to~~ be assessed every six months by the treatment team to determine if that individual is appropriate for safe and voluntary medically supervised withdrawal from opioid analgesics, including methadone or buprenorphine, alternative therapies including other medication assisted treatments, or continued federally approved pharmacotherapy treatment for opioid addiction.

~~J.~~ L. Applicants shall submit policies and procedures describing services they will provide to individuals who wish to discontinue medication assisted opioid treatment services.

~~K.~~ M. Applicants shall provide assurances that the service will have a community liaison responsible for developing and maintaining cooperative relationships with community organizations, other service providers, local law enforcement, local government officials, and the community at large.

~~L.~~ N. The department shall conduct announced and unannounced reviews and complaint investigations in collaboration with the Virginia Board of Pharmacy and DEA to determine compliance with the regulations.

12VAC35-105-930. Registration, certification, or accreditation.

A. The medication assisted opioid treatment service shall maintain current registration or certification with:

1. The federal Drug Enforcement Administration;

2. The federal Department of Health and Human Services; and

3. The Virginia Board of Pharmacy.

B. A provider of medication assisted opioid treatment services shall maintain accreditation with an entity approved under federal regulations.

12VAC35-105-935. Criteria for patient admission.

A. Before a medication assisted opioid treatment program may admit an individual, the individual shall meet the criteria for admission as defined by the provider's policies. The provider's policy regarding admission shall at a minimum require the individual to (i) meet diagnostic criteria for opioid use disorder as defined within the DSM; and (ii) meet the admission criteria of Level 1.0 of ASAM. The policies shall be consistent with subsections B through E of this section.

B. A medication assisted opioid treatment program shall maintain current procedures that are designed to ensure that individuals are admitted to short or long-term detoxification treatment by qualified personnel, such as a program physician who determines that such treatment is appropriate for the specific individual by applying established diagnostic criteria. An individual with two or more unsuccessful detoxification episodes within a 12-month period must be assessed by the medication assisted opioid treatment program physician for other forms of treatment. A program shall not admit an individual for more than two detoxification treatment episodes in one year.

C. An medication assisted opioid treatment program shall maintain current procedures designed to ensure that individuals are admitted to maintenance treatment by qualified personnel who have determined, using accepted medical criteria, that the person is currently addicted to an opioid drug, and that the individual became addicted at least one year before admission for treatment. In addition, a program physician shall ensure that each individual voluntarily chooses maintenance treatment, that all relevant facts concerning the use of the opioid drug are clearly and adequately explained to the individual, and that each individual provides informed written consent to treatment.

D. A person younger than 18 years of age is required to have had two documented unsuccessful attempts at short-term detoxification or drug-free treatment within a 12-month period to be eligible for maintenance treatment. No individual younger than 18 years of age may be admitted to maintenance treatment unless parent, legal guardian, or responsible adult designated by the relevant state authority consents in writing to such treatment.

E. If clinically appropriate, the program physician may waive the requirement of a one-year history of addiction under subsection C of this section, for individuals released from penal institutions (within six months after release), for pregnant patients (program physician must certify pregnancy), and for previously treated individuals (up to two years after discharge).

12VAC35-105-940. Criteria for involuntary termination from treatment.

A. The provider shall establish criteria for involuntary termination from treatment that describe the rights of the individual receiving services and the responsibilities and rights of the provider.

B. The provider shall establish a grievance procedure as part of the rights of the individual.

C. On admission, the individual shall be given a copy of the criteria and grievance procedure and shall sign a statement

acknowledging receipt of same. The signed ~~acknowledgement~~ acknowledgment shall be maintained in the individual's service record.

D. Upon admission and annually thereafter all individuals shall sign an authorization for disclosure of information to allow ~~programs~~ the provider access to the Virginia Prescription Monitoring System. ~~Failure to comply shall be grounds for nonadmission to the program.~~ Individuals who fail to sign this authorization shall be denied admission to the program.

12VAC35-105-945. Criteria for patient discharge.

Before a medication assisted opioid treatment program may discharge or transfer an individual, the individual shall meet the criteria for discharge or transfer as defined by the provider's policies, which shall include provisions for the discharge or transfer of individuals who have:

1. Achieved the goals of the treatment services and no longer require medication assisted opioid treatment level of care;

2. Been unable to achieve the goals of the individual's treatment but could achieve the individual's goals with a different type of treatment; or

3. Achieved the individual's original treatment goals but have developed new treatment challenges that can only be adequately addressed in a different type of treatment.

12VAC35-105-950. Service operation schedule.

A. The service's days of operation shall meet the needs of the individuals served. If the service dispenses or administers a medication requiring daily dosing, the service shall operate seven days a week, 12 months a year, except for official state holidays. Prior approval from the state methadone authority shall be required for additional closed days.

B. The service may close on Sundays if all the following criteria are met:

1. The provider develops and implements policies and procedures that address recently ~~inducted~~ admitted individuals receiving services, individuals not currently on a stable dose of medication, patients that present noncompliance treatment behaviors, and individuals who previously picked up take-home medications on Sundays, security of take-home medication doses, and health and safety of individuals receiving services.

2. The provider receives prior approval from the state ~~methadone~~ opioid treatment authority (SOTA) for Sunday closings. Each program must have a policy that addresses medication for the newly inducted patients and those who are deemed at risk, for example, are still actively using illicit substances or medical issues that may warrant closer monitoring of medication.

3. Once approved, by the state opioid treatment authority to close on Sundays, the provider shall notify individuals receiving services in writing at least 30 days in advance of their intent to close on Sundays. The notice shall address the risks to the individuals and the security of take-home medications. All individuals shall receive an orientation addressing take-home policies and procedures, and this orientation shall be documented in the individual's service record prior to receiving take-home medications.

4. The provider shall establish procedures for emergency access to dosing information 24 hours a day, seven days a week. This information may be provided via an answering service, pager, or other electronic measures. Information needed includes the individual's last dosing time and date, and dose.

C. Medication dispensing hours shall include at least two hours each day of operation outside normal working hours, ~~i.e.~~ that is, before 9 a.m. and after 5 p.m. The ~~state methadone authority~~ SOTA may approve an alternative schedule if the SOTA determines that schedule meets the needs of the population served by the provider.

12VAC35-105-960. ~~Physical examinations~~ Initial and periodic assessment services.

A. The individual shall have a complete physical examination prior to admission to the service unless the individual is transferring from another licensed ~~opioid agonist~~ medication assisted opioid treatment service in Virginia. The provider shall maintain the report of the individual's physical examination in the individual's service record. The results of serology and other tests shall be available within 14 days of admission.

B. ~~Physical exams of each individual shall be completed annually or more frequently if there is a change in the individual's physical or mental condition.~~ The program physician shall review a consent to treatment form with the patient and sign the form prior to the individual receiving the first dose of medication.

C. The provider shall maintain the report of the individual's physical examination in the individual's service record.

D. ~~On admission, all individuals shall be offered testing for AIDS/HIV. The individual may sign a notice of refusal without prejudice.~~ The program shall have a policy to ensure that coordination of care is in place with any prescribing physician.

E. ~~The provider shall coordinate treatment services for individuals who are prescribed benzodiapines and prescription narcotics with the treating physician. The coordination shall be the responsibility of the provider's physician and shall be documented.~~ The provider shall coordinate treatment services for individuals who are prescribed benzodiazepines and prescription narcotics with the treating physician. The coordination shall be the responsibility of the provider's physician and shall be documented.

12VAC35-105-965. Special services for pregnant individuals.

The program shall ensure that every pregnant woman has the opportunity for prenatal care, prenatal education, and postpartum follow-up, either onsite or by referral to an appropriate health care provider.

12VAC35-105-980. Drug screens.

A. The provider shall perform at least ~~eight~~ one random drug ~~screens during a 12-month period~~ screen per month unless the conditions in ~~subdivision~~ subsection B of this ~~subsection~~ section apply;

B. Whenever an individual's drug screen indicates continued illicit drug use or when clinically and environmentally indicated, random drug screens shall be performed weekly.

C. Drug screens shall be analyzed for opiates, methadone (if ordered), benzodiazepines, ~~and~~ cocaine, and buprenorphine. In addition, drug screens for other drugs that have the potential for addiction shall be performed when clinically and environmentally indicated.

D. The provider shall implement a written policy on how the results of drug screens shall be used to direct treatment.

12VAC35-105-990. Take-home medication.

A. Prior to dispensing regularly scheduled take-home medication, the provider shall ensure the individual demonstrates a level of current lifestyle stability as evidenced by the following:

1. Regular clinic attendance, including dosing and participation in counseling or group sessions;

2. Absence of recent alcohol abuse and illicit drug use;

3. Absence of significant behavior problems;

4. Absence of recent criminal activities, charges, or convictions;

5. Stability of the individual's home environment and social relationships;

6. Length of time in treatment;

7. Ability to ~~assure~~ ensure take-home medications are safely stored; and

8. Demonstrated rehabilitative benefits of take-home medications outweigh the risks of possible diversion.

B. Determinations for the take-home approval shall be based on the clinical judgement of the physician in consultation with the treatment team and shall be documented in the individual's service record.

C. If it is determined that an individual in comprehensive maintenance treatment is appropriate for handling take-home medication, the amount of take-home medication shall not exceed:

1. A single take-home dose for one day when the clinic is closed for business, including Sundays and state or federal holidays.

2. A single dose each week during the first 90 days of treatment (beyond that in subdivision 1 of this subsection). The individual shall ingest all other doses under the supervision of a medication administration trained employee.

3. Two doses per week in the second 90 days of treatment (beyond that in subdivision 1 of this subsection).

4. Three doses per week in the third 90 days of treatment (beyond that in subdivision 1 of this subsection).

5. A maximum six-day supply of take-home doses in the remaining months of the first year of treatment.

6. A maximum two-week supply of take-home medication after one year of continuous treatment.

7. One month's supply of take-home medication after two years of continuous treatment with monthly visits made by the individual served.

D. No medication shall be dispensed to individuals in short-term detoxification treatment or interim maintenance treatment for unsupervised take-home use.

E. Medication assisted opioid treatment providers shall maintain current procedures adequate to identify the theft or diversion of take-home medications. These procedures shall require the labeling of containers with the medication assisted opioid treatment providers name, address, and telephone number. Programs shall ensure that the take-home supplies are packaged in a manner that is designed to reduce the risk of accidental ingestion, including child proof containers.

F. The provider shall educate the individual on the safe transportation and storage of take-home medication.

12VAC35-105-1000. Preventing duplication of medication services.

To prevent duplication of medication assisted opioid ~~medication~~ treatment services to an individual, prior to admission of the individual, the provider shall implement ~~a~~ written policy and procedures for contacting every medication assisted opioid treatment service within a 50-mile radius before admitting an individual.

12VAC35-105-1010. Guests.

A. For the purpose of this section a guest is a patient of a medication assisted opioid treatment service in another state or another area of Virginia, who is traveling and is not yet eligible for take-home medication. Guest dosing shall be approved by the individual's home clinic.

B. The provider shall not dispense medication to any guest unless the guest has been receiving such medication services from another provider and documentation from that provider has been received prior to dispensing medication.

~~B.~~ C. Guests may receive medication for up to 28 days. To continue receiving medication after 28 days, the guest must be admitted to the service. Individuals receiving guest medications as part of a residential treatment service may exceed the 28-day maximum time limit at the medication assisted opioid treatment service.

Article 2
Medically ~~Managed Withdrawal~~ Monitored Intensive Inpatient Services

12VAC35-105-1110. Admission assessments.

During the admission process, providers of ~~managed withdrawal services~~ medically monitored intensive inpatient services shall:

1. Identify individuals with a high-risk for medical complications or who may pose a danger to themselves or others;

2. Assess substances used and time of last use;

3. Determine time of last meal;

4. Administer a urine screen;

5. Analyze blood alcohol content or administer a breathalyzer; and

6. Record vital signs.

12VAC35-105-1420. (Reserved.).

Part VII
Addition Medicine Service Requirements

Article 1
Medically Managed Intensive Inpatient

12VAC35-105-1430. Medically managed intensive inpatient staff criteria.

A medically managed intensive inpatient program shall meet the following staff requirements:

1. Have a team of appropriately trained and credentialed professionals who provide medical management by physicians 24 hours a day, primary nursing care and observation 24 hours a day, and professional counseling services 16 hours a day;

2. Have an interdisciplinary team of appropriately credentialed clinical staff, which may include addiction-credentialed physicians, nurse practitioners, physician assistants, nurses, counselors, psychologists, and social workers, who assess and treat individuals with severe substance use disorders or addicted individuals with concomitant acute biomedical, emotional, or behavioral disorders;

3. Have staff who are knowledgeable about the biopsychosocial dimensions of addiction as well as biomedical, emotional, behavioral, and cognitive disorders;

4. Have facility-approved addiction counselors or licensed, certified, or registered addiction clinicians who administer planned interventions according to the assessed needs of the individual; and

5. All clinical staff shall be qualified by training and experience and appropriately licensed, certified, or registered by the appropriate health regulatory board to serve individuals admitted to the service.

12VAC35-105-1440. Medically managed intensive inpatient program criteria.

A medically managed intensive inpatient program shall meet the following programmatic requirements. The program shall:

1. Deliver services in a 24-hour medically managed, acute care setting and shall be available to all individuals within that setting;

2. Provide cognitive, behavioral, motivational, pharmacologic, and other therapies provided on an individual or group basis, depending on the individual's needs;

3. Provide, for the individual who has a severe biomedical disorder, physical health interventions to supplement addiction treatment;

4. Provide, for the individual who has stable psychiatric symptoms, individualized treatment activities designed to monitor the individual's mental health;

5. Provide planned clinical interventions that are designed to enhance the individual's understanding and acceptance of his addiction illness;

6. Provide family and caregiver treatment services as deemed appropriate by a licensed professional and included in an assessment and treatment plan;

7. Provide health education services;

8. Make medication assisted treatment (MAT) available for all individuals admitted to the service. MAT may be provided by facility staff or coordinated through alternative resources; and

9. Comply with 12VAC35-105-1055 through 12VAC35-105-1130.

12VAC35-105-1450. Medically managed intensive inpatient admission criteria.

Before a medically managed intensive inpatient program may admit an individual, the individual shall meet the criteria for

admission as defined by the provider's policies. The provider's policy regarding admission shall at a minimum require the individual to:

1. Meet diagnostic criteria for a substance use disorder or addictive disorder of moderate to high severity as defined by the DSM; and

2. Meet the admission criteria of Level 4.0 of ASAM, including the specific criteria for adult and adolescent populations.

12VAC35-105-1460. Medically managed intensive inpatient discharge criteria.

Before a medically managed intensive inpatient program may discharge or transfer an individual, the individual shall meet the criteria for discharge or transfer as defined by the provider's policies, which shall include provisions for the discharge or transfer of individuals who have:

1. Achieved the goals of the treatment services and no longer require ASAM 4.0 level of care;

2. Been unable to achieve the goals of the individual's treatment but could achieve the individual's goals with a different type of treatment; or

3. Achieved the individual's original treatment goals but have developed new treatment challenges that can only be adequately addressed in a different type of treatment.

12VAC35-105-1470. Medically managed intensive inpatient co-occurring enhanced programs.

A. Medically managed intensive inpatient co-occurring enhanced programs shall be staffed by appropriately credentialed mental health professionals who assess and treat the individual's co-occurring mental disorders. All clinical staff shall be qualified by training and experience and appropriately licensed, certified, or registered by the appropriate health regulatory board to serve individuals admitted to the service.

B. Medically managed intensive inpatient co-occurring enhanced programs shall offer individualized treatment activities designed to stabilize the individual's active psychiatric symptoms, including medication evaluation and management.

Article 2
Medically Monitored Intensive Inpatient Services

12VAC35-105-1480. Medically monitored intensive inpatient services staff criteria.

A medically monitored intensive inpatient treatment program shall meet the following staff requirements. The program shall:

1. Have a licensed physician to oversee the treatment process and ensure quality of care. A physician, a licensed nurse practitioner, or a licensed physician assistant shall be available 24 hours a day in person or by telephone. A physician shall assess the individual in person within 24 hours of admission;

2. Offer 24-hour nursing care and conduct a nursing assessment on admission. The level of nursing care must be appropriate to the severity of needs of individuals admitted to the service;

3. Have interdisciplinary staff, which may include physicians, nurses, addiction counselors, and behavioral health specialists, who are able to assess and treat the individual and obtain and interpret information regarding the individual's psychiatric and substance use or addictive disorders;

4. Offer daily onsite counseling and clinical services. Clinical staff shall be knowledgeable about the biological and psychosocial dimensions of addiction and other behavioral health disorders with specialized training in behavior management techniques and evidence-based practices;

5. Have staff able to provide a planned regimen of 24-hour professionally directed evaluation, care, and treatment services;

6. Make MAT available for all individuals. MAT may be provided by facility staff or coordinated through alternative resources; and

7. Ensure all clinical staff are qualified by training and experience and appropriately licensed, certified, or registered by the appropriate health regulatory board to serve individuals admitted to the service.

12VAC35-105-1490. Medically monitored intensive inpatient services program criteria.

A medically monitored intensive inpatient treatment program shall meet the following programmatic requirements. The program shall:

1. Be made available to all individuals within the inpatient setting;

2. Provide a combination of individual and group therapy as deemed appropriate by a licensed mental health professional and included in an assessment and treatment plan. Such therapy shall be adapted to the individual's level of comprehension;

3. Make available medical and nursing services onsite to provide ongoing assessment and care of addiction needs;

4. Provide direct affiliations with other easily accessible levels of care or close coordination through referral to more or less intensive levels of care and other services;

5. Provide family and caregiver treatment services as deemed appropriate by a licensed mental health professional and included in an assessment and treatment plan;

6. Provide educational and informational programming adapted to individual needs. The educational and informational programming shall include materials designed to enhance the individual's understanding of addiction and may include peer recovery support services as appropriate;

7. Utilize random drug screening to monitor drug use and reinforce treatment gains;

8. Regularly monitor the individual's adherence in taking any prescribed medications; and

9. Comply with 12VAC35-105-1055 through 12VAC35-105-1130.

12VAC35-105-1500. Medically monitored intensive inpatient admission criteria.

Before a medically monitored intensive inpatient program may admit an individual, the individual shall meet the criteria for admission as defined by the provider's policies. The provider's policy regarding admission shall at a minimum require the individual to:

1. Meet diagnostic criteria for a substance use disorder of the DSM or addictive disorder of moderate to high severity; and

2. Meet the admission criteria of Level 3.7 of ASAM, including the specific criteria for adult and adolescent populations.

12VAC35-105-1510. Medically monitored intensive inpatient discharge criteria.

A. Before a medically monitored intensive inpatient program may discharge or transfer an individual, the individual shall meet the criteria for discharge or transfer as defined by the provider's policies, which shall include provisions for the discharge or transfer of individuals who have:

1. Achieved the goals of the treatment services and no longer require ASAM 3.7 level of care;

2. Been unable to achieve the goals of the individual's treatment but could achieve the individual's goals with a different type of treatment; or

3. Achieved the individual's original treatment goals but have developed new treatment challenges that can only be adequately addressed in a different type of treatment.

B. Discharge planning shall occur for individuals and include realistic plans for the continuity of MAT services as indicated.

12VAC35-105-1520. Medically monitored intensive inpatient co-occurring enhanced programs.

A. Medically monitored intensive inpatient co-occurring enhanced programs shall offer psychiatric services, medication evaluation, and laboratory services as indicated by the needs of individuals admitted to the service. A psychiatrist shall assess the individual by telephone within four hours of admission and in person with 24 hours following admission. An LMHP shall conduct a behavioral health-focused assessment at the time of admission. A registered nurse shall monitor the individual's progress and administer or monitor the individual's self-administration of psychotropic medications.

B. Medically monitored intensive inpatient co-occurring enhanced programs shall be staffed by addiction psychiatrists and appropriately credentialed behavioral health professionals who are able to assess and treat co-occurring psychiatric disorders and who have specialized training in behavior management techniques and evidence based practices. All clinical staff shall be qualified by training and experience and appropriately licensed, certified, or registered by the appropriate health regulatory board to serve individuals admitted to the service.

C. Medically monitored intensive inpatient co-occurring enhanced programs shall offer planned clinical activities designed to promote stabilization of the individual's behavioral health needs and psychiatric symptoms and to promote such stabilization, including medication education and management and motivational and engagement strategies.

Article 3
Clinically Managed High-Intensity Residential Services

12VAC35-105-1530. Clinically managed high-intensity residential services staff criteria.

A clinically managed high-intensity residential care program shall meet the following staff requirements. The program shall:

1. Offer telephone or in-person consultation with a physician, a licensed nurse practitioner, or a licensed physician assistant in case of emergency related to an individual's substance use disorder 24 hours a day seven days a week;

2. Offer onsite 24-hour-a-day clinical staffing by credentialed addiction treatment professionals and other allied health professionals, such as peer recovery specialists, who work in an interdisciplinary team;

3. Have clinical staff knowledgeable about the biological and psychosocial dimensions of substance use and mental health disorders and their treatment. Staff shall be able to identify the signs and symptoms of acute psychiatric conditions. Staff shall have specialized training in behavior management techniques; and

4. All clinical staff shall be qualified by training and experience and appropriately licensed, certified, or registered by the appropriate health regulatory board to serve individuals admitted to the service.

12VAC35-105-1540. Clinically managed high-intensity residential services program criteria.

A clinically managed high-intensity residential care program shall meet the following programmatic requirements. The program shall:

1. Provide daily clinical services, including a range of cognitive, behavioral, and other therapies in individual or group therapy; programming; and psychoeducation as deemed appropriate by a licensed professional and included in an assessment and treatment plan;

2. Provide counseling and clinical interventions to teach an individual the skills needed for daily productive activity, prosocial behavior, and reintegration into family and community;

3. Provide motivational enhancement and engagement strategies appropriate to an individual's stage of readiness to change and level of comprehension;

4. Have direct affiliations with other easily accessible levels of care or provide coordination through referral to more or less intensive levels of care and other services;

5. Provide family and caregiver treatment services as deemed appropriate by a licensed professional and included in an assessment and treatment plan;

6. Provide educational, vocational, and informational programming adaptive to individual needs;

7. Utilize random drug screening to monitor progress and reinforce treatment gains as appropriate to an individual treatment plan;

8. Ensure and document that the length of an individual's stay shall be determined by the individual's condition and functioning;

9. Make a substance use treatment program available for all individuals; and

10. Make MAT available for all individuals. Medication assisted treatment may be provided by facility staff, or coordinated through alternative resources.

12VAC35-105-1550. Clinically managed high-intensity residential services admission criteria.

A. The individuals served by clinically managed high-intensity residential care are individuals who are not sufficiently stable to benefit from outpatient treatment regardless of intensity of service.

B. Before a clinically managed high-intensity residential service program may admit an individual, the individual shall meet the criteria for admission as defined by the provider's policies. The provider's policy regarding admission shall at a minimum require the individual to:

1. Meet diagnostic criteria for a substance use disorder or addictive disorder of moderate to high severity as defined by the DSM; and

2. Meet the admission criteria of Level 3.5 of ASAM.

12VAC35-105-1560. Clinically managed high-intensity residential services discharge criteria.

Before a clinically managed high-intensity residential service program may discharge or transfer an individual, the individual shall meet the criteria for discharge or transfer as defined by the provider's policies, which shall include provisions for the discharge or transfer of individuals who have:

1. Achieved the goals of the treatment services and no longer require ASAM 3.5 level of care;

2. Been unable to achieve the goals of the individual's treatment but could achieve the individual's goals with a different type of treatment; or

3. Achieved the individual's original treatment goals but have developed new treatment challenges that can only be adequately addressed in a different type of treatment.

12VAC35-105-1570. Clinically managed high-intensity residential services co-occurring enhanced programs.

A. Clinically managed high-intensity residential services co-occurring enhanced programs shall offer psychiatric services, medication evaluation, and laboratory services. Such services shall be available by telephone within eight hours and onsite or closely coordinated offsite within 24 hours.

B. Clinically managed high-intensity residential services co-occurring enhanced programs shall be staffed by appropriately credentialed mental health professionals, including addiction psychiatrists who are able to assess and treat co-occurring mental disorders and who have specialized training in behavior management techniques. All clinical staff shall be qualified by training and experience and appropriately licensed, certified, or registered by the appropriate health regulatory board to serve individuals admitted to the service.

C. Clinically managed high-intensity residential services co-occurring enhanced programs shall offer planned clinical activities designed to stabilize the individual's mental health problems and psychiatric symptoms and to maintain such stabilization, including medication education and management and motivational and engagement strategies. Goals of therapy shall apply to both the individual's substance use disorder and any co-occurring mental disorder.

Article 4
Clinically Managed Population-Specific High Intensity Residential Services

12VAC35-105-1580. Clinically managed population-specific high-intensity residential services staff criteria.

A high-intensity residential services program shall meet the following staff requirements. The program shall:

1. Offer telephone or in-person consultation with a physician, a licensed nurse practitioner, or a physician assistant in case of emergency related to an individual's substance use disorder 24 hours a day, seven days a week;

2. Have allied health professional staff onsite 24 hours a day. At least one clinician with competence in the treatment of substance use disorder shall be available onsite or by telephone 24 hours a day;

3. Have clinical staff knowledgeable about the biological and psychosocial dimensions of substance use and mental health disorders and their treatment and able to identify the signs and symptoms of acute psychiatric conditions. Staff shall have specialized training in behavior management techniques; and

4. Ensure all clinical staff are qualified by training and experience and appropriately licensed, certified, or registered by the appropriate health regulatory board to serve individuals admitted to the service.

12VAC35-105-1590. Clinically managed population-specific high-intensity residential services program criteria.

A high-intensity residential services program shall meet the following programmatic requirements. The program shall:

1. Provide daily clinical services that shall include a range of cognitive, behavioral, and other therapies administered on an individual and group basis, medication education and management, educational groups, and occupational or recreation activities as deemed appropriate by a licensed professional and included in an assessment and treatment plan;

2. Provide daily professional addiction and mental health treatment services that may include relapse prevention, exploring interpersonal choices, peer recovery support, and development of a social network;

3. Provide services to improve the individual's ability to structure and organize the tasks of daily living and recovery. Such services shall accommodate the cognitive limitations within this population;

4. Make available medical, psychiatric, psychological, and laboratory and toxicology services through consultation or referral as indicated by the individual's condition;

5. Provide case management, including ongoing transition and continuing care planning;

6. Provide motivational interventions appropriate to the individual's stage of readiness to change and designed to address the individual's functional limitations;

7. Have direct affiliations with other easily accessible levels of care or coordinate through referral to more or less intensive levels of care and other services;

8. Provide family and caregiver treatment services as deemed appropriate by an assessment and treatment plan;

9. Utilize random drug screening to monitor progress and reinforce treatment gains;

10. Regularly monitor the individual's adherence to taking prescribed medications;

11. Make the substance use treatment program available to all individuals served by the residential care service; and

12. Make MAT available for all individuals. Medication assisted treatment may be provided by facility staff or coordinated through alternative resources.

12VAC35-105-1600. Clinically managed population-specific high-intensity residential services admission criteria.

Before a clinically managed, population-specific, high-intensity residential service program may admit an individual, the individual shall meet the criteria for admission as defined by the provider's policies. The provider's policy regarding admission shall at a minimum require the individual to:

1. Meet diagnostic criteria for a substance use disorder or addictive disorder of moderate to high severity as defined by the DSM; and

2. Meet the admission criteria of Level 3.3 of ASAM.

12VAC35-105-1610. Clinically managed population-specific high-intensity residential services discharge criteria.

A. Before a clinically managed, population-specific, high-intensity residential service program may discharge or transfer an individual, the individual shall meet the criteria for discharge or transfer as defined by the provider's policies, which shall include provisions for the discharge or transfer of individuals who have:

1. Achieved the goals of the treatment services and no longer require ASAM 3.3 level of care;

2. Been unable to achieve the goals of the individual's treatment but could achieve the individual's goals with a different type of treatment; or

3. Achieved the individual's original treatment goals but have developed new treatment challenges that can only be adequately addressed in a different type of treatment.

B. Discharge planning shall occur for individuals and include realistic plans for the continuity of MAT services as indicated.

12VAC35-105-1620. Clinically managed population-specific high-intensity residential services co-occurring enhanced programs.

A. Clinically managed population-specific high-intensity residential services co-occurring enhanced programs shall offer psychiatric services, medication evaluation, and laboratory services. Such services shall be available by telephone within eight hours and onsite or closely coordinated offsite within 24 hours, as appropriate to the severity and urgency of the individual's mental condition.

B. Clinically managed population-specific high-intensity residential services co-occurring enhanced programs shall be staffed by appropriately credentialed psychiatrists and licensed mental health professionals who are able to assess and treat co-occurring mental disorders and who have specialized training in behavior management techniques. All clinical staff shall be qualified by training and experience and appropriately licensed, certified, or registered by the appropriate health regulatory board to serve individuals admitted to the service.

C. Clinically managed population-specific high-intensity residential services co-occurring enhanced programs shall offer planned clinical activities designed to stabilize the individual's mental health problems and psychiatric symptoms and to maintain such stabilization, including medication education and management and motivational and engagement strategies. Goals of therapy shall apply to both the substance use disorder and any co-occurring mental health disorder.

Article 5
Clinically Managed Low-Intensity Residential Services

12VAC35-105-1630. Clinically managed low-intensity residential services staff criteria.

A clinically managed low-intensity residential services program shall meet the following staff requirements. The program shall:

1. Offer telephone or in-person consultation with a physician in case of emergency related to an individual's substance use disorder, available 24 hours a day, seven days a week. The program shall also provide allied health professional staff onsite 24 hours a day;

2. Have clinical staff who are knowledgeable about the biological and psychosocial dimensions of substance use disorder and their treatment and are able to identify the signs and symptoms of acute psychiatric conditions;

3. Have a team comprised of appropriately trained and credentialed medical, addiction, and mental health professionals; and

4. Ensure all clinical staff are qualified by training and experience and appropriately licensed, certified, or registered by the appropriate health regulatory board to serve individuals admitted to the service.

12VAC35-105-1640. Clinically managed low-intensity residential services program criteria.

A clinically managed low-intensity residential services program shall meet the following programmatic requirements. The program shall:

1. Offer a minimum of five hours a week of professionally directed treatment in addition to other treatment services offered to individuals, such as partial hospitalization or intensive outpatient treatment the focus of which is stabilizing the individual's substance use disorder. Services shall be designed to improve the individual's ability to structure and organize the tasks of daily living and recovery;

2. Ensure collaboration with care providers to develop an individual treatment plan for each individual with time-specific goals and objectives;

3. Provide counseling and clinical monitoring to support successful initial involvement in regular, productive daily activity;

4. Provide case management services;

5. Provide motivational interventions appropriate to the individual's stage of readiness to change and level of comprehension;

6. Have direct affiliations with other easily accessible levels of care or coordinate through referral to more or less intensive levels of care and other services;

7. Include the ability to arrange for needed procedures as appropriate to the severity and urgency of the individual's condition;

8. Provide family and caregiver treatment and peer recovery support services as deemed appropriate by a licensed professional and included in an assessment and treatment plan;

9. Provide addiction pharmacotherapy and the ability to arrange for pharmacotherapy for psychiatric medications;

10. Utilize random drug screening to monitor progress and reinforce treatment gains;

11. Make a substance abuse treatment program available to all individuals; and

12. Make MAT available for all individuals. Medication assisted treatment may be provided by facility staff or coordinated through alternative resources.

12VAC35-105-1650. Clinically managed low-intensity residential services admission criteria.

Before a clinically managed low-intensity residential service program may admit an individual, the individual shall meet the criteria for admission as defined by the provider's policies. The provider's policy regarding admission shall at a minimum require the individual to:

1. Meet diagnostic criteria for a substance use disorder or addictive disorder of moderate to high severity as defined by the DSM; and

2. Meet the admission criteria of Level 3.1 of ASAM.

12VAC35-105-1660. Clinically managed low-intensity residential services discharge criteria.

Before a clinically managed low-intensity residential service program may discharge or transfer an individual, the individual shall meet the criteria for discharge or transfer as defined by

the provider's policies, which shall include provisions for the discharge or transfer of individuals who have:

1. Achieved the goals of the treatment services and no longer require ASAM 3.1 level of care;

2. Been unable to achieve the goals of the individual's treatment but could achieve the individual's goals with a different type of treatment; or

3. Achieved the individual's original treatment goals but have developed new treatment challenges that can only be adequately addressed in a different type of treatment.

12VAC35-105-1670. Clinically managed low-intensity residential services co-occurring enhanced programs.

A. Clinically managed low-intensity residential services co-occurring enhanced programs shall offer psychiatric services, including medication evaluation and laboratory services. Such services shall be provided onsite or closely coordinated offsite, as appropriate to the severity and urgency of the individual's mental condition.

B. Clinically managed low-intensity residential services co-occurring enhanced programs shall be staffed by appropriately credentialed licensed mental health professionals who are able to assess and treat co-occurring disorders with the capacity to involve addiction-trained psychiatrists. All clinical staff shall be qualified by training and experience and appropriately licensed, certified, or registered by the appropriate health regulatory board to serve individuals admitted to the service.

C. Clinically managed low-intensity residential services co-occurring enhanced programs shall offer planned clinical activities that are designed to stabilize the individual's mental health problems and psychiatric symptoms and to maintain such stabilization, including medication education and management and motivational and engagement strategies. Goals of therapy shall apply to both the substance use disorder and any co-occurring mental disorder.

Article 6
Partial Hospitalization

12VAC35-105-1680. Substance abuse partial hospitalization services (ASAM 2.5 level of care) staff criteria.

A substance abuse partial hospitalization program shall meet the following staff requirements. The program shall:

1. Have an interdisciplinary team of addiction treatment professionals, which may include counselors, psychologists, social workers, and addiction-credentialed physicians. Physicians treating individuals in this level shall have specialty training or experience in addiction medicine;

2. Have staff able to obtain and interpret information regarding the individual's biopsychosocial needs;

3. Have staff trained to understand the signs and symptoms of mental disorders and to understand and be able to explain the uses of psychotropic medications and their interactions with substance-related disorders; and

4. Ensure all clinical staff are qualified by training and experience and appropriately licensed, certified, or registered by the appropriate health regulatory board to serve individuals admitted to the service.

12VAC35-105-1690. Substance abuse partial hospitalization services program criteria.

A substance abuse partial hospitalization program shall meet the following programmatic requirements. The program shall:

1. Offer no fewer than 20 hours of programming per week in a structured program. Services may include individual and group counseling, medication management, family therapy, peer recovery support services, educational groups, or occupational and recreational therapy;

2. Provide a combination of individual and group therapy as deemed appropriate by a licensed professional and included in an assessment and treatment plan;

3. Provide medical and nursing services as deemed appropriate by a licensed professional and included in an assessment and treatment plan;

4. Provide motivational enhancement and engagement strategies appropriate to an individual's stage of readiness to change and level of comprehension;

5. Have direct affiliations with other easily accessible levels of care or coordinate through referral to more or less intensive levels of care and other services;

6. Provide family and caregiver treatment services as deemed appropriate by a licensed professional and included in an assessment and treatment plan;

7. Provide educational and informational programming adaptable to individual needs;

8. Ensure and document that the length of service shall be determined by the individual's condition and functioning;

9. Make emergency services available by telephone 24 hours a day, seven days a week when the program is not in session; and

10. Make MAT available for all individuals. MAT may be provided by facility staff or coordinated through alternative resources.

12VAC35-105-1700. Substance abuse partial hospitalization admission criteria.

Before a substance abuse partial hospitalization program may admit an individual, the individual shall meet the criteria for admission as defined by the provider's policies. The provider's

policy regarding admission shall at a minimum require the individual to:

1. Meet diagnostic criteria for a substance use disorder or addictive disorder as defined by the DSM; and

2. Meet the admission criteria of Level 2.5 of ASAM, including the specific criteria for adult and adolescent populations.

12VAC35-105-1710. Substance abuse partial hospitalization discharge criteria.

Before a substance abuse partial hospitalization program may discharge or transfer an individual, the individual shall meet the criteria for discharge or transfer as defined by the provider's policies, which shall include provisions for the discharge or transfer of individuals who have:

1. Achieved the goals of the treatment services and no longer require ASAM 2.5 level of care;

2. Been unable to achieve the goals of the individual's treatment but could achieve the individual's goals with a different type of treatment; or

3. Achieved the individual's original treatment goals but have developed new treatment challenges that can only be adequately addressed in a different type of treatment.

12VAC35-105-1720. Substance abuse partial hospitalization co-occurring enhanced programs.

A. Substance abuse partial hospitalization co-occurring enhanced programs shall offer psychiatric services appropriate to the individual's mental health condition. Such services shall be available by telephone and onsite or closely coordinated offsite, within a shorter time than in a co-occurring capable program.

B. Substance abuse partial hospitalization co-occurring enhanced programs shall be staffed by appropriately credentialed mental health professionals who assess and treat co-occurring mental disorders. Intensive case management shall be delivered by cross-trained, interdisciplinary staff through mobile outreach and shall involve engagement-oriented addiction treatment and psychiatric programming. All clinical staff shall be qualified by training and experience and appropriately licensed, certified, or registered by the appropriate health regulatory board to serve individuals admitted to the service.

C. Substance abuse partial hospitalization co-occurring enhanced programs shall offer intensive case management, assertive community treatment, medication management, and psychotherapy.

Article 7
Intensive Outpatient Services

12VAC35-105-1730. Substance abuse intensive outpatient services staff criteria.

A substance abuse intensive outpatient services program shall meet the following staff requirements. The program shall:

1. Be staffed by interdisciplinary team of appropriately credentialed addiction treatment professionals, which may include counselors, psychologists, social workers, and addiction-credentialed physicians. Physicians shall have specialty training or experience in addiction medicine or addiction psychiatry;

2. Have program staff that are able to obtain and interpret information regarding the individual's biopsychosocial needs;

3. Have program staff trained to understand the signs and symptoms of mental disorders and to understand and be able to explain the uses of psychotropic medications and their interactions with substance use and other addictive disorders; and

4. Ensure all clinical staff are qualified by training and experience and appropriately licensed, certified, or registered by the appropriate health regulatory board to serve individuals admitted to the service.

12VAC35-105-1740. Substance abuse intensive outpatient services program criteria.

A substance abuse intensive outpatient program shall meet the following programmatic requirements. The program shall:

1. Offer a minimum of three service hours per service day to achieve no fewer than nine hours and no more than 19 hours of programming per week in a structured environment;

2. Ensure psychiatric and other medical consultation shall be available within 24 hours by telephone and within 72 hours in person;

3. Offer consultation in case of emergency related to an individual's substance use disorder by telephone 24 hours a day, seven days a week when the treatment program is not in session;

4. Provide a combination of individual and group therapy as deemed appropriate by a licensed professional and included in an assessment and treatment plan;

5. Have direct affiliations with other easily accessible levels of care or coordinate through referral to more or less intensive levels of care and other services;

6. Provide family and caregiver treatment and peer recovery support services as deemed appropriate by a licensed professional and included in an assessment and treatment plan;

7. Provide education and informational programming adaptable to individual needs and developmental status;

8. Ensure and document that the length of service shall be determined by the individual's condition and functioning; and

9. Make MAT available for all individuals. MAT may be provided by facility staff or coordinated through alternative resources.

12VAC35-105-1750. Substance abuse intensive outpatient services admission criteria.

Before a substance abuse intensive outpatient service program may admit an individual, the individual shall meet the criteria for admission as defined by the provider's policies. The provider's policy regarding admission shall at a minimum require the individual to:

1. Meet diagnostic criteria for a substance use disorder or addictive disorder as defined by the DSM; and

2. Meet the admission criteria of Level 2.1 of ASAM, including the specific criteria for adult and adolescent populations.

12VAC35-105-1760. Substance abuse intensive outpatient services discharge criteria.

Before a substance abuse intensive outpatient service program may discharge or transfer an individual, the individual shall meet the criteria for discharge or transfer as defined by the provider's policies, which shall include provisions for the discharge or transfer of individuals who have:

1. Achieved the goals of the treatment services and no longer require ASAM 2.1 level of care;

2. Been unable to achieve the goals of the individual's treatment but could achieve the individual's goals with a different type of treatment; or

3. Achieved the individual's original treatment goals but have developed new treatment challenges that can only be adequately addressed in a different type of treatment.

12VAC35-105-1770. Substance abuse intensive outpatient services co-occurring enhanced programs.

A. Substance abuse intensive outpatient services co-occurring enhanced programs shall offer psychiatric services appropriate to the individual's mental health condition. Such services shall be available by telephone and onsite or closely coordinated offsite, within a shorter time than in a co-occurring capable program.

B. Substance abuse intensive outpatient services co-occurring enhanced programs shall be staffed by appropriately credential mental health professionals who assess and treat co-occurring mental disorders. Capacity to consult with an addiction psychiatrist shall be available. All clinical staff shall be qualified by training and experience and appropriately licensed, certified, or registered by the appropriate health regulatory board to serve individuals admitted to the service.

C. Substance abuse intensive outpatient services co-occurring enhanced programs shall offer intensive case management, assertive community treatment, medication management, and psychotherapy.

Article 8
Substance Abuse Outpatient Services

12VAC35-105-1780. Substance abuse outpatient services staff criteria.

Substance abuse outpatient service programs shall meet the following staff requirements. The program shall:

1. Have appropriately credentialed or licensed treatment professionals who assess and treat substance-related mental and addictive disorders;

2. Have program staff who are capable of monitoring stabilized mental health problems and recognizing any instability of individuals with co-occurring mental health conditions;

3. Provide medication management services by a licensed independent practitioner with prescribing authority; and

4. Ensure all clinical staff are qualified by training and experience and appropriately licensed, certified, or registered by the appropriate health regulatory board to serve individuals admitted to the service.

12VAC35-105-1790. Substance abuse outpatient service program criteria.

Substance abuse outpatient service programs shall meet the following programmatic requirements. The program shall:

1. Offer no more than nine hours of programming a week;

2. Ensure emergency services shall be available by telephone 24 hours a day, seven days a week;

3. Provide individual or group counseling, motivational enhancement, family therapy, educational groups, occupational and recreational therapy, psychotherapy, addiction, and pharmacotherapy as indicated by each individual's needs;

4. For individuals with mental illness, ensure the use of psychotropic medication, mental health treatment and that the individual's relationship to substance abuse disorders shall be addressed as the need arises;

5. Provide medical, psychiatric, psychological, laboratory, and toxicology services onsite or through consultation or referral. Medical and psychiatric consultation shall be available within 24 hours by telephone, or if in person, within a timeframe appropriate to the severity and urgency of the consultation requested;

6. Have direct affiliations with other easily accessible levels of care or coordinate through referral to more or less intensive levels of care and other services; and

7. Ensure through documentation that the duration of treatment varies with the severity of the individual's illness and response to treatment.

12VAC35-105-1800. Substance abuse outpatient service admission criteria.

Before a substance abuse outpatient service program may admit an individual, the individual shall meet the criteria for admission as defined by the provider's policies. The provider's policy regarding admission shall at a minimum require the individual to:

1. Meet diagnostic criteria for a substance use disorder or addictive disorder as defined by the DSM; and

2. Meet the admission criteria of Level 1.0 of ASAM, including the specific criteria for adult and adolescent populations.

12VAC35-105-1810. Substance abuse outpatient services discharge criteria.

Before a substance abuse outpatient service program may discharge or transfer an individual, the individual shall meet the criteria for discharge or transfer as defined by the provider's policies, which shall include provisions for the discharge or transfer of individuals who have:

1. Achieved the goals of the treatment services and no longer require ASAM 1.0 level of care;

2. Been unable to achieve the goals of the individual's treatment but could achieve the individual's goals with a different type of treatment; or

3. Achieved the individual's original treatment goals but have developed new treatment challenges that can only be adequately addressed in a different type of treatment.

12VAC35-105-1820. Substance abuse outpatient services co-occurring enhanced programs.

A. Substance abuse outpatient services co-occurring enhanced programs shall offer ongoing intensive case management for highly crisis-prone individuals with co-occurring disorders.

B. Substance abuse outpatient services co-occurring enhanced programs shall include credentialed mental health trained personnel who are able to assess, monitor, and manage the types of severe and chronic mental disorders seen in a level 1 setting as well as other psychiatric disorders that are mildly unstable. Staff shall be knowledgeable about management of co-occurring mental and substance-related disorders, including assessment of the individual's stage of readiness to change and engagement of individuals who have co-occurring mental disorders. All clinical staff shall be qualified by training and experience and appropriately licensed, certified, or registered by the appropriate health regulatory board to serve individuals admitted to the service.

C. Substance abuse outpatient services co-occurring enhanced programs shall offer therapies to actively address, monitor, and manage psychotropic medication, mental health treatment, and interaction with substance-related and addictive disorders.

DOCUMENTS INCORPORATED BY REFERENCE (12VAC35-105)

The ASAM: Treatment for Addictive, Substance-Related and Co-Occurring Conditions, Third Edition, American Society of Addiction Medicine, Address, asam.org.

Diagnostic and Statistical Manual of Mental Disorders, 5th Edition. DSM-5, American Psychiatric Association, 800 Maine Avenue, S.W., Suite 900 Washington, DC 20024, psychiatry.org

VA.R. Doc. No. R21-6439; Filed January 13, 2022, 12:19 p.m.

TITLE 14. INSURANCE

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: **14VAC5-430. Insurance Data Security Risk Assessment and Reporting (amending 14VAC5-430-50).**

Statutory Authority: §§ 12.1-13 and 38.2-223 of the Code of Virginia.

Effective Date: February 1, 2021.

Agency Contact: Katie Johnson, Insurance Policy Advisor, Bureau of Insurance, State Corporation Commission, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9873, or email katie.johnson@scc.virginia.gov.

Summary:

The amendment corrects two documents incorporated by reference.

AT RICHMOND, JANUARY 13, 2022

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. INS-2020-00168

Ex Parte: In the Matter of Adopting
Rules to Implement the Requirements
of the Insurance Data Security Act

ORDER NUNC PRO TUNC

On May 24, 2021, the State Corporation Commission

("Commission") issued an Order Adopting Regulations ("Order"). It has been brought to the Commission's attention that there was a typographical error in the regulations adopted by the Order ("Regulations"). Specifically, 14VAC5-430-50 C referenced NIST SP 800-30, NIST SP 800-39[1] when it should have referenced NIST SP 800-53, NIST SP 800-171.

NOW THE COMMISSION, upon consideration of the matter, is of the opinion and finds that the erroneous reference in 14VAC5-430-50 C should be corrected as set forth herein and attached hereto.

Accordingly, IT IS ORDERED THAT:

(1) The incorrect reference in 14VAC5-430-50 C to NIST SP 800-30, NIST SP 800-39 is removed and replaced, nunc pro tunc, with NIST SP 800-53, NIST SP 800-171.

(2) The Regulations, as corrected and attached hereto, remain in full force and effect.

(3) The Bureau shall provide notice of the correction to the Regulations to all insurers, burial societies, fraternal benefit societies, health services plans, risk retention groups, joint underwriting associations, group self-insurance pools, and group self-insurance associations licensed by the Commission, to qualified reinsurers in Virginia, and to all interested persons.

(4) The Commission's Division of Information Resources shall cause a copy of this Order, together with the corrected Regulations, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

(5) The Commission's Division of Information Resources shall make available this Order and the attached correction to the Rules on the Commission's website: https://scc.virginia.gov/pages/Case-Information.

A copy of this Order shall be sent by the Clerk of the Commission to: C. Meade Browder, Jr., Senior Assistant Attorney General, Office of the Attorney General, Division of Consumer Counsel, by electronic mail at MBrowder@oag.state.va.us, and a copy hereof shall be delivered to the Commission's Office of General Counsel and the Bureau of Insurance in care of Deputy Commissioner Donald C. Beatty.

[1]NIST SP 800-30, NIST SP 800-39 is correctly referenced in 14VAC5-430-40 B and appears to have been inadvertently repeated in 14VAC5-430-50 C.

14VAC5-430-50. Information security program security measures.

A. As part of its information security program and based on its risk assessments, each licensee shall implement appropriate security measures as follows:

1. Manage the data, personnel, devices, systems, and facilities of the licensee in accordance with its identified risk;

2. Protect, by encryption or other appropriate means, all nonpublic information while being transmitted over an external network;

3. Protect, by encryption or other appropriate means, all nonpublic information stored on portable computing, storage devices, or media;

4. Adopt secure development practices for applications developed in-house and used by the licensee;

5. Adopt procedures for evaluating and assessing the security of externally developed applications utilized by the licensee;

6. Implement effective controls, which may include multi-factor authentication, for authorized persons to access nonpublic information; and

7. Use audit trails or audit logs designed to detect and respond to cybersecurity events and to reconstruct material financial transactions.

B. Compliance with the provisions of this section is required of all licensees on or before July 1, 2022.

C. Security measures implemented in accordance with the objectives of the most current revision of ~~NIST SP 800-30, NIST SP 800-39~~ NIST SP 800-53, NIST SP 800-171, or other substantially similar standard shall meet the requirements for security measures in subsection A of this section.

D. Effective July 1, 2022, each licensee that utilizes a third-party service provider shall:

1. Exercise due diligence in selecting a third-party service provider; and

2. Require the third-party service provider to implement appropriate administrative, technical, and physical measures to protect and secure the information systems and nonpublic information that are accessible to, or held by, the third-party service provider.

DOCUMENTS INCORPORATED BY REFERENCE (14VAC5-430)

National Institute of Standards and Technology, Computer Security Division, Information Technology Laboratory, 100 Bureau Drive (Mail Stop 8930), Gaithersburg, MD 20899-8930, sec-cert@nist.gov

NIST, Special Publication, Guide for Conducting Risk Assessments, 800-30 (rev. 9/2012)

NIST, Special Publication, Managing Information Security Risk Organization, Mission, and Information System View, 800-39 (eff. 3/2011)

NIST, Special Publication, Security and Privacy Controls for Federal Information Systems and Organizations, 800-53 (rev. 9/2021)

NIST, Special Publication, Protecting Controlled Unclassified Information, 800-171 (rev. 2/2020)

VA.R. Doc. No. R22-6886; Filed January 21, 2022, 12:42 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF MEDICINE

Fast-Track Regulation

Titles of Regulations: **18VAC85-20. Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry, and Chiropractic (amending 18VAC85-20-141).**

18VAC85-50. Regulations Governing the Practice of Physician Assistants (amending 18VAC85-50-50).

18VAC85-101. Regulations Governing the Practice of Radiologic Technology (amending 18VAC85-101-28).

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

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: March 16, 2022.

Effective Date: April 1, 2022.

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.

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: Amendments will make licensing more efficient, enabling applicants to obtain licensure and begin practice more expeditiously. Public health and safety are still protected, as verification is still required showing that no disciplinary action has been taken or is pending in another jurisdiction.

Rationale for Using Fast-Track Rulemaking Process: This action is appropriate for the fast-track rulemaking process because the amendments will make licensing more efficient, enabling applicants to obtain licensure and begin practice more expeditiously. Public protection and minimal competency are not being compromised, so there should be no objection to these changes.

Substance: Requirements for licensure are amended for applicants in medicine, osteopathic medicine, podiatry, or as a physician assistant or radiologist assistant. The revised regulation will require verification that the most recent license held in another jurisdiction or Canada is in good standing or that there has been no disciplinary action taken or pending.

Issues: The primary advantage to the public is expedited licensure for medical professionals to increase access to vital services. There are no disadvantages; public protection is maintained through a state verification and a report from the National Practitioner Data Bank. There are no advantages or disadvantages to the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 14 (as amended, July 16, 2018). The analysis presented represents DPB's best estimate of these economic impacts.[1]

Summary of the Proposed Amendments to Regulation. The Board of Medicine (Board) proposes to amend 18VAC85-20 Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry, and Chiropractic to indicate that applicants for licensure by endorsement must provide verification that the most recently acquired license held in another United States jurisdiction or in Canada is in good standing, defined as current and unrestricted, or if lapsed, eligible for renewal or reinstatement. The current regulation requires that such verification be provided for all licenses held in other United States jurisdictions or in Canada.

Similarly, the Board also proposes to amend 18VAC85-50 Regulations Governing the Practice of Physician Assistants and 18VAC85-101 Regulations Governing the Practice of Radiologic Technology to indicate that verification would only be required for the most recently acquired license held in another jurisdiction.

Background. Under the current 18VAC85-20 Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry, and Chiropractic, physicians and podiatrists who are applying for Virginia licensure by endorsement must provide verification that all licenses held in another United States jurisdiction or in Canada are in good standing, defined as current and unrestricted, or if lapsed, eligible for renewal or reinstatement. The Board proposes to only require that the most recently acquired license be so verified.

The current 18VAC85-50 Regulations Governing the Practice of Physician Assistants and 18VAC85-101 Regulations Governing the Practice of Radiologic Technology require that all applicants for Virginia licensure as a physician assistant or radiologist assistant respectively, provide verification of their licensure status in all other jurisdictions where they are licensed. The Board proposes to only require that the most recently acquired license be so verified.

Estimated Benefits and Costs. According to the Department of Health Professions (DHP), many applicants for licensure by endorsement in medicine, osteopathic medicine, and podiatry

are licensed in multiple jurisdictions, so verification of every license can significantly delay the licensing process. Licensure would not be granted until all such jurisdictions respond. Thus, the proposal to only require verification for the most recently acquired license would reduce the time it takes to become licensed by endorsement as a physician or podiatrist for many applicants. Similarly, many of the applicants for licensure as a physician assistant or radiologist assistant who are licensed in multiple other jurisdictions would also benefit from reduced time to gain licensure in the Commonwealth.

Applicants for licensure by endorsement in medicine, osteopathic medicine, and podiatry, and applicants for licensure as a physician assistant or radiologist assistant, who are licensed in multiple other jurisdictions would also benefit from the proposed amendments by paying fewer fees. Licensing agencies typically charge fees to verify licensure. For example, DHP charges $10 for verification to other jurisdictions on Virginia licensure of physicians, podiatrists, physician assistants and radiologist assistants. Thus, under the proposal, applicants would only pay the verification fee from the licensing agency in the jurisdiction of the most recently acquired license. Under the current regulations, applicants pay fees to the licensing agencies in all other jurisdictions where they are licensed.

According to DHP, all applicants must provide a current report from the U.S. Department of Health and Human Services National Practitioner Data Bank (NPDB). The NPDB is a web-based repository of reports containing information on medical malpractice payments and certain adverse actions related to health care practitioners, providers, and suppliers. Established by Congress in 1986, the U.S. Department of Health and Human Services describes it as a workforce tool that prevents practitioners from moving state to state without disclosure or discovery of previous damaging performance.[2] Thus, the proposals to only require verifications of the most recently acquired license would not likely substantively add to the risk of licensing a practitioner in the Commonwealth who unbeknownst to DHP previously practiced in an incompetent or unethical manner in another jurisdiction.

Businesses and Other Entities Affected. The proposed amendments potentially affect applicants for licensure by endorsement as physicians or podiatrists, and applicants for licensure as physician assistants or radiologist assistants, who are licensed in multiple other jurisdictions. According to DHP, in 2020 there were 596 MD and DO licenses issued by endorsement (none for podiatrists). The agency does not have data on how many of those held licenses in multiple jurisdictions, but DHP believes that the vast majority did. DHP issued 150 physician assistant licenses and zero radiologist assistant licenses in the fourth quarter 2021. The agency does not have data on how many of those held licenses in multiple jurisdictions.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.[3] An 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. No adverse impact is indicated for this proposal.

Small Businesses[4] Affected.[5] The proposed amendments do not appear to adversely affect small businesses.

Localities[6] Affected.[7] It may be the case that practitioners who live near jurisdictional borders would be more likely to seek licensure in multiple jurisdictions. To the extent that this occurs, localities adjacent to or otherwise near other jurisdictions may be particularly affected. The proposed amendments do not introduce costs for local governments.

Projected Impact on Employment. For some applicants, the proposed amendments reduce the time it takes to become licensed as a physician, podiatrist, physician assistant or radiologist assistant in Virginia and modestly reduces fees paid to other jurisdictions. However, these benefits would not likely substantively affect total employment.

Effects on the Use and Value of Private Property. By enabling some practitioners to start working in the Commonwealth sooner, the proposed amendments may raise the earnings and value of private entities that employ them during the first year of their employment. The proposed amendments do not affect real estate development costs.

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[1]Section 2.2-4007.04 of the Code of Virginia requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

[2]See https://www.npdb.hrsa.gov/topNavigation/aboutUs.jsp

[3]Pursuant to § 2.2-4007.04 D: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

[4]Pursuant to § 2.2-4007.04, 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]If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation

may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

[6]"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.

[7]§ 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 economic impact analysis of the Department of Planning and Budget.

Summary:

The amendments (i) change licensure by endorsement requirements in medicine, osteopathic medicine, and podiatry to only require verification of the most recent license status in another United States jurisdiction and (ii) change licensure requirements for physician assistants and radiologist assistants to verification of only one jurisdiction, which is consistent with current language for all other allied professions licensed by the Board of Medicine.

18VAC85-20-141. Licensure by endorsement.

To be licensed by endorsement, an applicant shall:

1. Hold at least one current, unrestricted license in a United States jurisdiction or Canada for the five years immediately preceding application to the board;

2. Have been engaged in active practice, defined as an average of 20 hours per week or 640 hours per year, for five years after postgraduate training and immediately preceding application;

3. Verify that ~~all licenses~~ the most recent license held in another United States jurisdiction or in Canada ~~are~~ is in good standing, defined as current and unrestricted, or if lapsed, eligible for renewal or reinstatement;

4. Hold current certification by one of the following:

a. American Board of Medical Specialties;

b. Bureau of Osteopathic Specialists;

c. American Board of Foot and Ankle Surgery;

d. American Board of Podiatric Medicine;

e. Fellowship of Royal College of Physicians of Canada;

f. Fellowship of the Royal College of Surgeons of Canada; or

g. College of Family Physicians of Canada;

5. Submit a current report from the U.S. Department of Health and Human Services National Practitioner Data Bank; and

6. Have no grounds for denial based on provisions of § 54.1-2915 of the Code of Virginia or regulations of the board.

18VAC85-50-50. Licensure: entry requirements and application.

A. The applicant seeking licensure as a physician assistant shall submit:

1. A completed application and fee as prescribed by the board.

2. Documentation of successful completion of an educational program as prescribed in § 54.1-2951.1 of the Code of Virginia.

3. Documentation of passage of the certifying examination administered by the National Commission on Certification of Physician Assistants.

4. ~~Documentation that the applicant has not had a license or certification as a physician assistant suspended or revoked and is not the subject of any disciplinary proceedings in another~~ If licensed or certified in any other jurisdiction, verification that there has been no disciplinary action taken or pending in that jurisdiction.

B. The board may issue a license by endorsement to an applicant for licensure if the applicant (i) is the spouse of an active duty member of the Armed Forces of the United States or the Commonwealth, (ii) holds current certification from the National Commission on Certification of Physician Assistants, and (iii) holds a license as a physician assistant that is in good standing, or that is eligible for reinstatement if lapsed, under the laws of another state.

18VAC85-101-28. Licensure requirements.

A. An applicant for licensure as a radiologist assistant shall:

1. Meet the educational requirements specified in 18VAC85-101-27;

2. Submit the required application, fee, and credentials to the board;

3. Hold certification by the ARRT as an R.T.(R) or be licensed in Virginia as a radiologic technologist;

4. Submit evidence of passage of an examination for radiologist assistants resulting in national certification as an Registered Radiologist Assistant by the ARRT; and

5. Hold current certification in Advanced Cardiac Life Support (ACLS).

B. If an applicant has been licensed or certified in another jurisdiction as a radiologist assistant or a radiologic technologist, ~~he shall provide information on the status of each license or certificate held~~ the application shall include verification that there has been no disciplinary action taken or pending in that jurisdiction.

C. An applicant who fails the ARRT examination for radiologist assistants shall follow the policies and procedures of the ARRT for successive attempts.

VA.R. Doc. No. R22-7034; Filed January 14, 2022, 1:03 p.m.

BOARD OF VETERINARY MEDICINE

Fast-Track Regulation

Title of Regulation: **18VAC150-20. Regulations Governing the Practice of Veterinary Medicine (amending 18VAC150-20-10, 18VAC150-20-115).**

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

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: March 16, 2022.

Effective Date: April 1, 2022.

Agency Contact: Leslie L. Knachel, Executive Director, Board of Veterinary Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 597-4130, FAX (804) 527-4471, or email leslie.knachel@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 Veterinary Medicine the authority to promulgate regulations to administer the regulatory system. The Board of Veterinary Medicine promulgates regulations for veterinary technicians in accordance with § 54.1-3805 of the Code of Virginia.

Purpose: The purpose of this regulatory action is to provide a pathway to licensure for persons educated in veterinary technology outside the United States or Canada without the additional costs and time associated with completion of a degree from an accredited program. The Program for the Assessment of Veterinary Education Equivalence (PAVE) program will assess the education equivalence of international veterinary technician or nurse graduates through course review and substantiation of English proficiency. Therefore, the health and safety of animals in Virginia would be equally protected in the care of persons with either a degree or PAVE certification.

Rationale for Using Fast-Track Rulemaking Process: The board is responding to a petition for rulemaking from the Executive Director of the American Association of Veterinary State Boards to accept PAVE as evidence of education for veterinary technician licensure. Since the intent is to expand access and availability to the profession and since the scope of practice is not affected, it is not expected to be controversial.

Substance: The board proposes amending regulations to accept PAVE certification as evidence of education as a veterinary technician for licensure in Virginia. PAVE is the Program for the Assessment of Veterinary Education Equivalence for veterinary technicians by the American Association of Veterinary State Boards. 18VAC150-20-10 is amended to add the definition of PAVE and 18VAC150-20-115 is amended to add PAVE certification as satisfactory evidence of education for licensure.

Issues: The primary advantage is the removal of any barriers to qualified applicants for licensure as veterinary technicians. Virginia has a shortage of technicians who are vital to veterinary practices, so amendments that remove potential barriers are advantageous to persons who utilize veterinary services. There are no disadvantages to the public. The primary advantage to the department is continued recognition of qualified persons applying for licensure.

Department of Planning and Budget's Economic Impact Analysis:

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 14 (as amended, July 16, 2018). The analysis presented represents DPB's best estimate of these economic impacts.[1]

Summary of the Proposed Amendments to Regulation. In response to a petition for rulemaking from the Executive Director of the American Association of Veterinary State Boards, the Board of Veterinary Medicine (Board) proposes to accept PAVE certification as satisfying the educational requirements necessary for licensure as a veterinary technician. PAVE is the Program for the Assessment of Veterinary Education Equivalence for veterinary technicians by the American Association of Veterinary State Boards.

Background. The Department of Health Professions (DHP) states that the purpose of this regulatory action is to provide a pathway to licensure for persons educated in veterinary technology outside the U.S. or Canada, without requiring the additional costs and time associated with completion of a degree from an accredited program in the U.S. or Canada. PAVE assesses the education equivalence of international veterinary technician/nurse graduates through course review and substantiation of English proficiency. PAVE has been operational for veterinarians for about 20 years.[2] It is now in the process of beginning to assess programs for veterinary technicians.

Estimated Benefits and Costs. The current regulation requires that applicants for licensure by examination as a veterinary technician have received a degree in veterinary technology or veterinary nursing from a college or school accredited by the American Veterinary Medical Association or the Canadian Veterinary Medical Association. The proposal is to also accept a PAVE certificate, which is available to a veterinary technician/nurse whose degree was conferred outside of the United States and Canada by a recognized post-secondary, professional school of veterinary technology/nursing or equivalent program.[3]

According to DHP, PAVE certification for veterinary technicians is not yet operational, but certain components of the PAVE certification process are anticipated. PAVE has set the application fee at $300, and candidates for a certificate must take either the TOEFL[4] iBT test (fee: $235) or IELTS[5] test (fee: $250) to demonstrate English proficiency. For certification, PAVE may require that some candidates take one to three additional credit hours to supplement their foreign degree to achieve equivalency with the American and Canadian veterinary technology (or nursing) educational

training.[6] These courses could be completed at a local community college or through distance learning, and would cost $100 to $200 (in-state) per credit hour. That would be a cost ranging from $100 to $600 in course fees. All told the cost in fees would likely be less than $1,200. There would also be the time costs associated with preparing for and taking the English proficiency test, and if necessary acquiring the one to three credit hours.[7]

These costs are considerably lower than acquiring a degree in veterinary technology or veterinary nursing from a college or school accredited by the American Veterinary Medical Association or the Canadian Veterinary Medical Association. According to DHP, the fees for obtaining an associate's degree in veterinary technology are between $13,000 and $15,000. It would also likely take approximately two years.[8] Thus, the proposal clearly benefits persons who wish to become licensed as a veterinary technician in Virginia, but were educated in veterinary technology or nursing in a country outside the U. S. and Canada.

Businesses and Other Entities Affected. The proposal particularly affects persons who wish to become licensed as a veterinary technician in the Commonwealth, but were educated in veterinary technology or nursing in a country outside the U. S. and Canada. Indirectly, the proposal also potentially affects the 1,192 registered veterinary establishments[9] in Virginia that may wish to hire such technicians.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.[10] An 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. No adverse impact is indicated for this proposal.

Small Businesses[11] Affected.[12] The proposal does not appear to adversely affect small businesses.

Localities[13] Affected.[14] The proposal does not disproportionately affect particular localities or substantively affect costs for local governments.

Projected Impact on Employment. The proposal would make it easier for individuals educated as veterinary technicians or nurses outside of the U.S. or Canada to become employed as veterinary technicians in Virginia, but would not likely substantively affect total employment.

Effects on the Use and Value of Private Property. The proposal may make it modestly easier for veterinary establishments to find qualified veterinary technicians to hire, which may in turn modestly reduce their costs and commensurately increase their value. The proposal does not affect real estate development costs.

[1]Section 2.2-4007.04 of the Code of Virginia requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

[2]See https://aavsb.org/news/article/105

[3]See https://aavsb.org/Download?url=s/hwa8pf8l2j0n5kv/PAVE%20for%20Veterinary%20Technician%20Standards%20and%20Policies.pdf

[4]TOEFL stands for Test of English as a Foreign Language.

[5]IELTS stands for International English Language Testing System.

[6]Source: DHP

[7]All data provided by DHP.

[8]Source: https://www.collegerank.net/what-is-an-associates-degree/

[9]Data source: https://www.dhp.virginia.gov/about/stats/2021Q4/04CurrentLicenseCountQ4FY2021.pdf

[10]Pursuant to § 2.2-4007.04 D: In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

[11]Pursuant to § 2.2-4007.04, 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]If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

[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 Veterinary Medicine concurs with the result of the economic impact analysis of the Department of Planning and Budget.

Summary:

The amendments change the regulation to accept PAVE certification as evidence of education as a veterinary technician for licensure in Virginia. PAVE is the Program for the Assessment of Veterinary Education Equivalence for veterinary technicians by the American Association of Veterinary State Boards.

18VAC150-20-10. Definitions.

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

"AAVSB" means the American Association of Veterinary State Boards.

"Automatic emergency lighting" is lighting that is powered by battery, generator, or alternate power source other than electrical power, is activated automatically by electrical power failure, and provides sufficient light to complete surgery or to stabilize the animal until surgery can be continued or the animal moved to another establishment.

"AVMA" means the American Veterinary Medical Association.

"Board" means the Virginia Board of Veterinary Medicine.

"Companion animal" means any dog, cat, horse, nonhuman primate, guinea pig, hamster, rabbit not raised for human food or fiber, exotic or native animal, reptile, exotic or native bird, or any feral animal or animal under the care, custody or ownership of a person or any animal that is bought, sold, traded, or bartered by any person. Agricultural animals, game species, or any animals regulated under federal law as research animals shall not be considered companion animals for the purposes of this chapter.

"CVMA" means the Canadian Veterinary Medical Association.

"DEA" means the U.S. Drug Enforcement Administration.

"ICVA" means the International Council for Veterinary Assessment.

"Immediate supervision" means that the licensed veterinarian is immediately available to the licensed veterinary technician or assistant, either electronically or in person, and provides a specific order based on observation and diagnosis of the patient within the last 36 hours.

"Owner" means any person who (i) has a right of property in an animal; (ii) keeps or harbors an animal; (iii) has an animal in his care; or (iv) acts as a custodian of an animal.

"PAVE" means the Program for the Assessment of Veterinary Education Equivalence for veterinary technicians of the American Association of Veterinary State Boards.

"Preceptee" or "extern" means a student who is enrolled and in good standing in an AVMA accredited college of veterinary medicine or AVMA accredited veterinary technology program and who is receiving practical experience under the supervision of a licensed veterinarian or licensed veterinary technician.

"Preceptorship" or "externship" means a formal arrangement between an AVMA accredited college of veterinary medicine or an AVMA accredited veterinary technology program and a veterinarian who is licensed by the board and responsible for the practice of the preceptee. A preceptorship or externship shall be overseen by faculty of the college or program.

"Private animal shelter" means a facility that is used to house or contain animals and that is owned or operated by an incorporated, nonprofit, and nongovernmental entity, including a humane society, animal welfare organization, society for the prevention of cruelty to animals, or any other organization operating for the purpose of finding permanent adoptive homes for animals.

"Professional judgment" includes any decision or conduct in the practice of veterinary medicine, as defined by § 54.1-3800 of the Code of Virginia.

"Public animal shelter" means a facility operated by the Commonwealth, or any locality, for the purpose of impounding or sheltering seized, stray, homeless, abandoned, unwanted, or surrendered animals, or a facility operated for the same purpose under a contract with any locality.

"Specialist" means a veterinarian who has been awarded and has maintained the status of diplomate of a specialty organization recognized by the American Board of Veterinary Specialties of the American Veterinary Medical Association, or any other organization approved by the board.

"Surgery" means treatment through revision, destruction, incision or other structural alteration of animal tissue. Surgery does not include dental extractions of single-rooted teeth or skin closures performed by a licensed veterinary technician upon a diagnosis and pursuant to direct orders from a veterinarian.

"Veterinarian-in-charge" means a veterinarian who holds an active license in Virginia and who is responsible for maintaining a veterinary establishment within the standards set by this chapter, for complying with federal and state laws and regulations, and for notifying the board of the establishment's closure.

"Veterinary establishment" or "establishment" means any stationary or ambulatory practice, veterinary hospital, animal hospital, or premises wherein or out of which veterinary medicine is being conducted.

"Veterinary technician" means a person licensed by the board as required by § 54.1-3805 of the Code of Virginia.

18VAC150-20-115. Requirements for licensure by examination as a veterinary technician.

A. The applicant, in order to be licensed by the board as a veterinary technician, shall:

1. Have received a degree in veterinary technology or veterinary nursing from a college or school accredited by the AVMA or the CVMA or obtained a PAVE certificate.

2. Have filed with the board the following documents:

a. A complete application on a form obtained from the board;

b. An official copy, indicating a veterinary technology or veterinary nursing degree, of the applicant's college or school transcript or documentation of a PAVE certificate; and

c. Verification that the applicant is in good standing by each board in another state or United States jurisdiction from which the applicant holds a license, certification, or registration to practice veterinary technology or veterinary nursing.

3. Have passed the Veterinary Technician National Examination approved by the AAVSB or any other board-approved, national board examination for veterinary technology with a score acceptable to the board.

4. Sign a statement attesting that the applicant has read, understands, and will abide by the statutes and regulations governing the practice of veterinary medicine in Virginia.

5. Have submitted the application fee specified in 18VAC150-20-100.

6. Have committed no acts that would constitute a violation of § 54.1-3807 of the Code of Virginia.

B. The application for licensure shall be valid for a period of one year after the date of initial submission, after which time a new application and fee shall be required.

VA.R. Doc. No. PFR22-02; Filed January 13, 2022, 9:56 a.m.

TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Final Regulation

Title of Regulation: **22VAC40-201. Permanency Services - Prevention, Foster Care, Adoption and Independent Living (amending 22VAC40-201-10, 22VAC40-201-110; adding 22VAC40-201-165).**

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

Effective Date: March 17, 2022.

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Summary:

The amendments update technical information, language, and processes necessary for consistency with the Code of Virginia and federal legislation and requirements and add (i) a new section outlining the Kinship Guardianship Assistance Program to include eligibility criteria, the process by which the maintenance payments will be negotiated, and the annual review process and (ii) types of petitions that may be completed by the designated nonattorney employee of a local department of social services.

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

22VAC40-201-10. Definitions.

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

"Administrative panel review" means a review of a child in foster care that the local board conducts on a planned basis pursuant to § 63.2-907 of the Code of Virginia to evaluate the current status and effectiveness of the objectives in the service plan and the services being provided for the immediate care of the child and the plan to achieve a permanent home for the child. The administrative review may be attended by the birth parents or prior custodians and other interested individuals significant to the child and family as appropriate.

"Adoption" means a legal process that entitles the person being adopted to all of the rights and privileges, and subjects the person to all of the obligations of a birth child.

"Adoption assistance" means a money payment provided to adoptive parents or other persons on behalf of a child with special needs who meets federal or state requirements to receive such payments.

"Adoption assistance agreement" means a written agreement between the local board and the adoptive parents of a child with special needs or in cases in which the child is in the custody of a licensed child-placing agency, an agreement between the local board, the licensed child-placing agency, and the adoptive parents that sets out the payment and services that will be provided to benefit the child in accordance with Chapter 13 (§ 63.2-1300 et seq.) of Title 63.2 of the Code of Virginia.

"Adoption Progress Report" means a report filed with the juvenile court on the progress being made to place the child in an adoptive home. Section 16.1-283 of the Code of Virginia requires that an Adoption Progress Report be submitted to the juvenile court every six months following termination of parental rights until the adoption is final.

"Adoptive home" means any family home selected and approved by a parent, local board, or a licensed child-placing agency for the placement of a child with the intent of adoption.

"Adoptive home study" means an assessment of a family completed by a child-placing agency to determine the family's suitability for adoption.

"Adoptive parent" means any provider selected and approved by a parent or a child-placing agency for the placement of a child with the intent of adoption.

"Adoptive placement" means arranging for the care of a child who is in the custody of a child-placing agency in an approved home for the purpose of adoption.

"Adult adoption" means the adoption of any person 18 years of age or older, carried out in accordance with § 63.2-1243 of the Code of Virginia.

"Agency placement adoption" means an adoption in which a child is placed in an adoptive home by a child-placing agency that has custody of the child.

"AREVA" means the Adoption Resource Exchange of Virginia that maintains a registry and photo-listing of children waiting for adoption and families seeking to adopt.

"Assessment" means an evaluation of the situation of the child and family to identify strengths and services needed.

"Birth family" means the child's biological family.

"Birth parent" means the child's biological parent and for purposes of adoptive placement means a parent by previous adoption.

"Birth sibling" means the child's biological sibling.

"Board" means the State Board of Social Services.

"Child" means any natural person under 18 years of age or, for the purposes of the Fostering Futures program set forth in Article 2 (§ 63.2-917 et seq.) of Chapter 9 of the Code of Virginia, under 21 years of age and meeting the eligibility criteria set forth in § 63.2-919 of the Code of Virginia.

"Child-placing agency" means any person who places children in foster homes, adoptive homes, or independent living arrangements pursuant to § 63.2-1819 of the Code of Virginia or a local board that places children in foster homes or adoptive homes pursuant to §§ 63.2-900, 63.2-903, and 63.2-1221 of the Code of Virginia. Officers, employees, or agents of the Commonwealth, or any locality acting within the scope of their authority as such, who serve as or maintain a child-placing agency, shall not be required to be licensed.

"Child with special needs" as it relates to adoption assistance means a child who meets the definition of a child with special needs set forth in § 63.2-1300 or 63.2-1301 B of the Code of Virginia.

"Children's Services Act" or "CSA" means a collaborative system of services and funding that is child centered, family focused, and community based when addressing the strengths and needs of troubled and at-risk youth and their families in the Commonwealth.

"Claim for benefits," as used in § 63.2-915 of the Code of Virginia and 22VAC40-201-115, means (i) foster care maintenance, including enhanced maintenance; (ii) the services set forth in a court approved foster care service plan, the foster care services identified in an individual family service plan developed by a family assessment and planning team or other multi-disciplinary team pursuant to the Children's Services Act (§ 2.2-5200 et seq. of the Code of Virginia), or a transitional living plan for independent living services; (iii) the placement of a child through an agreement with the child's parents or guardians, where legal custody remains with the parents or guardians; (iv) foster care prevention services as set out in a prevention service plan; or (v) placement of a child for adoption when an approved family is outside the locality with the legal custody of the child, in accordance with 42 USC § 671(a)(23).

"Close relative" means a grandparent, great-grandparent, adult nephew or niece, adult brother or sister, adult uncle or aunt, or adult great uncle or great aunt.

"Commissioner" means the commissioner of the department, his designee, or his authorized representative.

"Community Policy and Management Team" or "CPMT" means a team appointed by the local governing body pursuant to Chapter 52 (§ 2.2-5200 et seq.) of Title 2.2 of the Code of Virginia. The powers and duties of the CPMT are set out in § 2.2-5206 of the Code of Virginia.

"Concurrent permanency planning" means utilizing a structured case management approach in which reasonable efforts are made to achieve a permanency goal, usually a reunification with the family, simultaneously with an established alternative permanent plan for the child.

"Department" means the state Department of Social Services.

"Denied," as used in § 63.2-915 of the Code of Virginia and 22VAC40-201-115, means the refusal to provide a claim for benefits.

"Dually approved" means applicants have met the required standards to be approved as a foster and adoptive family home provider.

"Entrustment agreement" means an agreement that the local board enters into with the parent, parents, or guardian to place the child in foster care either to terminate parental rights or for the temporary care and placement of the child. The agreement specifies the conditions for the care of the child.

"Family assessment and planning team" or "FAPT" means the local team created by the CPMT (i) to assess the strengths and needs of troubled youths and families who are approved for referral to the team and (ii) to identify and determine the complement of services required to meet their unique needs. The powers and duties of the FAPT are set out in § 2.2-5208 of the Code of Virginia.

"Foster care" means 24-hour substitute care for children in the custody of the local board or who remain in the custody of their

parents, but are placed away from their parents or guardians and for whom the local board has placement and care responsibility through a noncustodial agreement.

"Foster care maintenance payments" means payments to cover those expenses made on behalf of a child in foster care including the cost of, and the cost of providing, food, clothing, shelter, daily supervision, school supplies, a child's incidentals, reasonable travel to the child's home for visitation, and reasonable travel to remain in the school in which the child is enrolled at the time of the placement. The term also includes costs for children in institutional care and costs related to the child of a child in foster care as set out in 42 USC § 675.

"Foster care plan" means a written document filed with the court in accordance with § 16.1-281 of the Code of Virginia that describes the programs, care, services, and other support that will be offered to the child and his parents and other prior custodians. The foster care plan defined in this definition is the case plan referenced in 42 USC § 675.

"Foster care prevention" means the provision of services to a child and family to prevent the need for foster care placement.

"Foster care services" means the provision of a full range of casework, treatment, and community services, including independent living services, for a planned period of time to a child meeting the requirements as set forth in § 63.2-905 of the Code of Virginia.

"Foster child" means a ~~child~~ person younger than 21 years of age for whom the local board has assumed placement and care responsibilities through a noncustodial foster care agreement, entrustment, or court commitment ~~before 18 years of age~~ prior to such person's 18th birthday.

"Foster home" means the place of residence of any natural person in which any child, other than a child by birth or adoption of such person, resides as a member of the household.

"Foster parent" means an approved provider who gives 24-hour substitute family care, room and board, and services for children or youth committed or entrusted to a child-placing agency.

"Independent living arrangement" means placement of a child at least 16 years of age who is in the custody of a local board or licensed child-placing agency and has been placed by the local board or licensed child-placing agency in a living arrangement in which he does not have daily substitute parental supervision.

"Independent living services" means services and activities provided to a child in foster care 14 years of age or older who was committed or entrusted to a local board of social services, child welfare agency, or private child-placing agency. Independent living services may also mean services and activities provided to a person who (i) was in foster care on his 18th birthday and has not yet reached the age of 21 years or (ii) is at least 18 years of age and who, immediately prior to his commitment to the Department of Juvenile Justice, was in the custody of a local department of social services. Such services shall include counseling, education, housing, employment, and money management skills development, access to essential documents, and other appropriate services to help children or persons prepare for self-sufficiency.

"Individual family service plan" or "IFSP" means the plan for services developed by the FAPT in accordance with § 2.2-5208 of the Code of Virginia.

"Intercountry placement" means the arrangement for the care of a child in an adoptive home or foster care placement into or out of the Commonwealth by a licensed child-placing agency, court, or other entity authorized to make such placements in accordance with the laws of the foreign country under which it operates.

"Interstate Compact on the Placement of Children" or "ICPC" means a uniform law that has been enacted by all 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands, which establishes orderly procedures for the interstate placement of children and sets responsibility for those involved in placing those children.

"Interstate placement" means the arrangement for the care of a child in an adoptive home, foster care placement, or in the home of the child's parent or with a relative or nonagency guardian, into or out of the Commonwealth, by a child-placing agency or court when the full legal right of the child's parent or nonagency guardian to plan for the child has been voluntarily terminated or limited or severed by the action of any court.

"Investigation" means the process by which the child-placing agency obtains information required by § 63.2-1208 of the Code of Virginia about the placement and the suitability of the adoption. The findings of the investigation are compiled into a written report for the circuit court containing a recommendation on the action to be taken by the court.

"Kinship foster parent" means a relative or fictive kin who gives 24-hour substitute family care, room and board, and services for children or youth committed or entrusted to a child-placing agency.

"Kinship guardian" means the adult relative of a child who has been awarded custody of the child in accordance with a kinship guardianship, as established in § 63.2-1305 of the Code of Virginia, or a kinship subsidy, as established in § 63.2-1306 of the Code of Virginia.

"Kinship guardianship" means a relationship established in accordance with § 63.2-1305 of the Code of Virginia between a child and an adult relative of the child who has formerly acted as the child's foster parent that is intended to be permanent and self-sustaining, as evidenced by the transfer by the court to the adult relative of the child of the authority necessary to ensure the protection, education, care and control, and custody of the child and the authority for decision making for the child.

"Kinship Guardianship Assistance Agreement" means a written agreement, binding on the parties to the agreement, between the agency and the kinship guardian of the minor child that specifies the nature and the amount of any payments and assistance to be provided under such agreement and stipulates that the agreement shall remain in effect regardless of the state in which the kinship guardian resides.

"Kinship Guardianship Assistance payment" means a money payment provided to a kinship guardian on behalf of a child that was discharged from foster care to the kinship guardian's custody in accordance with the requirements of § 63.2-1305 of the Code of Virginia.

"Kinship Guardianship Assistance Program" means a program consistent with 42 USC § 673 that provides, subject to a kinship guardianship assistance agreement developed in accordance with § 63.2-1305 of the Code of Virginia, payments to eligible individuals who have received custody of a relative child of whom they had been the foster parents.

"Local board" means the local board of social services in each county and city in the Commonwealth required by § 63.2-300 of the Code of Virginia.

"Local department" means the local department of social services of any county or city in the Commonwealth.

"Nonagency placement adoption" means an adoption in which the child is not in the custody of a child-placing agency and is placed in the adoptive home directly by the birth parent or legal guardian.

"Noncustodial foster care agreement" means an agreement that the local department enters into with the parent or guardian of a child to place the child in foster care when the parent or guardian retains custody of the child. The agreement specifies the conditions for placement and care of the child.

"Nonrecurring expenses" means expenses of adoptive parents directly related to the adoption of a child with special needs as set out in § 63.2-1301 D of the Code of Virginia or the expenses of a kinship guardian directly related to obtaining legal custody of the child subject to 42 USC § 673(d)(1)(D).

"Normalcy" means allowing children and youth in foster care to experience childhood and adolescence in ways similar to their peers who are not in foster care by empowering foster parents and congregate care staff to use the reasonable and prudent parent standard as referenced in Public Law 113-183 (42 USC §§ 671 and 675) when making decisions regarding extracurricular, enrichment, and social activities.

"Parental placement" means locating or effecting the placement of a child or the placing of a child in a family home by the child's parent or legal guardian for the purpose of foster care or adoption.

"Permanency" means establishing family connections and placement options for a child to provide a lifetime of commitment, continuity of care, a sense of belonging, and a legal and social status that go beyond a child's temporary foster care placements.

"Permanency planning" means a social work practice philosophy that promotes establishing a permanent living situation for every child with an adult with whom the child has a continuous, reciprocal relationship within a minimum amount of time after the child enters the foster care system.

"Prior custodian" means the person who had custody of the child and with whom the child resided, other than the birth parent, before custody was transferred to or placement made with the child-placing agency when that person had custody of the child.

"Prior family" means the family with whom the child resided, including birth parents, relatives, or prior custodians, before custody was transferred to or placement made with the child-placing agency.

"Reasonable and prudent parent standard," in accordance with 42 USC § 675(10), means the standard characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child while at the same time encouraging the emotional and developmental growth of the child that foster parents and congregate care staff shall use when determining whether to allow a child in foster care to participate in extracurricular, enrichment, cultural, and social activities.

"Residential placement" means a placement in a licensed publicly or privately owned facility, other than a private family home, where 24-hour care is provided to children separated from their families. A residential placement includes placements in children's residential facilities as defined in § 63.2-100 of the Code of Virginia.

"Reunification" means the return of the child to his home after removal for reasons of child abuse and neglect, abandonment, child in need of services, parental request for relief of custody, noncustodial agreement, entrustment, or any other court-ordered removal.

"Service worker" means a worker responsible for case management or service coordination for prevention, foster care, or adoption cases.

"Sibling" means each of two or more children having one or more parents in common.

"SSI" means Supplemental Security Income.

"State-Funded Kinship Subsidy" or "State-Funded Kinship Guardianship Assistance Program" means a program that provides payments to eligible individuals who have received custody of a relative child subject to a State-Funded Kinship Subsidy agreement developed in accordance with § 63.2-1306 of the Code of Virginia.

"State pool funds" means the pooled state and local funds administered by CSA and used to pay for services authorized by the CPMT.

"Step-parent adoption" means the adoption of a child by a spouse or the adoption of a child by a former spouse of the birth or adoptive parent in accordance with § 63.2-1201.1 of the Code of Virginia.

"Supervised independent living setting" means the residence of a person 18 years of age or older who is participating in the Fostering Futures program set forth in Article 2 (§ 63.2-917 et seq.) of Chapter 9 of the Code of Virginia where supervision includes a monthly visit with a service worker or, when appropriate, contracted supervision. "Supervised independent living setting" does not include residential facilities or group homes.

"Title IV-E" means the title of the Social Security Act that authorizes federal funds for foster care and adoption assistance.

"Virginia Birth Father Registry" means the established confidential database designed to protect the rights of a putative father who wants to be notified in the event of a proceeding related to termination of parental rights or adoption for a child he may have fathered.

"Visitation and report" means the visits conducted pursuant to § 63.2-1212 of the Code of Virginia and the written report of the findings made in the course of the visitation. The report is filed in the circuit court in accordance with § 63.2-1212 of the Code of Virginia.

"Voluntary placement" means the placement of a child in foster care with the agreement of the child's parent through a noncustodial foster care or entrustment agreement.

"Wrap around services" means an individually designed set of services and supports provided to a child and his family that includes treatment services, personal support services or any other supports necessary to achieve the desired outcome. Wrap around services are developed through a team approach.

"Youth" means any child in foster care between 14 and 18 years of age or any person 18 to 21 years of age transitioning out of foster care and receiving independent living services pursuant to § 63.2-905.1 of the Code of Virginia. "Youth" may also mean an individual older than the age of 16 years who is the subject of an adoption assistance agreement or kinship guardianship assistance agreement.

22VAC40-201-110. Court hearings and case reviews.

A. For all court hearings, local departments shall:

1. Facilitate a meeting prior to the development of the foster care service plan and foster care service plan review to ensure participation and consider input from the child, the birth parents or prior custodians, the foster or adoptive parents, relatives and fictive kin who are interested in the child's welfare, and any other interested individuals, who may include service providers, in the development of the service plan and service plan review. All youth 12 years of age and older shall be given the opportunity to choose up to two people to attend the meeting who are not the foster parent or caseworker. All of these persons shall be involved in sharing information for the purposes of well-informed decisions and planning for the child with a focus on safety and permanence.

2. File petitions in accordance with subsection L of this section and the requirements for the type of hearing.

3. Obtain and consider the child's input as to who should be included in the court hearing. If persons identified by the child will not be included in the court hearing, the service worker shall explain the reasons to the child for such a decision consistent with the child's developmental and psychological status.

4. Inform the court of reasonable efforts made to achieve concurrent permanency goals.

5. Document the appropriateness of the placement, including the continued appropriateness of an out-of-state placement if applicable.

6. Ensure the child or youth is present for the permanency planning hearing unless the court determines this not to be in the child's best interest.

B. The child or youth shall be consulted in an age-appropriate manner about his permanency plan at the permanency planning hearing and subsequent administrative panel reviews.

C. An administrative panel review shall be held six months after a permanency planning hearing when the goal of permanent foster care has been approved by the court. A foster care review hearing will be held annually. The child will continue to have administrative panel reviews or review hearings every six months until the child reaches age 18 years.

D. The local department shall invite the child; the child's birth parents or prior custodians when appropriate; and the child's foster or adoptive parents, placement providers, guardian ad litem, court appointed special advocate, relatives, and service providers to participate in the administrative panel reviews.

E. The local department shall consider all recommendations made during the administrative panel review in planning services for the child and birth parents or prior custodians and document the recommendations on the department approved form. Individuals who were invited, including those not in attendance, shall be given a copy of the results of the administrative panel review as documented on the department approved form.

F. A supervisory review is required every six months for youth ages 18 to 21 years who are receiving independent living services only.

G. An administrative panel review is required every six months for Fostering Futures program participants unless a court review is held.

H. In accordance with § 16.1-242.1 of the Code of Virginia, when a case is on appeal for termination of parental rights, the juvenile and domestic relations district court retains jurisdiction on all matters not on appeal. The circuit court appeal hearing may substitute for a review hearing if the circuit court addresses the future status of the child.

I. An adoption progress report shall be prepared every six months after a permanency planning hearing when the goal of adoption has been approved by the court. The adoption progress report shall be entered into the automated child welfare data system. The child will continue to have annual review hearings in addition to adoption progress reports until a final order of adoption is issued or the child reaches age 18 years.

J. If a child is in the custody of the local department and a preadoptive family has not been identified and approved for the child, the child's guardian ad litem or the local board of social services may file a petition to restore the previously terminated parental rights of the child's parent in accordance with § 16.1-283.2 of the Code of Virginia.

K. If a child has been in foster care 15 out of the last 22 months or if the parent of a child in foster care has been convicted of an offense as outlined in § 63.2-910.2 of the Code of Virginia, the local department shall file a petition to terminate the parental rights and concurrently identify, recruit, process, and approve a qualified family for adoption of the child unless certain exceptions as outlined in § 63.2-910.2 are met.

L. Designated nonattorney employees of a local department may only file petitions that are outlined in this subsection. All other petitions must be filed by an attorney, including petitions for the termination of parental rights. In accordance with §§ 16.1-260, 54.1-3900, and 63.2-332 of the Code of Virginia, nonattorney employees of a local department may only do the following:

1. Initiate a case on behalf of the local department by appearing before an intake officer; and

2. Complete, sign, and file with the clerk, on forms approved by the Supreme Court of Virginia, petitions for foster care review hearings, petitions for permanency planning hearings, petitions to establish paternity, motions to establish or modify support, motions to amend or review an order, and motions for a rule to show cause.

22VAC40-201-165. Kinship Guardianship Assistance Program.

A. The purpose of the Kinship Guardianship Assistance Program is to facilitate placements with relatives and ensure permanency for children for whom adoption or reunification are not appropriate permanency options.

B. A child is eligible for the Kinship Guardianship Assistance Program if:

1. The child has been removed from the child's home pursuant to a voluntary placement agreement or as a result of a judicial determination that continuation in the home would be contrary to the welfare of the child;

2. The child was eligible for foster care maintenance payments under 42 USC § 672 or under state law while residing for at least six consecutive months in the home of the prospective kinship guardian;

3. Reunification or adoption are not appropriate permanency options for the child;

4. The child demonstrates a strong attachment to the prospective kinship guardian, and the prospective kinship guardian has a strong commitment to caring permanently for the child; and

5. The child has been consulted regarding the kinship guardianship if the child is 14 years of age or older.

C. If a child does not meet the eligibility criteria set forth in subsection B of this section but has a sibling who meets such criteria, the child may be placed in the same kinship guardianship with the child's eligible sibling in accordance with 42 USC § 671(a)(31) if the local department and kinship guardian agree that such placement is appropriate. In such cases, kinship guardianship may be paid on behalf of each sibling so placed.

D. Kinship Guardianship Assistance payments may not exceed the foster care maintenance payment, either IV-E or state funded, which would have been paid on behalf of the child if the child had remained in a foster home. Once the Kinship Guardianship Assistance Agreement becomes effective in accordance with subsection H of this section, foster care payments will cease and kinship guardianship assistance payments will begin. Kinship Guardianship Assistance payments include the following, where appropriate:

1. Title IV-E maintenance payments if the child meets federal eligibility requirements.

2. State-funded maintenance payments when the local department determines that the child does not meet the requirements in § 473 of Title IV-E of the Social Security Act (42 USC § 673).

3. Nonrecurring expense payments associated with the costs of obtaining legal custody of the child when a Kinship Guardianship Assistance Agreement is completed prior to legal custody transfer to the kinship guardian. Claims for nonrecurring expense payments must be filed within two years of the date that legal custody transferred to the kinship guardian.

E. The local department shall inform the prospective kinship guardian whether the child is eligible for Medicaid in relation to the Kinship Guardianship Assistance Agreement. For the child who meets the requirements in § 473 of Title IV-E of the Social Security Act (42 USC § 673), Medicaid shall be included in the Kinship Guardianship Assistance Agreement.

F. Additional criteria for the payments and services specified in subsection D of this section are as follows:

1. A maintenance payment, whether under Title IV-E or state funded, shall be approved for a child who is eligible for Kinship Guardianship Assistance payment unless the kinship guardian indicates, or it is determined through negotiation, that the payment is not needed.

a. The amount of all payments shall be negotiated by a representative of the department with the kinship guardian, taking into consideration the needs of the child and circumstances of the kinship guardian.

b. The amount of maintenance payments made shall not exceed the foster care maintenance payment that would have been paid during the period if the child had remained in a foster family home.

c. The maintenance payments shall not be reduced below the amount specified in the Kinship Guardianship Assistance Agreement without the concurrence of the kinship guardian or a statewide reduction in maintenance rates.

d. The maintenance payment specified in the Kinship Guardianship Assistance Agreement may only be increased if the child is already receiving the maximum amount allowed and (i) the child reaches an age at which the foster care maintenance rate would increase or (ii) statewide increases are approved for foster care maintenance rates.

e. The kinship guardian shall be required under the Kinship Guardianship Assistance Agreement to keep the local department informed of the circumstances that would make them ineligible for a maintenance payment or eligible for a different amount of maintenance payment than that specified in the Kinship Guardianship Assistance Agreement.

2. Children who are living with a kinship guardian participating in the Kinship Guardianship Assistance Program are eligible for foster care services under § 63.2-905 of the Code of Virginia, including a full range of casework, treatment, and community services. The kinship guardian may request services through the family assessment and planning team (FAPT) in accordance with state and local policies and procedures.

3. The kinship guardian shall be reimbursed, upon request, for the nonrecurring expenses of obtaining legal custody of the child. The total amount of reimbursement shall be based on actual costs and shall not exceed the amount established by federal law. Claims for nonrecurring expense payments must be filed within two years of the date that legal custody transferred to the kinship guardian.

4. When the kinship guardian declines a specific payment or agrees to a reduced payment amount and the kinship guardian's family circumstances or the child's needs change, the kinship guardian may request a change to the agreement, and an addendum to the Kinship Guardianship Assistance Agreement may be negotiated. The requirements for addendums to an existing Kinship Guardianship Assistance Agreement are in subsection K of this section.

G. All Kinship Guardianship Assistance payments and agreements shall be negotiated with the kinship guardian by a representative of the department, taking into consideration the needs of the child, the circumstances of the family, and the limitations specified in subsections B, C, D, and E of this section. Documentation supporting the requests for payments shall be provided by the kinship guardian and shall be considered in the negotiation of the Kinship Guardianship Assistance Agreement. Income shall not be the sole factor in considering the family's circumstances during the negotiations. Available family and community resources shall be explored as an alternative or supplement to the Kinship Guardianship Assistance payment.

H. A Kinship Guardianship Assistance Agreement shall be entered into by the local board and the kinship guardian for a child who has been determined eligible for Kinship Guardianship Assistance payments. Local departments shall use the Kinship Guardianship Assistance Agreement form provided by the department.

I. The Kinship Guardianship Assistance Agreement shall:

1. Be signed prior to legal custody transfer of the child to the kinship guardian;

2. Specify the payment types and monthly amounts to be provided;

3. Become effective on the date that the judge signs the court order transferring legal custody of the child to the kinship guardian; and

4. Absent modification or revocation of the kinship guardianship, remain in effect and governed by the laws of the Commonwealth of Virginia regardless of the state to which the kinship guardian may relocate.

J. The kinship guardian shall:

1. Annually submit a signed kinship guardianship assistance affidavit to the local department by the date the Kinship Guardianship Assistance Agreement was effective; and

2. Report changes in circumstances to the local department as outlined in the Kinship Guardianship Assistance Agreement.

K. Kinship Guardianship Assistance Agreements may be modified beyond the original provisions of the agreement to the extent provided by law when the local department and the kinship guardian agree in writing to new or renewed provisions in an addendum signed and dated by the local department and the kinship guardian. The local departments shall use the addendum form provided by the department and the changes to the agreement shall be negotiated by a representative of the department.

L. The Kinship Guardianship Assistance Agreement and any amendments may name an appropriate person to act as a successor legal guardian to provide care and guardianship in the event of death or incapacitation of the relative guardian. The successor guardian must be named in the agreement or addendum prior to the kinship guardian's death or incapacitation. The successor guardian does not need to be a relative or licensed as a foster parent to receive the Kinship Guardianship Assistance payment. Before the successor guardian may receive the Kinship Guardianship Assistance payments, the following requirements shall be met:

1. A new amendment to the Kinship Guardianship Assistance Agreement will need to be completed, outlining the terms of the kinship guardianship assistance and responsibilities of the successor guardian. The amendment to the Kinship Guardianship Assistance Agreement must specify that the agency will pay the total cost of nonrecurring expenses associated with obtaining legal guardianship of the child to the extent that the total cost does not exceed the amount authorized by federal law;

2. The successor guardian must complete a fingerprint based criminal background check and a central registry check of the successor guardian and all other adults living in the successor guardian's home; and

3. The successor guardian must obtain legal custody of the child.

M. The local department is responsible for the following:

1. Maintaining payments identified in the Kinship Guardianship Assistance Agreement and any addendum in effect, regardless of where the family resides;

2. Notifying kinship guardians who are receiving Kinship Guardianship Assistance payments that the annual affidavit is due;

3. Assisting the kinship guardian in coordinating services to meet the child's needs upon request;

4. Managing requests for changes in Kinship Guardianship Assistance payments and foster care services from the kinship guardian; and

5. Notifying the kinship guardians of a suspension or termination in payments or foster care services.

N. The Kinship Guardianship Assistance Agreement shall be terminated when the child reaches the age of 18 years, unless:

1. The child has a physical or mental disability that was present at the time of the custody transfer or a physical or mental disability that is related to a hereditary tendency, congenital problem, or birth injury and the local department determines the child requires ongoing treatment and intervention. The Kinship Guardianship Assistance payment may be continued by amending the original Kinship Guardianship Assistance Agreement or completing an addendum. The terms of the agreement or addendum may be for any period after the child's 18th birthday up to the child's 21st birthday; or

2. The child was subject to a Kinship Guardianship Assistance Agreement that became effective after the child reached the age of 16 years. In addition, the child shall meet at least one of the following participation criteria:

a. Completing secondary education or an equivalent credential;

b. Enrolled in an institution that provides post-secondary or vocational education;

c. Participating in a program or activity designed to promote employment or remove barriers to employment;

d. Employed at least 80 hours per month; or

e. Is incapable of doing any of the activities described in subdivisions a through d of this subsection due to a medical condition, which incapability is supported by regularly updated information in the program participant's case record.

O. The Kinship Guardianship Assistance Agreement shall not be terminated before the child's 18th birthday without the consent of the kinship guardian unless:

1. The kinship guardian adopts the child subsequent to the Kinship Guardianship Assistance Agreement and transfer of legal custody. The kinship guardian and a representative of the department shall negotiate adoption assistance payments independently from any negotiated terms of the Kinship Guardianship Assistance Agreement.

2. The kinship guardian requests in writing that the agreement ends.

3. The kinship guardian fails to comply with the annual review process.

4. The kinship guardian is no longer legally responsible for the care of the child.

5. The kinship guardian is not providing any financial support for the child.

6. The kinship guardian dies or becomes incapacitated. If a successor legal guardian is named in the Kinship Guardianship Assistance Agreement or amendments prior to the kinship guardian's death or incapacitation, then Kinship

Guardianship Assistance payments may continue to the successor legal guardian under the requirements outlined in subsection L of this section.

7. The kinship guardian and the local department agree in writing to terminate the agreement.

P. Local boards of social services are responsible for informing kinship guardians in writing of their right to appeal decisions relating to the child's eligibility for the Kinship Guardianship Assistance Program and decisions relating to payments within 30 days of receiving written notice of such decisions. In accordance with § 63.2-915 of the Code of Virginia, applicants for and recipients of the Kinship Guardianship Assistance Program shall have the right to appeal these decisions by a local board or licensed child-placing agency in granting, denying, changing, or discontinuing Kinship Guardianship Assistance payments.

VA.R. Doc. No. R19-5722; Filed January 12, 2022, 2:59 p.m.

Final Regulation

Title of Regulation: **22VAC40-201. Permanency Services - Prevention, Foster Care, Adoption and Independent Living (amending 22VAC40-201-40, 22VAC40-201-70, 22VAC40-201-100, 22VAC40-201-110, 22VAC40-201-140; adding 22VAC40-201-145).**

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

Effective Date: March 17, 2022.

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

Summary:

The amendments make changes in response to Chapters 446, 676, and 677 of the 2019 Acts of Assembly and Chapter 934 of the 2020 Acts of Assembly, including (i) requiring the local departments to search for relatives at the time the child enters foster care, annually, and prior to any subsequent placement changes for the child; (ii) removing the requirement that a home or licensed facility be approved so that children may be placed in homes or licensed facilities that meet federal and state requirements even if full foster home approval has not yet been granted; (iii) modifying the requirements and exceptions regarding the termination of parental rights for children who enter foster care; (iv) requiring local departments to file a petition to terminate parental rights if the parent has been convicted of the offenses listed in § 63.2-910.2 of the Code of Virginia; (v) requiring that the department investigate a complaint by conducting a review of case documentation, foster care policy, and state and federal code, and gather information from the constituent, local department, and other collaterals as needed and provide the constituent a resolution to their concern that includes the methods used to assess the concern and a response to the concern via the communication method of the constituent; and (vi) establishing a maximum caseload per foster care worker and stating that each child in foster care is considered to be an individual foster care case.

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

22VAC40-201-40. Foster care placements.

A. Within 30 days of the child being placed in the custody of the local board, the local department shall exercise due diligence to identify and notify in writing all adult relatives, including the parents of siblings who have legal custody of such siblings, that the child has been removed and explain the options to relatives to participate in the care and placement of the child including eligibility as a kinship foster parent and the services and supports that may be available for children placed in such a home. The local department may determine it is not in the child's best interest to notify relatives who have a history of domestic violence; have been convicted of barrier crimes as defined in § 63.2-1719 of the Code of Virginia other than those described in subsections E, F, G, and H of § 63.2-1721 of the Code of Virginia; or are listed on the Virginia State Police Sex Offender Registry. Additionally, if the birth father is unknown, the local department shall search the Virginia Birth Father Registry within 30 days of the child entering foster care. At a minimum, the local department shall search for relatives at the time the child enters foster care, annually, and prior to any subsequent placement changes for the child.

B. The local department shall ensure a child in foster care is placed in ~~an approved~~ a home or licensed facility that complies with all applicable federal and state requirements for safety and child well-being. Placements shall be made subject to the requirements of § 63.2-901.1 of the Code of Virginia. The following requirements shall be met when placing a child in an approved home or licensed facility:

1. The local department shall exercise due diligence to locate and assess relatives as a foster home placement for the child, including in emergency situations.

2. The local department shall place the child in the least restrictive, most family like setting consistent with the best interests and needs of the child.

3. The local department shall attempt to place the child in as close proximity as possible to the birth parent's or prior custodian's home to facilitate visitation, provide continuity of connections, and provide educational stability for the child.

4. The local department shall take reasonable steps to place the child with siblings unless such a joint placement would

be contrary to the safety or well-being of the child or siblings.

5. The local department shall, when appropriate, consider placement in a dually approved home so that if reunification fails, the placement is the best available placement to provide permanency through adoption for the child.

6. The local department shall not delay or deny placement of a child into a foster or adoptive family placement on the basis of race, color, or national origin of the foster or adoptive parent or child.

7. When a child being placed in foster care is of Native American, Alaskan Eskimo, or Aleut heritage and is a member of a nationally recognized tribe, the local department shall follow all federal laws, regulations, and policies regarding the referral of the child. The local department may contact the Department of Historic Resources for information on contacting Virginia tribes and shall consider tribal culture and connections in the placement and care of a child of Virginia Indian heritage.

8. If a child is placed in a kinship foster placement pursuant to § 63.2-900.1 of the Code of Virginia, the child shall not be removed from the physical custody of the kinship foster parent, provided the child has been living with the kinship foster parent for six consecutive months and the placement continues to meet approval standards for foster care, unless (i) the kinship foster parent consents to the removal; (ii) removal is agreed upon at a family partnership meeting; (iii) removal is ordered by a court of competent jurisdiction; or (iv) removal is warranted pursuant to § 63.2-1517 of the Code of Virginia.

C. A service worker shall make a preplacement visit to any out-of-home placement to observe the environment where the child will be living and ensure that the placement is safe and capable of meeting the needs of the child. The preplacement visit shall precede the placement date except in cases of emergency. In cases of emergency, the visit shall occur on the same day as the placement.

D. Foster or adoptive homes shall meet standards established by the board and shall be approved by child-placing agencies. Prior to the placement of a child in a licensed child-placing agency (LCPA) foster home, the local department shall verify that the LCPA approved the foster home. Prior to the placement of a child in a children's residential facility, the local department shall verify that the facility is licensed to operate by the appropriate state regulatory authority.

E. Local departments shall receive notice of the approval from the department's office of the ICPC prior to placing a child out of state.

F. When the local department is considering placement of a child in a foster or adoptive home approved by another local department within Virginia, the local department intending to place the child shall consult with the approving local department about the placement of the child and shall also verify that the home is still approved.

G. When a child is moving with a foster or adoptive family from one jurisdiction to another, the local department holding custody shall notify the local department in the jurisdiction to which the foster or adoptive family is moving.

H. When a child moves with a foster or adoptive family from one jurisdiction to another in Virginia, the local department holding custody shall continue supervision of the child unless supervision is transferred to the other local department.

I. A local department may petition the court to transfer custody of a child to another local department when the birth parent or prior custodian has moved to that locality.

J. In planned placement changes or relocation of foster parents, birth parents with residual parental rights or prior custodians and all other relevant parties shall be notified that a placement change or move is being considered if such notification is in the best interest of the child. The service worker shall consider the child's best interest and safety needs when involving the birth parent or prior custodian and all other relevant parties in the decision-making process regarding placement change or notification of the new placement.

K. In the case where an emergency situation requires an immediate placement change, the birth parent with residual parental rights or prior custodian and all other relevant parties shall be notified immediately of the placement change. The local department shall inform the birth parent or prior custodian why the placement change occurred and why the birth parent or prior custodian and all other relevant parties could not be involved in the decision-making process.

22VAC40-201-70. Foster care goals.

A. Foster care goals are established to assure permanency is achieved for the child. Permissible foster care goals are:

1. Transfer custody of the child to his prior family;

2. Transfer custody of the child to a relative other than his prior family;

3. Finalize adoption of the child;

4. Place the child in permanent foster care;

5. Transition to independent living if the child is admitted to the United States as a refugee or asylee or is 18 years of age or older; or

6. Place the child in another planned permanent living arrangement in accordance with § 16.1-282.1 A2 of the Code of Virginia.

B. When the permanency goal is changed to adoption, the local department shall file petitions with the court 30 days prior to the hearing to:

1. Approve the foster care service plan seeking to change the permanency goal to adoption; and

2. Terminate parental rights.

Upon termination of parental rights, the local department shall provide an array of adoption services to support obtaining a finalized adoption.

C. The local department shall engage in concurrent permanency planning in order to achieve timely permanency for the child. Permanency goals shall be considered and addressed from the beginning of placement and continuously evaluated.

D. The goal of another planned permanent living arrangement may be chosen when the court has found that:

1. The child has a severe and chronic emotional, physical, or neurological disabling condition;

2. The child requires long-term residential care for the condition;

3. None of the alternatives listed in clauses (i) through (v) of § 16.1-282.1 A of the Code of Virginia is achievable for the child at the time placement in another planned permanent living arrangement is approved as the permanent goal for the child; and

4. The youth is 16 years of age or older.

E. The goal of permanent foster care may be chosen when the court has found that:

1. The child is placed in a foster home;

2. The child has developed a clearly established and documented significant relationship with a foster parent;

3. None of the alternatives listed in clauses (i) through (v) of § 16.1-282.1 A of the Code of Virginia is achievable for the child at the time placement in permanent foster care is approved as the permanent goal for the child; and

4. The youth is 16 years of age and older.

F. If either the goal of permanent foster care or another planned permanent living arrangement is selected, the local department shall continue to search for relatives and significant individuals as permanent families throughout the child's involvement with the child welfare system. The local department shall continuously evaluate the best interests of the child in light of the changing circumstances of the child and extended family to determine whether a change in goal to return home, placement with relatives, or adoption can achieve permanency.

G. The goal of independent living services shall only be selected for those children admitted to the United States as a refugee or asylee, those youth age 18 years leaving foster care and meeting the requirements to receive independent living services, or youth participating in the Fostering Futures program, as described in 22VAC40-201-105. For those youth with this goal, the service worker shall continue diligent efforts to search for a relative or other interested adult who will provide a permanent long-term family relationship for the youth.

H. When a child has been in care for 12 months and reunification remains the goal, the local department shall consult with the commissioner or designee regarding case planning.

22VAC40-201-100. Providing independent living services: service for youth 14 years of age and older.

A. Independent living services shall be identified by the youth, parent or prior custodian, foster or adoptive family, local department, service providers, legal community, and other interested individuals and shall be included in the service plan. Input from the youth in assembling these individuals and developing the services is required.

B. Independent living services shall be provided to all youth in foster care ages 14 to ~~18~~ 21 years and shall be offered to any person ~~between 18 and 21~~ from the age of 14 until they reach 23 years of age and who ~~is in the process of transitioning from foster care to self-sufficiency~~ was in foster care at any point between 14 and 21 years of age.

C. Independent living services include education, vocational training, employment, mental and physical health services, transportation, housing, financial support, daily living skills, counseling, and development of permanent connections with adults.

D. Local departments shall ~~assess the youth's independent living skills and needs and incorporate the assessment results into the youth's service plan~~ conduct life skills assessments and develop transition plans, which include independent living services to be offered, within 30 days of a child in foster care reaching 14 years of age or within 30 days of a child who is 14 years of age or older entering foster care and update such assessments and plans annually.

E. ~~A youth placed in foster care before the age of 18 years who turns age 18 years prior to July 1, 2016, may continue to receive independent living services from the local department between the ages of 18 and 21 years if:~~

~~1. The youth is making progress in an educational or vocational program, has employment, or is in a treatment or training program; and~~

~~2. The youth agrees to participate with the local department in (i) developing a service agreement and (ii) signing the service agreement. The service agreement shall require that the youth shall cooperate with all services; or~~

~~3. The youth is in permanent foster care and is making progress in an educational or vocational program, has employment, or is in a treatment or training program.~~

~~F.~~ A youth age 16 years and older is eligible to live in an independent living arrangement provided the local department utilizes the independent living arrangement placement criteria developed by the department to determine that such an arrangement is in the youth's best interest. An eligible youth may receive an independent living stipend to assist him with the costs of maintenance. The eligibility criteria for receiving an independent living stipend will be developed by the department.

~~G. Any person who was committed or entrusted to a local department, turned 18 years of age prior to July 1, 2016, and chooses to discontinue receiving independent living services after age 18 years may request a resumption of independent living services provided that (i) the person has not yet reached 21 years of age and (ii) the person has entered into a written agreement, less than 60 days after independent living services have been discontinued, with the local board regarding the terms and conditions of his receipt of independent living services. Local departments shall provide any person who chooses to leave foster care or terminate independent living services before his 21st birthday written notice of his right to request restoration of independent living services in accordance with § 63.2 905.1 of the Code of Virginia by including such written notice in the person's transition plan.~~

~~H.~~ F. Local departments shall assist eligible youth in applying for educational and vocational financial assistance. Educational and vocational specific funding sources shall be used prior to using other sources.

~~I. Local departments shall provide independent living services to any person between 18 and 21 years of age who:~~

~~1. Turned 18 years of age prior to July 1, 2016;~~

~~2. Was in the custody of the local board immediately prior to his commitment to the Department of Juvenile Justice;~~

~~3. Is in the process of transitioning from a commitment to the Department of Juvenile Justice to self-sufficiency; and~~

~~4. Provides written notice of his intent to receive independent living services and enters into a written agreement that sets forth the terms and conditions for the provision of independent living services with the local board within 60 days of his release from commitment.~~

~~J. Every six months a supervisory review of service plans for youth receiving independent living services after age 18 years shall be conducted to assure the effectiveness of service provision.~~

~~K.~~ G. A youth who has been in care six months or more and turns 18 years of age while in foster care shall receive a certified copy of his birth certificate, social security card, health insurance information, medical records, and state-issued identification or driver's license.

~~L.~~ H. The local department shall run annual credit checks on all youth in foster care who are 14 years of age and older but younger than 18 years of age. The local department shall assist a youth in resolving any discrepancies in the youth's credit report. The local department shall assist a youth in foster care over 18 years of age in obtaining the youth's annual credit report.

~~M.~~ I. The local department shall ensure that any youth in foster care on the youth's 18th birthday is enrolled in Medicaid, unless the youth objects or is otherwise ineligible.

~~N.~~ J. The local department shall ensure that any youth who turns 18 years of age while in foster care is given the opportunity to complete a survey to provide feedback regarding the youth's experience in foster care.

22VAC40-201-110. Court hearings and case reviews.

A. For all court hearings, local departments shall:

1. Facilitate a meeting prior to the development of the foster care service plan and foster care service plan review to ensure participation and consider input from the child, the birth parents or prior custodians, the foster or adoptive parents, relatives and fictive kin who are interested in the child's welfare, and any other interested individuals, who may include service providers, in the development of the service plan and service plan review. All youth 12 years of age and older shall be given the opportunity to choose up to two people to attend the meeting who are not the foster parent or caseworker. All of these persons shall be involved in sharing information for the purposes of well-informed decisions and planning for the child with a focus on safety and permanence.

2. File petitions in accordance with the requirements for the type of hearing.

3. Obtain and consider the child's input as to who should be included in the court hearing. If persons identified by the child will not be included in the court hearing, the service worker shall explain the reasons to the child for such a decision consistent with the child's developmental and psychological status.

4. Inform the court of reasonable efforts made to achieve concurrent permanency goals.

5. Document the appropriateness of the placement, including the continued appropriateness of an out-of-state placement if applicable.

6. Ensure the child or youth is present for the permanency planning hearing unless the court determines this not to be in the child's best interest.

B. The child or youth shall be consulted in an age-appropriate manner about his permanency plan at the permanency planning hearing and subsequent administrative panel reviews.

C. An administrative panel review shall be held six months after a permanency planning hearing when the goal of permanent foster care has been approved by the court. A foster care review hearing will be held annually. The child will continue to have administrative panel reviews or review hearings every six months until the child reaches age 18 years.

D. The local department shall invite the child; the child's birth parents or prior custodians when appropriate; and the child's foster or adoptive parents, placement providers, guardian ad litem, court appointed special advocate, relatives, and service providers to participate in the administrative panel reviews.

E. The local department shall consider all recommendations made during the administrative panel review in planning services for the child and birth parents or prior custodians and document the recommendations on the department approved form. Individuals who were invited, including those not in attendance, shall be given a copy of the results of the administrative panel review as documented on the department approved form.

F. A supervisory review is required every six months for youth ages 18 to 21 years who are receiving independent living services only.

G. An administrative panel review is required every six months for Fostering Futures program participants unless a court review is held.

H. In accordance with § 16.1-242.1 of the Code of Virginia, when a case is on appeal for termination of parental rights, the juvenile and domestic relations district court retains jurisdiction on all matters not on appeal. The circuit court appeal hearing may substitute for a review hearing if the circuit court addresses the future status of the child.

I. An adoption progress report shall be prepared every six months after a permanency planning hearing when the goal of adoption has been approved by the court. The adoption progress report shall be entered into the automated child welfare data system. The child will continue to have annual review hearings in addition to adoption progress reports until a final order of adoption is issued or the child reaches age 18 years.

J. If a child is in the custody of the local department and a preadoptive family has not been identified and approved for the child, the child's guardian ad litem or the local board of social services may file a petition to restore the previously terminated parental rights of the child's parent in accordance with § 16.1-283.2 of the Code of Virginia.

K. If a child has been in foster care 15 out of the last 22 months or if the parent of the child in foster care has been convicted of an offense as outlined in § 63.2-910.2 of the Code of Virginia, the local department shall file a petition to terminate ~~the~~ parental rights and concurrently identify, recruit, process, and approve a qualified family for adoption of the child, unless certain exceptions as outlined in § 63.2-910.2, are met. These exceptions, which shall be documented in the child's case plan submitted to court, include:

1. The child is being cared for by a relative, and the relative is pursuing custody of the child and does not want to adopt.

2. The local department has not provided services to the parents deemed necessary for the safe return of the child.

3. Termination of parental rights is not in the best interests of the child and the local department has documented a compelling reason explaining why termination is not in the best interests of the child. Determinations regarding compelling reasons not to terminate parental rights shall be made based on the unique circumstances of the case. Compelling reasons may include:

a. A parent has made substantial progress toward eliminating the conditions that caused the child's placement in foster care; it is possible for the child to safely return home within six months; and the child's return home will be in the child's best interest.

b. Another permanency plan is better suited to meet the health and safety needs of the child.

L. If a local department does not file a petition to terminate parental rights when a child has been in care for 15 of the most recent 22 months, the local department shall report to the commissioner or designee a clear description of the reason why such petition has not been filed and the reasonable efforts made regarding reunification or placement of the child with a relative.

1. The commissioner or designee shall compile the information reported into a de-identified annual report and provide such report to all local departments.

2. The commissioner or designee shall use the information contained in the report to establish a training program that educates local departments regarding common errors made by local departments when declining to file a petition for termination of parental rights.

22VAC40-201-140. Other foster care requirements.

A. Pursuant to § 63.2-908 of the Code of Virginia, a foster parent may consent to a marriage or entry into the military if the child has been placed with him through a permanent foster care agreement that has been approved by the court.

B. An employee of a local department, including a relative, cannot serve as a foster, adoptive, or licensed child-placing agency parent for a child in the custody of that local department. In the event it is in the child's best interest that a local employee be the foster parent, the child's custody may be transferred to another local department.

C. The child of a foster child remains the responsibility of his parent, unless custody has been removed by the court.

1. The child is not subject to requirements for foster care plans, reviews, or hearings. However, the needs and safety of the child shall be considered and documented in the foster care plan for the foster child (parent).

2. The child is eligible for maintenance payments in accordance with 42 USC § 675(4)(B) and Medicaid in accordance with 42 USC § 672(h).

D. When a child in foster care is committed to the Department of Juvenile Justice, the local department no longer has custody or placement and care responsibility for the child. As long as the discharge or release plan for the child is to return to the local department prior to reaching age 18 years, the local department shall maintain a connection with the child.

E. At least 90 days prior to a child's release from commitment to the Department of Juvenile Justice, the local department shall:

1. Consult with the court services unit concerning the child's return to the locality; and

2. Work collaboratively with the court services unit to develop a plan for the child's successful transition back to the community, which will identify the services necessary to facilitate the transition and will describe how the services will be provided.

F. The caseload standard for foster care workers is 15 cases maximum per foster care worker. Each child in foster care is considered an individual foster care case.

22VAC40-201-145. Foster care complaint system.

A. Upon receipt of a complaint from a constituent regarding a foster care case, the department will investigate such complaint by conducting a review of case documentation, foster care policy, and state and federal code, and gather information from the constituent, local department, and other collaterals as needed.

B. The department shall provide the constituent a resolution to the constituent's concern that includes the methods used to assess the concern and a response to the concern. This resolution will be provided via the communication method of the constituent.

C. All information received or maintained by the department in connection with such reports, complaints, or investigations shall be confidential and not subject to the Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia), except that such information may be relayed and used on a confidential basis for the purposes of investigation and to protect the health, safety, and well-being of children in foster care.

VA.R. Doc. No. R20-6266; Filed January 12, 2022, 3:01 p.m.

Proposed Regulation

Title of Regulation: **22VAC40-211. Foster and Adoptive Home Approval Standards for Local Departments of Social Services (adding 22VAC40-211-130).**

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

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: April 15, 2022.

Agency Contact: C. Garrett Jones, Resource Family Program Manager, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7527, or email garrett.jones@dss.virginia.gov.

Basis: Section 63.2-217 of the Code of Virginia authorizes the State Board of Social Services to adopt regulations as may be necessary to carry out the provisions of Title 63.2 of the Code of Virginia. Sections 63.2-21, 63.2-901.1, and 63.2-1734 provide the legal authority for the State Board of Social Services to adopt regulations for foster and adoptive home approval and child welfare agencies.

Purpose: This regulatory action will help protect the health, safety, and welfare of children in care by ensuring collaboration, communication, access, and transparency between the local boards, local child protective agency (LCPA), and foster parents. The regulatory action will include a statewide process for dispute resolution through which a foster parent may contest an alleged violation by the local board or LCPA of a foster parent's rights. The dispute resolution process promotes empowerment of foster parents as valuable members of the permanency planning team.

Substance: The substantive changes include the addition of a new section implementing a foster parent bill of rights, as required by § 63.2-902 of the Virginia Code, and the establishment of a statewide dispute resolution process that a foster parent may use to contest an alleged violation. More specifically, the regulatory action provides additional oversight regarding the rights of foster and adoptive parents and transparency between the local boards, LCPA, and the foster parents. The changes reinforce the provider's role as a member of the child welfare team and the expectation that the local department of social services keep them informed on matters related to the child and which are essential in protecting the child's health, safety, and welfare.

Issues: Previously, foster parents have not been parties to foster care cases. This will be the first time their roles will be officially established. Regulatory changes will benefit foster and adoptive parents by ensuring that their input and opinions are taken into consideration when determining appropriate services for children who are placed in their home. This will also allow for a more individualized approach to the child's treatment plan. It will also increase the retention of approved homes by (i) engaging foster and adoptive parents in a manner that will support positive interactions between agencies and

caregivers; (ii) endorsing a healthy and mutually cooperative relationship with foster and adoptive parents by eliminating employee and employer approach; (iii) addressing issues upfront that could possibly lead to families no longer wanting to foster; and (iv) encouraging early intervention for foster families who may be struggling with their role and responsibilities. There are no disadvantages for the public.

Currently, agencies have no formal internal processes in place to address foster or adoptive parents' concerns. These changes will now require agencies to allot time in their challenging schedules to adhere to the timeframes outlined. The regulatory action also ensures appropriate conduct of agency staff when interacting with foster and adoptive parents to achieve more positive outcomes for children and reduce any potential barriers. Lastly, it ensures compliance with current regulations that require foster parent collaboration and input.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 336 of the 2019 Acts of Assembly, the State Board of Social Services (Board) proposes to add a section to 22VAC40-211 Adoptive Family Home Approval Standards that would establish foster parents' rights to timely information regarding their foster child prior to and during the child's placement, and if appropriate, after the child leaves foster care. The proposed new section would also establish a dispute resolution process, including an appeals process, for foster parents who allege the local social services board or licensed child placing agency (LCPA) to have violated their rights.

Background. The proposed new section 22 VAC 40-211-130 Foster Parent Bill of Rights and Dispute Resolution Process contains two parts. The first part contains a list of 13 requirements of local departments of social services (LDSS) regarding the information provided to foster parents, including the tone and timing of such communication, framed as a foster parent's "Bill of Rights." The second part establishes a dispute resolution process for foster parents who seek recourse for a violation of these rights.

Part A. Foster Parent Bill of Rights. The first part of the proposed new section would delineate foster parents' rights regarding collaboration, communication, access and transparency. In general, foster parents would have a right to be regarded as the primary caregiver of the child and part of the foster care team and to be treated accordingly. This would include allowing them to have input regarding the child's permanency plan and to be able to communicate (to the extent permitted under federal and state law) with professionals who work directly with the child in foster care, including therapists, physicians, and teachers. Accordingly, the proposed amendments would reiterate that foster parents are afforded the same rights as outlined in the Foster Care Placement Agreement and the Code of Ethics and Mutual Responsibilities.[1]

The Department of Social Services (DSS) reports that foster parents would routinely raise concerns regarding LDSS practices, particularly a lack of utilization or placement decisions. While foster families have always had the right to raise their concerns with the local department, there were no formal requirements with respect to who would respond or when a response could be expected. Further, foster parents could always share concerns with DSS and prior to the development of the Constituent Services Unit (CSU), such concerns were routinely handled by DSS staff. In 2018, DSS' Division of Family Services established the CSU to respond to matters raised by constituents, including foster parents. One of the proposed amendments would require that foster parents be provided with a method to contact the local board or LCPA for assistance 24 hours a day and seven days a week. DSS has indicated that they will establish a toll free number as a result of this regulation, which will be reserved for matters specific to foster families and will be received by the CSU's Resource Family Program consultant.

DSS reports that LDSS have always been directed to be transparent in sharing information regarding children in foster care with families providing care; however, they have not previously spelled out what information had to be shared. The foster parents' bill of rights is intended to remedy this by specifying the types of information to be shared and requiring that such information be shared in a timely manner. For example, foster parents would have a right to all background and medical records of the child prior to placement, all information relevant to the child's foster care services, and copies of all documents related to the foster parent, their family, and services provided to the foster home on an ongoing basis. In addition, foster parents would have a right to be notified of all court hearings, scheduled meetings, and decisions made by the court, local board, or LCPA concerning the child's foster care service, and changes to the child's case plan or termination of the child's placement. Foster parents would also have a right to timely responses to requests for information regarding the child's progress after leaving foster care, if it is in the child's best interest.

Part B. Dispute Resolution Process. The second part of the proposed new section implements the statutory requirements created by Chapter 336 of the 2019 Acts of Assembly, which requires local boards and LCPAs to "implement and publicize a dispute resolution process through which a foster parent may contest an alleged violation of the regulations governing the collaboration, communication, access, and transparency between the local boards' (and LCPAs) and foster parents.[2] Foster parents are directed to first attempt to resolve the dispute informally by contacting the family services specialist assigned to them and describing the conduct they deem a violation of the regulations. The family services specialist is required to respond with a proposed correction or resolution within five business days. If the foster parent and the family services specialist are unable to resolve the conflict informally, the foster parent may file a written complaint with the local

board's foster care supervisor or assigned designee, who then has five business days to respond in writing, setting forth all findings regarding the alleged violation and any corrective action to be taken.

The legislation also provides for an appeals process if the foster parent disagrees with the findings or proposed corrective actions made by the foster care supervisor: the foster parent may file a written notice of appeal with the local director describing the alleged violation and including a copy of the foster care supervisor's written response. The local director shall hold a meeting between all parties within seven business days to determine whether the allegations made by the foster parent are valid and whether the recommendations made by the family services specialist and the foster care supervisor were appropriate. Following the meeting, the family services specialist shall produce a written summary of the meeting with the approval of the foster care supervisor. Finally, the local director is required to issue a formal copy of the findings to all parties and, if applicable, recommendations for corrective action. The legislation does not specify a time frame for the actions to be taken following the meeting.

The second part largely mirrors the requirements put forth by the legislation, summarized above, except that the board has added a requirement that foster parents advance the dispute within ten business days of receiving findings and recommendations from the preceding stage of the dispute resolution process. This ten-day window applies in three places: at the beginning of the process, requiring the foster parent to contact their assigned family services specialist within ten days of the conduct they deem to be a violation, after the foster parent hears from the family services specialist, and again after receiving written findings and/or recommendations from the local board's foster care supervisor or designee. DSS has clarified that email would constitute a written communication under this regulation. Because the legislation directed the Board to adopt regulations within 280 days, the proposed amendments have been implemented via emergency regulations effective January 4, 2021.[3]

Estimated Benefits and Costs. Currently, there are 4,078 children in foster care in Virginia, of which 72% are placed with foster families. (The rest are placed in congregate care facilities or group homes.) 38% (1,553) of children in foster care are placed in foster families approved by LCPAs, while 34% (1,383) are placed in foster families approved by LDSS. To the extent that the proposed changes serve to improve collaboration, communication, access, and transparency regarding a foster child's placement and care, the proposed amendments would ultimately benefit the children placed with foster families.

The proposed changes would benefit foster and adoptive parents by ensuring that their input and opinions are taken into consideration when determining appropriate services for children who are placed in their home. This would allow for a more individualized approach to the child's treatment plan. It would also increase the retention of approved homes by engaging foster and adoptive parents in healthy and mutually cooperative relationship, addressing issues that could possibly lead to families no longer wanting to foster, and engaging in early intervention for foster families who may be struggling with their role and responsibilities.

The proposed amendments could result in a marginally increased workload for LDSS and LCPAs by requiring greater communication with foster parents on their part. However, DSS reports that there have not been any reports of increased workload by LDSS or LCPAs. LDSS have always been instructed to be transparent in sharing information regarding children in foster care with families providing care. The proposed amendments only serve to specify what information must be shared and the process to be followed when a dispute arises. The proposed changes would also ensure that LDSS and LCPAs are in compliance with statute.

Businesses and Other Entities Affected. There are currently 36 LCPAs, many of which operate out of multiple locations throughout the state. The DSS website reports 160 unique LCPA offices.[4] There are 121 LDSS.[5]

Small Businesses[6] Affected. The proposed amendment would affect LCPAs; it is unknown how many, if any, LCPAs are small businesses.

Localities[7] Affected.[8] The proposed amendment would not affect local governments. LDSS, which are part of DSS, would be affected; LDSS serving a disproportionate number of foster children would be affected more. However, there is no information as to which localities have a disproportionate number of foster children and the extent to which those LDSS would be impacted relative to other LDSS.

Projected Impact on Employment. The proposed amendments do not significantly increase staff workloads and are thus unlikely to affect employment by DSS, LDSS, or by LCPAs.

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 https://www.dss.virginia.gov/files/division/licensing/lcpa/intro_page/current_providers/forms/all_other/032-04-0029-02-eng.pdf for a copy of the current Foster Care Agreement. DSS has indicated that this document will be updated to include the Foster Parent Bill of Rights.

[2]See https://lis.virginia.gov/cgi-bin/legp604.exe?191+ful+CHAP0336+hil.

[3]See https://townhall.virginia.gov/L/ViewStage.cfm?stageid=8756.

[4]See https://www.dss.virginia.gov/facility/search/cpa.cgi.

[5]See https://www.dss.virginia.gov/localagency/index.cgi.

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

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

Summary:

Pursuant to Chapter 336 of the 2019 Acts of Assembly, the proposed amendments add new regulatory requirements that a local board of social services and a licensed child-placing agency (LCPA) provide foster parents with (i) all reasonably ascertainable background, medical, and psychological records of the child prior to placement; (ii) all information relevant to the child's foster care services; and (iii) copies of all documents related to the foster parent, the foster parent's family, and services provided to the foster home on an ongoing basis. Local boards and LCPAs are also required to notify foster parents of court hearings; scheduled meetings; and decisions made by the court, local board, or LCPA concerning the child's foster care service, changes to the child's case plan, or termination of child's placement in a timely manner. The regulation also requires the timely response to requests for information regarding the child's progress after leaving foster care if it is in the child's best interest. The regulation sets forth a dispute resolution process through which a foster parent may contest an alleged violation by the local board or LCPA, including an appeal process for the foster parent.

22VAC40-211-130. Foster parent bill of rights and dispute resolution process.

A. In accordance with § 63.2-902 of the Code of Virginia relating to foster care agreements and the rights of foster parents regarding resolution of disputes, each local department of social services shall implement and ensure that all foster parents receive a copy of the Foster Parent Bill of Rights and that a signed copy of receipt is placed in the foster parent's file.

Foster parents shall abide by all responsibilities as set forth in state and federal law, including all responsibilities set forth in this chapter.

In addition to any claim for benefits pursuant to 42 USC § 671 et seq., and pursuant to § 63.2-905 of the Code of Virginia, all foster parents have the following rights regarding collaboration, communication, access, and transparency:

1. To be regarded as the primary caregiver of a child placed in foster care and to be treated with dignity, respect, trust, value, and consideration, including the local department giving due consideration to the foster parent's family values, traditions, and beliefs;

2. To receive copies of all documents related to the foster parent, the foster parent's family, and ongoing services provided to the foster home;

3. To be considered part of the foster care team and to be able to contribute input regarding the child's permanency plan and receive copies of the plan;

4. To be provided all reasonably ascertainable background, medical, and psychological records of the child prior to placement, at the initial placement, or at any time during the placement of a child in foster care;

5. To be provided all information relevant to the child's foster care services as allowed by federal and state law;

6. To be notified of court hearings and scheduled meetings;

7. To be informed of decisions made by the court, local board, or licensed child-placing agency concerning the child's foster care services;

8. To be able to communicate, to the extent permitted under federal and state law, with professionals who work directly with the child in foster care, including therapists, physicians, and teachers;

9. To be informed in a timely manner of changes to the child's case plan or the termination of the child's placement;

10. To be afforded the same rights as outlined in the Foster Care Placement Agreement and the Code of Ethics and Mutual Responsibilities;

11. To be provided with reimbursements for costs associated with foster care services in a timely manner;

12. To be provided with a method to contact the local board or licensed child-placing agency for assistance 24 hours a day and seven days a week; and

13. To receive a timely response from the local department of social services regarding whether or not information may be provided to requests for information regarding the child's progress after leaving foster care.

B. Foster parents have a right to file a complaint regarding alleged violations of the regulations governing collaboration, communication, access, and transparency between the local boards, the licensed child-placing agencies, and the foster parents. When filing such a complaint, foster parents must follow the following steps:

1. The foster parent shall contact the service worker assigned to the foster home within 10 business days and provide a detailed description of the conduct constituting the alleged violation of the regulations governing collaboration, communication, access, and transparency between the local boards, the licensed child placing agencies, and the foster parents and attempt to resolve the dispute.

2. The service worker shall respond within five business days and explain any corrective action to be taken in response to the foster parent's complaint.

3. If the foster parent and service worker are unable to resolve the complaint informally, the foster parent may file a written complaint through the dispute resolution process with the local board's foster care supervisor or assigned designee.

a. The written complaint shall include a detailed description of the conduct constituting the alleged violation of the regulations governing collaboration, communication, access, and transparency between the local boards, the licensed child-placing agencies, and the foster parents and a copy of the service worker's response.

b. The written complaint shall be sent to the supervisor and must be received by the supervisor within 10 business days of the foster parent receiving the service worker's response.

4. The foster care supervisor or assigned designee shall respond to the complaint in writing within five business days setting forth all findings regarding the alleged violation and any corrective action taken.

5. If the foster parent disagrees with the findings or corrective actions proposed by the foster care supervisor or assigned designee, the foster parent may appeal the decision to the local director by filing a written notice of appeal.

a. The notice of appeal shall include a detailed description of the conduct constituting the alleged violation of the regulations governing collaboration, communication, access, and transparency between the local boards, the licensed child-placing agencies, and the foster parents and a copy of the foster care supervisor or assigned designee's findings or recommendations.

b. The notice of appeal shall be sent to the local director and must be received by the local director within 10 business days of the foster parent receiving the supervisor's response.

6. The local director shall hold a meeting between all parties within seven business days to gather any information necessary to determine (i) the validity of the alleged violation of the regulations governing collaboration, communication, access, and transparency between the local boards, the licensed child-placing agencies, and the foster parents and (ii) the appropriateness of any recommendations for corrective action made by the family services specialist and foster care supervisor or assigned designee.

7. A summary of the meeting shall be documented in writing by the service worker after approval by the foster care supervisor or assigned designee.

8. Following such meeting and documentation, the local director shall issue to all parties written findings and, when applicable, recommendations for corrective actions.

C. The dispute resolution process set forth in subsection B of this section does not apply to a complaint related to the denial or failure of a local board to act upon an individual's claim for benefits. Complaints related to a claim for benefits shall be appealable pursuant to 42 USC § 671(a)(12) and 22VAC40-201-115.

VA.R. Doc. No. R21-6042; Filed January 12, 2022, 3:08 p.m.

Proposed Regulation

Title of Regulation: **22VAC40-601. Supplemental Nutrition Assistance Program (repealing 22VAC40-601-50).**

Statutory Authority: § 63.2-217 Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: April 15, 2022.

Agency Contact: Celestine Jackson, Human Services Consultant, Department of Social Services, 7 North 8th Street, Richmond, VA 23219, telephone (804) 726-7376, FAX (804) 726-7356, or email celestine.jackson1@dss.virginia.gov.

Basis: Section 63.2-217 of the Code of Virginia grants authority to the State Board of Social Services to promulgate rules and regulations to operate assistance programs in Virginia. 7 CFR 271.4 delegates responsibility to administer Supplemental Nutrition Assistance Program (SNAP) within a state to the agency assigned responsibility for other federally funded public assistance programs. 7 CFR 273.2(h) allows states an option to deny SNAP applications after 30 days or to extend the pending status for an additional 30-day period.

Purpose: SNAP applicants must apply for benefits in the city or county where they live. SNAP benefits are calculated from the date the application is filed. Local departments of social services normally have 30 days from the filing date to process SNAP applications. Federal regulations allow one of two options for processing applications if the local worker is unable to complete the processing of the application by the end of 30 days. States must either deny the unprocessed applications at the end of the 30-day period or extend the processing period by 30 additional days. For both processing methods, the day the applicant household supplies needed information will determine the amount of SNAP benefits authorized if the applicant provides the information after the 30th day.

The agency initiated 22VAC40-601-50 in an effort to reduce local workload activities. However, it was determined that the effort to implement the application processing method would not likely result in significant reduced work activities to offset the major system modifications needed, altered work activities and documents, and the retraining of the work force.

The chapter sets out the framework by which local departments of social services administer SNAP benefits. SNAP is essential to the health and welfare of citizens, as it provides for nutritional benefits to supplement the food budgets of eligible families. Repeal of 22VAC40-601-50 will not affect the health and safety of citizens. The welfare of citizens is also unaffected by this regulatory action, in that the amount of SNAP benefits

one would receive would remain the same regardless of the application processing method states adopt.

Substance: The amendments repeal 22VAC40-601-50, which will mean the SNAP applications will be held pending for an additional 30 days if applicants fail to provide information or take required actions after the initial 30-day period. Applicants who fail to provide information or take action during the extended pending period will have their SNAP applications denied on the 60th day following the application date.

Issues: There are no advantages or disadvantages to the public or the Commonwealth in repealing 22VAC40-601-50.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The State Board of Social Services (Board) seeks to repeal section 50 Application Processing of 22VAC 40-601 Supplemental Nutrition Assistance Program (SNAP), which states that an application would be denied after 30 days if the applicant has not provided "verification or information needed to determine eligibility" for SNAP.

Background. Title 7, Section 271.4 of the Code of Federal Regulations (CFR) delegates authority to the Department of Social Services (DSS) to implement SNAP in the state.[1] Specifically, if an applicant fails to provide verification or information needed to determine eligibility of the household, 7 CFR § 273.2(h) gives states the option to either (i) deny a SNAP application after 30 days or (ii) extend its pending status for an additional 30 days.

Accordingly, section 50 currently requires that applications for SNAP benefits be disposed of within 30 days. As per the current text, "Applicants have 30 days to provide verification or information needed to determine eligibility of the household. If an application cannot be processed by the 30th day because such information is lacking due to the fault of the household, the application must be denied. If the applicant provides the information during the next 30 days, the eligibility worker must reinstate the application and prorate benefits to the date the last verification was provided." Thus, the approach taken by the Board appears to be a combination of the two options provided by the CFR.

The Board established section 50 in 2009 as a potential local work reduction effort. However, "full comprehension of federal requirements and system changes required for implementation of the provision extinguished hope for work reduction outcomes."[2] A periodic review of 22VAC40-601 resulted in the realization that the agency had not implemented the processing method outlined in section 50, and likely would never implement the provision.[3] Repealing the provision would allow the agency to keep an application under review for up to 60 days, in keeping with the second option provided by the CFR.

Estimated Benefits and Costs. Since the provision has not been implemented, the proposed repeal would not likely have any impact beyond potentially reducing confusion among readers of the regulation. DSS does not expect any changes in the number of applications received or denied by local departments. There is no expected fiscal impact on local departments of social services, as local workers would have only needed additional training if the provision had actually been implemented in the first place.

Businesses and Other Entities Affected. The proposed amendment does not appear to affect businesses or other entities.

Small Businesses[4] Affected. The proposed amendment would not affect small businesses.

Localities[5] Affected.[6] The proposed amendment does not affect local governments and is unlikely to affect any locality in particular.

Projected Impact on Employment. The proposed amendment is unlikely to affect employment by DSS or its local departments.

Effects on the Use and Value of Private Property. The proposed amendment is unlikely to affect the use and value of private property. Real estate development costs are not affected.

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[1]See https://www.law.cornell.edu/cfr/text/7/273.2.

[2]See the Agency Background Document: https://townhall.virginia.gov/l/GetFile.cfm?File=73\5540\9186\AgencyStatement_DSS_9186_v1.pdf.

[3]See https://townhall.virginia.gov/l/ViewPReview.cfm?PRid=1737 for the periodic review.

[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 Department of Social Services reviewed the economic impact analysis prepared by the Department of Planning and Budget and has no comments.

Summary:

The proposed amendment repeals 22VAC40-601-50, which established a potential local work reduction effort but has since been abandoned as a possible change to processing applications for Supplemental Nutrition Assistance Program benefits.

22VAC40-601-50. ~~Application processing.~~ (Repealed.)

~~Applications for SNAP benefits must be disposed of within 30 days. Applicants have 30 days to provide verification or information needed to determine eligibility of the household. If an application cannot be processed by the 30th day because such information is lacking due to the fault of the household, the application must be denied. If the applicant provides the information during the next 30 days, the eligibility worker must reinstate the application and prorate benefits to the date the last verification was provided.~~

VA.R. Doc. No. R21-6420; Filed January 12, 2022, 2:30 p.m.

EXECUTIVE ORDER NUMBER TEN (2022)

Focusing Virginia's Diversity, Equity, and Inclusion Office and Designating a Commonwealth Chief Diversity, Opportunity, & Inclusion Officer

By virtue of the authority vested in me as Governor, I hereby issue this Executive Order to strengthen and focus the Office of Diversity, Equity, and Inclusion by including in its duties the expansion of entrepreneurship and economic opportunity for all Virginians, the promotion of diverse free speech and inclusive civil discourse, and a role in promoting the honest and complete teaching of history.

Importance of the Initiative

The Commonwealth of Virginia is a strong and diverse state, rich in history and ripe with opportunity. Our people are resilient, optimistic, and courageous; they hail from every corner of the globe, with inspiring backgrounds and distinct cultures. Most of all, every one of us is made in the image of our Creator.

Since the first settlers arrived little more than 400 years ago, we've been an imperfect people on the course to a more perfect union. At times we've truly failed to live up to our ideals. But we all want to do what is right and what is morally just even if we fall short. What is seared in our heart by a loving, almighty Creator is not a desire for power or conquest, not a love of self, or personal advancement. Rather it's a belief that life is worth living when we serve a greater cause than self when we love without expecting favor in return and when we set aside ego for the greater good. We are one Virginia. We are all sailing in the same boat.

Yet, we acknowledge that too many of our citizens have not received the equal opportunity they deserve, and we recognize that diversity when genuinely embraced strengthens our Commonwealth. Every Virginian deserves dignity and respect, deserves the opportunity to pursue their dreams and deserves inclusion in the Virginia family.

To accomplish this, we must strengthen and focus the Office of Diversity, Equity and Inclusion (ODEI) by including in its mission the promotion of entrepreneurship and economic opportunity for all Virginians — including Virginians with disabilities — as well as the promotion of free speech and civil discourse.

Directive

Accordingly, by virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia, and the Code of Virginia, and subject to my continuing and ultimate authority and responsibility to act in such matters, I hereby order:

l. Angela Sailor is appointed as Director of the Office of Diversity, Equity and Inclusion, and is hereby designated to serve in the Governor's Cabinet as the Commonwealth Chief Diversity, Opportunity & Inclusion Officer, and in addition to the statutory duties prescribed:

2. The Chief Diversity, Opportunity & Inclusion Officer will promote ideas, policies, and practices in coordination with the Secretary of Commerce and Trade to expand entrepreneurship and economic opportunities for disadvantaged Virginians, including Virginians living with disabilities.

3. The Chief Diversity, Opportunity & Inclusion Officer will also facilitate bringing Virginians of different faiths together in service to their communities and the Commonwealth.

4. The Chief Diversity, Opportunity & Inclusion Officer will also promote free speech and civil discourse in civic life, including viewpoint diversity in higher education in coordination with the Secretary of Education.

5. The Chief Diversity, Opportunity & Inclusion Officer will also work to promote ideas, policies, and practices to eliminate disparities in pre-natal care, and be an ambassador for unborn children.

6. The Chief Diversity, Opportunity & Inclusion Officer will also be responsive to the rights of parents in educational and curricular decision making and ensure, in coordination with the Secretary of Education, that the teaching of Virginia's and the United States' history is honest, objective, and complete.

7. The Chief Diversity, Opportunity & Inclusion Officer will also have other responsibilities consistent with the spirit of the Office and this Order as assigned by the Governor or the Chief of Staff.

Effective Date

This Executive Order shall be effective upon its signing and shall remain in force and effect unless amended or rescinded by future executive order or directive.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 19th day of January, 2022.

/s/ Glenn Youngkin, Governor

EXECUTIVE ORDER NUMBER ELEVEN (2022)

Providing Flexibility to Hospitals, Health Systems, Nursing Homes, Certified Nursing Facilities, and Other Health Care Providers to Combat COVID-19

By virtue of the authority vested in me as Governor, I hereby issue this Executive Order to provide flexibility to hospitals, health systems, nursing homes, certified nursing facilities, and other health care providers to combat COVID-19. This order expires February 21, 2022.

Importance of the Initiative

Over the last two years, Virginia's hospitals, health systems, nursing homes and certified nursing facilities, emergency medical services, and other health care providers have been on the frontlines responding to the novel coronavirus (COVID-19) pandemic. The relentless pace of the pandemic has had an innumerable burden on our health care system, exacerbating preexisting workforce shortages and creating new challenges. Our frontline health care workers are tired, facing unprecedented burnout, and grappling with their own mental and physical health, but yet, they continue to sacrifice time with their loved ones over holidays, special occasions, and weekends so that they can continue to provide care for their neighbors. Virginia is grateful to these heroes and humbled by their daily service.

The increase in hospitalizations, combined with severe staffing shortages universally experienced across the Commonwealth and nationwide, is placing an unsustainable strain on our health care system and health care workforce. Given these challenges, it is critical that the Commonwealth extend to hospitals, health systems, nursing homes, certified nursing facilities, and other health care providers every available flexibility and waiver necessary to ensure that our health care system has the resources needed to care for patients and communities. Any and all measures are needed to expand the workforce, meet surge demand, and leverage other tools and technologies to respond to this crisis, provide relief for our overburdened frontline workers, and ensure their safety and that of their patients.

The General Assembly afforded immunity from certain liability in circumstances such as those presented by the COVID-19 health crisis. Sections 8.01-225.01 and 8.01-225.02 of the Code of Virginia provide certain liability protection to all health care providers during a state of emergency. Section 44-146.23 of the Code of Virginia provides certain liability protection to public and private agencies and their employees engaged in emergency services activities, which include medical and health services.

Directive

Therefore, on this date, January 20, 2022, I declare that a limited state of emergency exists in the Commonwealth of Virginia due to COVID-19, a communicable disease of public health threat and its impact on the health care system and its workforce. The effects of COVID-19 constitute a disaster as described in § 44-146.16 of the Code of Virginia (Code). By virtue of the authority vested in me by Article V of the Constitution of Virginia and by § 44-146.17 of the Code, I declare that a limited state of emergency exists in the Commonwealth of Virginia. In order to marshal all public resources and appropriate preparedness, response, and recovery measures, I order the following actions:

1. I authorize for the Commissioner of the Virginia Department of Health, the Commissioner of the Department of Behavioral Health and Developmental Services, the Director for the Department of Medical Assistance Services and the Director of the Department of Health Professions, on behalf of their regulatory boards as appropriate, and with the concurrence of the Secretary of Health and Human Resources, to waive any state regulation, and enter into contracts as required to implement this order without regard to normal procedures or formalities, and without regard to application or permit fees or royalties. All waivers issued by agencies shall be posted on their websites.

2. Notwithstanding the provisions of Article 1.1 of Chapter 4 of Title 32.1 of the Code, I further direct the State Health Commissioner, at his discretion, to authorize any general hospital or nursing home licensed or exempt from licensure by the Virginia Department of Health (VDH) to increase licensed bed capacity as determined necessary by the Commissioner to respond to increased demand for beds resulting from COVID-19, including plans for safely staffing services across the facility. Notwithstanding § 32.1-132 of the Code, I further direct that any beds added by a general hospital or nursing home pursuant to an authorization of the Commissioner under this Order will constitute licensed beds that do not require further approval or the issuance of a new license. Any authorization by the Commissioner to increase bed capacity, and the authority for any resulting increased number of beds, will expire 30 days after the expiration or rescission of this Order, as it may be further amended. To provide relief on existing bed capacity, and notwithstanding any contract provision of Title 32.1 of the Code, I also direct the State Health Commissioner to authorize programs to allow hospitals to offer intensive athome treatment enabled by digital technologies, multidisciplinary teams, and ancillary services consistent with the Centers for Medicare & Medicaid Services (CMS) Acute Hospital Care at Home Program, provided that a hospital has received a waiver from CMS of 42 CFR § 482.23(b)(1) of the Hospital Conditions of Participation.

3. Notwithstanding any contrary provision in Title 54.1 of the Code, in order to relieve the capacity strain on bedside care and support resulting from staffing shortages, a license issued to a health care practitioner, pharmacist, pharmacy intern, or pharmacy technician by another state, and in good standing with such state, shall be deemed to be an active license or registration issued by the Commonwealth to provide health care or professional services as a health care practitioner of the same type for which such license or registration is issued in another state provided the health care practitioner is engaged by a hospital (or an affiliate of such hospital where both share the same corporate parent), licensed nursing home, certified nursing facility, dialysis facility, the VDH, or a local or district health department for the purpose of assisting that facility with public health and medical and health operations. Hospitals, licensed nursing homes, certified nursing facilities, dialysis

facilities, and health departments must submit to the applicable licensing authority each out-of-state health care practitioner's name, license type, state of license, and license identification number within a reasonable time of such health care practitioner providing services at the applicable facility in the Commonwealth.

4. Health care physical or behavioral health care practitioners with an active license issued by another state may provide continuity of care to their current patients who are Virginia residents through telehealth services. Establishment of a relationship with a new patient requires a Virginia license unless pursuant to paragraph 3 of this Order.

5. Physician assistants licensed in Virginia with two or more years of clinical experience may practice in their area of knowledge and expertise and may prescribe without a written or electronic practice agreement.

6. A health care practitioner or behavioral health care may use any non-public facing audio or remote communication product that is available to communicate with patients, provided that such communication product is not inconsistent with the waivers and flexibilities issued by the United States Department of Health and Human Services and the Centers for Medicare and Medicaid Services. This exercise of discretion applies to telehealth services provided for both COVID-19 and for other diagnosis and treatment services unrelated to COVID-19.

7. A licensed practical nurse may administer the COVID-19 vaccine without the supervision of a registered nurse or licensed medical practitioner.

8. Licensed health professionals of health systems or hospitals whose scope of practice includes administration of the vaccine and who have administered the COVID-19 vaccine in a health system or hospital setting may administer the COVID-19 vaccine at any point of distribution that is held in collaboration between a health system or hospital and a local health department without undergoing additional training.

9. A local health department may collaborate with a federal health facility, whether civilian or military, for the purpose of COVID-19 vaccine administration. Federal personnel whose scope of practice includes vaccination may serve with the Medical Reserve Corps after a training and skills assessment as required by VDH.

10. The Department of Medical Assistance Services (DMAS) shall suspend pre-admission screening pursuant to § 32.1-330 of the Code. All new nursing home admissions will be treated as exempted hospital discharges. Community based LTSS screening teams shall be exempt from face-to-face screenings and may screen for nursing home admission from a community setting or waiver services using telehealth or telephonic screening.

11. DMAS shall waive requirements pursuant to § 32.1-325(A)(14) of the Code concerning certificates of medical necessity. Any supporting verifiable documentation requirements are waived with respect to replacement of durable medical equipment (DME). DMAS shall also suspend enforcement of additional replacement requirements for DME, prosthetics, orthotics, and supplies that are lost, destroyed, irreparably damaged, or otherwise rendered unusable, such that the face-to-face requirement, a new physician's order, and new medical necessity documentation are not required for replacement equipment.

12. Any health care provider as defined in § 32.1-127.1:03 of the Code, or any other person permitted by law to administer the COVID-19 vaccine, who administers COVID-19 immunizations, shall report to the Virginia Immunization Information System in a manner consistent with the Virginia Immunization Information System Regulations.

13. The number of technicians a pharmacist may supervise shall be increased. No pharmacist shall supervise more than five persons performing the duties of a pharmacy technician at one time. Pharmacy technicians performing COVID-19 administrative tasks will not be counted in the ratio count.

14. Emergency Medical Services (EMS) agencies shall continue to coordinate and work with health care providers to address the overwhelming demands and capacity shortages being experienced by EMS agencies and other first responders. This includes strategies to manage and coordinate pre-hospital care as well as patient discharge and transport.

15. Temporary nurse aides practicing in long term care certified nursing facilities under the federal Public Health Emergency 1135 Waiver may be deemed eligible by the Board of Nursing to take the National Nurse Aide Assessment Program examination upon submission of a completed application, the employer's written verification of competency and employment as a temporary nurse aide, and provided no other grounds exist under Virginia law to deny the application.

16. Copays required under § 32.1-351(C) of the Code for Virginians receiving health insurance through the Family Access to Medical Insurance Security Plan are waived.

17. Personal care, respite, and companion providers in the agency- or consumer-directed program, who are providing services to individuals over the age of 18, may work for up to 60 days, as opposed to the current 30-day limit in § 32.1-162.9:1 of the Code, while criminal background registries are checked. Consumer-directed Employers of Record must ensure that the attendant is adequately supervised while the criminal background registry check is processed. Agency providers must adhere to current reference check requirements and ensure that adequate training has occurred prior to the aide providing the services in the home. Agency providers shall conduct weekly supervisory visits through telehealth methods when the aide works prior to receiving criminal background

registry results. This section does not apply to services provided to individuals under the age of 18, with the exception of parents of minor children in the consumer-directed program.

18. Requirements under § 2.2-4002.1 of the Code related to the 30-day advance -public notice and comment period are waived as to DMAS only, so that DMAS can issue Medicaid Memos to ensure that health care providers receive immediate information on flexibilities to ensure access to care for Medicaid members.

Effective Date

This Executive Order shall be effective upon its signing and shall be in effect until February 21th 2022, unless sooner amended or rescinded by further executive order or directive.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 20th day of January, 2022.

/s/ Glenn Youngkin, Governor

EXECUTIVE ORDER NUMBER 12 (2022)

Declaration of a State of Emergency Due to Severe Winter Weather

Importance of the Issue

On this date, January 20, 2022, I declare that a state of emergency exists in the Commonwealth of Virginia to prepare and coordinate our response to severe winter weather. The Virginia Emergency Operations Center has been actively monitoring the movement of two major winter weather systems heading toward Virginia, with anticipated tracks showing impacts of the first beginning tomorrow Thursday, January 20, 2022, and the second arriving shortly after on Friday, January 21, 2022. The National Weather Service is still refining its forecasts based on real-time data, but initial forecasts are predicting impactful to highly impactful snow, sleet, ice, and freezing rain across broad swaths of the Commonwealth, to include higher impacts in the same area affected by recent events over the last two weeks. These upcoming weather systems are likely to include additional downed trees, more electrical outages, and significant impacts on travel conditions.

Given the storm's current forecast, the Commonwealth is leaning forward to assist localities, especially those with vulnerable populations to provide support in the complex incident of two large-scale winter weather events, hitting the same portions of the Commonwealth, while also coordinating continued COVID operations. Pre-positioning response assets and supplies will be necessary to assist our local and state partners whose resources have been severely strained by the first event. The Virginia Emergency Support Team plans to activate for this incident.

The anticipated effects of this situation constitute a disaster as described in § 44-146.16 of the Code of Virginia (Code). Therefore, by virtue of the authority vested in me by Article V, Section 7 of the Constitution of Virginia, by §§ 44-146.17 and 44-75.1 of the Code, as Governor and Director of Emergency Management and Commander-in-Chief of the Commonwealth's armed forces, I proclaim a state of emergency. Accordingly, I direct state and local governments to render appropriate assistance to prepare for this event, to alleviate any conditions resulting from the situation, and to implement recovery and mitigation operations and activities so as to return impacted areas to pre-event conditions as much as possible. Emergency services shall be conducted in accordance with § 44-146.13 et seq. of the Code.

Directive

In order to marshal all public resources and appropriate preparedness, response, and recovery measures, I order the following actions:

1. Implementation by state agencies of the Commonwealth of Virginia Emergency Operations Plan, as amended, along with other appropriate state plans.

2. Activation of the Virginia Emergency Operations Center and the Virginia Emergency Support Team, as directed by the State Coordinator of Emergency Management, to coordinate the provision of assistance to state, local, and tribal governments and to facilitate emergency services assignments to other agencies.

3. Authorization for the heads of executive branch agencies, on behalf of their regulatory boards as appropriate, and with the concurrence of their Cabinet Secretary, to waive any state requirement or regulation, and enter into contracts without regard to normal procedures or formalities, and without regard to application or permit fees or royalties. All waivers issued by agencies shall be posted on their websites.

4. Activation of § 59.1-525 et seq. of the Code related to price gouging.

5. Authorization of a maximum of $350,000 in state sum sufficient funds for state and local government mission assignments and state response and recovery operations authorized and coordinated through the Virginia Department of Emergency Management allowable by The Stafford Act, 42 U.S.C. § 5121 et seq. Included in this authorization is $250,000 for the Department of Military Affairs.

6. Activation of the Virginia National Guard to State Active Duty.

Effective Date of this Executive Order

This Executive Order shall be effective January 20, 2022, and shall remain in full force and in effect until February 19, 2022, unless sooner amended or rescinded by further executive order. Termination of this Executive Order is not intended to terminate any federal type benefits granted or to be granted due

to injury or death as a result of service under this Executive Order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 20th day of January 2022.

/s/ Glenn Youngkin, Governor

EXECUTIVE ORDER NUMBER 13 (2022)

Delegating the Governor's Authority to Declare a State of Emergency, to Call the Virginia National Guard to Active Service for Emergencies or Disasters, and to Declare the Governor Unable to Discharge the Powers and Duties of his Office When the Governor Cannot be Reached or is Incapacitated

By virtue of the authority vested in me by Section 2.2-104 of the Code of Virginia, and subject to the provisions stated herein, I hereby affirm and delegate to the Chief of Staff, followed in protocol order by the Secretary of Public Safety and Homeland Security, the State Coordinator of the Virginia Department of Emergency Management, and the Secretary of Veterans and Defense Affairs, my authorities under Sections 44-146.17 and 44-75.1 of the Code of Virginia, to declare a state of emergency and to call forth the Virginia National Guard or any part thereof to state-active duty in any of the circumstances outlined in subsections 4 and 5 of Section 44-75.1.A.

I further hereby affirm and delegate to the Chief of Staff, my authority under Article V Section 16 of the Constitution and under Section 24.2-211 of the Code of Virginia to transmit to the President pro tempore of the Senate and the Speaker of the House of Delegates, a declaration that I am unable to discharge the powers and duties of the Governor's office. Each of these declarations is subject to the following conditions:

1. Such delegation is subject always to my continuing, ultimate authority and responsibility to act in such matters, and in the case of a declaration that I am unable to discharge the powers and duties of my office, my ability to transmit to the Clerk of the Senate and 2 Clerk of the House of Delegates my written declaration that no inability continues to exist and to resume the powers and duties of my office.

2. Use of this delegation is contingent upon my being unable to be reached so as to give my approval for the declaration of a state of emergency, as defined in Section 44-146.16 of the Code of Virginia, or use of the Virginia National Guard.

Use of this delegation to declare that I am unable to discharge the powers and duties of my office is specifically contingent upon my being unable to be reached or otherwise incapacitated for over 24 hours and the unavailability of any one of the Attorney General, President pro tempore of the Senate, or the Speaker of the House of Delegates.

3. This delegation is strictly standby in nature, to be held in abeyance until such time as there may be explicit circumstances involving an emergency whereby human lives and public and private property are threatened in the event of natural or man-made emergencies or disasters.

4. If the authority granted under this Executive Order is used, the Lieutenant Governor and I shall be informed of such use as soon as practicable.

Effective Date of the Executive Order

This Executive Order rescinds Executive Order No. 3 (2018) issued on January 13, 2018, by Governor Ralph S. Northam. This Executive Order shall become effective upon its signing and shall remain in full force and effect until January 31, 2026, unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 20th day of January 2022.

/s/ Glenn Youngkin, Governor

EXECUTIVE ORDER NUMBER 14 (2022)

Establishing the Authority and Responsibility of the Chief of Staff

By virtue of the authority vested in me as Governor under Article V, Sections 1, 7, 8, and 10 of the Constitution of Virginia and Sections 2.2-100 and 2.2-104 of the Code of Virginia, and subject always to my continuing ultimate authority and responsibility to act in such matters and to reserve to myself any and all such powers, I hereby affirm and delegate to my Chief of Staff the powers and duties enumerated below.

1. To direct, as the deputy planning and budget officer, the administration of the state government planning and budget process, except as to the responsibilities enumerated below, which are retained by me:

a. Submission of the budget and accompanying documents to the General Assembly;

b. Final review and determination of all proposed expenditures and of estimated revenues and borrowings to be included in the Executive Budget for each state department, division, office, board, commission, institution, or other agency or undertaking;

c. Amendment of Position Levels; and

d. Authorization of deficits.

2. To direct, as the deputy personnel officer, the administration of the state government personnel system, except as to the responsibility enumerated below, which are retained by me:

a. Final determination with respect to employee compensation plans;

b. Submission of reports to the General Assembly by the Governor as required by law;

c. Issuance, amendment, or suspension of the Rules for the Administration of the Virginia Personnel Act; and

d. Final action on appeals from appointing authorities to the Governor.

3. To review, in the event of my absence or unavailability, major planning, budgetary, personnel, policy, and legislative matters that require my decision.

4. To review, in the event of my absence or unavailability, policy or operational differences that may arise among or between my Secretaries and other Cabinet members.

5. To administer the direction and supervision of the Governor's Office, as well as budgetary and personnel authority for the Office.

Effective Date of the Executive Order

This Executive Order rescinds Executive Order No. 2 (2018) issued on January 13, 2018, by Governor Ralph S. Northam. This Executive Order shall become effective upon its signing and shall remain in full force and effect until January 31, 2026, unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 20th day of January 2022.

/s/ Glenn Youngkin, Governor

EXECUTIVE ORDER NUMBER 15 (2022)

Declaration of a State of Emergency Due to Severe Winter Weather

Importance of the Issue

On this date, January 27, 2022, I declare that a state of emergency exists in the Commonwealth of Virginia to prepare and coordinate our response to severe winter weather. The Virginia Emergency Operations Center has been actively monitoring the movement of a late week nor'easter heading toward Virginia, with anticipated arrival the evening of Friday, January 28, 2022. The National Weather Service is still refining its forecasts based on real-time data, but initial forecasts are predicting impactful to highly impactful snow and high winds across broad swaths of the Commonwealth, and coastal flooding along the Chesapeake Bay and Atlantic Ocean coastlines. These forecasts include higher impacts in the same areas affected by recent events over the last several weeks. This upcoming nor'easter is likely to include additional downed trees, more electrical outages, and significant impacts on travel conditions.

Given the storm's current forecast, the Commonwealth is leaning forward to assist localities, especially those with vulnerable populations to provide support in the complex incident of a large-scale winter weather event, hitting the same portions of the Commonwealth, while also coordinating continued COVID operations. Pre-positioning response assets and supplies will be necessary to assist our local and state partners whose resources have been severely strained by the several back to back events. The Virginia Emergency Support Team plans to activate for this incident.

The anticipated effects of this situation constitute a disaster as described in § 44-146.16 of the Code of Virginia (Code). Therefore, by virtue of the authority vested in me by Article V, Section 7 of the Constitution of Virginia, by §§ 44-146.17 and 44-75.1 of the Code, as Governor and Director of Emergency Management and Commander-in-Chief of the Commonwealth's armed forces, I proclaim a state of emergency. Accordingly, I direct state and local governments to render appropriate assistance to prepare for this event, to alleviate any conditions resulting from the situation, and to implement recovery and mitigation operations and activities so as to return impacted areas to pre-event conditions as much as possible. Emergency services shall be conducted in accordance with § 44-146.13 et seq. of the Code.

Directive

In order to marshal all public resources and appropriate preparedness, response, and recovery measures, I order the following actions:

1. Implementation by state agencies of the Commonwealth of Virginia Emergency Operations Plan, as amended, along with other appropriate state plans.

2. Activation of the Virginia Emergency Operations Center and the Virginia Emergency Support Team, as directed by the State Coordinator of Emergency Management, to coordinate the provision of assistance to state, local, and tribal governments and to facilitate emergency services assignments to other agencies.

3. Authorization for the heads of executive branch agencies, on behalf of their regulatory boards as appropriate, and with the concurrence of their Cabinet Secretary, to waive any state requirement or regulation, and enter into contracts without regard to normal procedures or formalities, and without regard to application or permit fees or royalties. All waivers issued by agencies shall be posted on their websites.

4. Activation of § 59.1-525 et seq. of the Code related to price gouging.

5. Authorization of a maximum of $1,000,000.00 in state sum sufficient funds for state and local government mission assignments and state response and recovery operations authorized and coordinated through the Virginia Department of Emergency Management allowable by The Stafford Act, 42 U.S.C. § 5121 et seq. Included in this authorization is $500,000.00 for the Department of Military Affairs, if it is called to State Active Duty.

6. Activation of the Virginia National Guard to State Active Duty.

Effective Date of this Executive Order

This Executive Order shall be effective January 27, 2022, and shall remain in full force and in effect until February 26, 2022, unless sooner amended or rescinded by further executive order. Termination of this Executive Order is not intended to terminate any federal type benefits granted or to be granted due to injury or death as a result of service under this Executive Order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 27th day of January 2022.

/s/ Glenn Youngkin, Governor

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.

STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Title of Document: Forensic Evaluation Oversight System Manual.

Public Comment Deadline: March 16, 2022.

Effective Date: April 1, 2022.

Agency Contact: Ruth Anne Walker, Director of Regulatory Affairs, Department of Behavioral Health and Developmental Services, Jefferson Building, 1220 Bank Street, 4th Floor, Richmond, VA 23219, telephone (804) 225-2252, or email ruthanne.walker@dbhds.virginia.gov.

BOARD OF SOCIAL WORK

Title of Document: Virginia Board of Social Work Bylaws.

Public Comment Deadline: March 16, 2022.

Effective Date: March 17, 2022.

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

STATE AIR POLLUTION CONTROL BOARD

Opportunity for Public Comment: East Tennessee Natural Gas Draft Title V Renewal Permit

Purpose of notice: To seek public comment on a draft permit from the Department of Environment Quality (DEQ) to limit air pollution emitted by a facility in Dickerson County, Virginia.

Public comment period: January 19, 2022, to February 18, 2022.

Permit name: Federal Operating Permit issued by DEQ under the authority of the State Air Pollution Control Board.

Applicant name and address: East Tennessee Natural Gas LLC, 5400 Westheimer Court, Houston, TX 77056.

Facility name address and registration number: Compressor Station 3401, 2213 Smith Ridge Road, McClure, VA 24269; Registration No. 11046.

Project description: East Tennessee Natural Gas LLC has applied for renewal of the permit for Compressor Station 3401. The facility is located at 2213 Smith Ridge Road, McClure, Virginia. The facility is classified as a major source of air pollution. The permit will allow the source to operate natural gas compression and dehydration equipment.

How to comment or request a public hearing: DEQ accepts comments and requests for public hearing by hand-delivery, email, fax, or postal mail. All comments and requests must be in writing and be received by DEQ during the comment period. Submittals must include the names, mailing addresses, and telephone numbers of the commenter or requester and all of the persons represented by the commenter or requester. A request for public hearing must also include (i) the reason why a public hearing is requested; (ii) a brief, informal statement regarding the nature and extent of the interest of the requester or of those represented by the requestor, including how and to what extent such interest would be directly and adversely affected by the permit; and (iii) specific references, where possible, to terms and conditions of the permit with suggested revisions. A public hearing may be held, including another comment period, if public responses is significant, based on individual requests for a public hearing, and there are substantial, disputed issues relevant to the permit.

For public comments, document requests, and additional information, contact the staff member listed at the end of this notice.

The public may review the draft permit and application, by appointment only, at the DEQ office listed. An appointment is required due to COVID-19 public health and safety concerns. Contact Bruce Mullins to schedule an appointment or to obtain documents by email. The draft permit is also available on the DEQ website at http://www.deq.virginia.gov.

Contact Information: Bruce Mullins, Department of Environment Quality, Southwest Regional Office, 355-A Deadmore Street, Abingdon, VA 24210, telephone (276) 698-7335, FAX (804) 698-4178, or email bruce.mullins@deq.virginia.gov.

Opportunity for Public Comment: Major Source Draft Construction Permit

Purpose of notice: To seek public comment and announce a public hearing on a draft construction permit from the Department of Environmental Quality (DEQ) for a major air pollution source in Westmoreland County, Virginia.

Public comment period: January 26, 2022, to March 15, 2022.

Public hearing: Public meeting room, George D. English, Sr. Memorial Building, 111 Polk Street, Montross, VA 22520, on February 28, 2022, at 6 p.m.

Information briefing: Same date and location as the public hearing, 30 minutes prior to public hearing from 5:30 p.m.

Permit name: Major Source Construction Permit issued by DEQ, under the authority of the State Air Pollution Control Board.

Applicant name and registration number: Potomac Supply LLC, Registration Number 40371.

Facility name and address: Potomac Supply LLC, 1398 Kinsale Road, Kinsale, Virginia.

Project description: Potomac Supply LLC has applied for a permit to construct a project at their lumber processing facility in Kinsale, Virginia. The proposed project would allow them to construct and operate a new drying kiln. The facility is classified as a major source of air pollution. The maximum annual emissions of air pollutants from the new kiln are expected to be: 258 tons of volatile organic compounds (VOC), 86 tons of carbon monoxide (CO), nine tons of nitrogen oxide (NO_x), eight tons of airborne particulate matter (PM) PM_{10}, and eight tons of $PM_{2.5}$. The applicant proposes to use bark and sawdust for fuel in the new kiln. The technology that will be used to control the air pollution from the new project is an electrostatic precipitator to control PM, overfire air to control NO_x, and proper operation of the drying kiln to control VOC. The estimated effect on air quality near the facility from the proposed project was examined using the Environmental Protection Agency ozone modeling (for NO_x and VOC) and the predicted ozone concentration in the vicinity of the facility was found to comply with the eight-hour ozone National Ambient Air Quality Standards.

How to comment or request board consideration: DEQ accepts comments and requests for board consideration by hand-delivery, email, fax, or postal mail. All comments and requests must be in writing and be received by DEQ during the comment period. Submittals must include the names, mailing

addresses, and telephone numbers of the commenter or requester and of all persons represented by the commenter or requester. A request for board consideration must include (i) the reason why board consideration is requested; (ii) A brief informal statement regarding the nature and extent of the interest of the requester, including how and to what extent such interest would be directly and adversely affected by the permit; and (iii) specific references, where possible, to terms and conditions of the permit with suggested revisions. Board consideration may be granted if public response is significant, based on individual requests for board consideration, and there are substantial, disputed issues relevant to the permit.

For public comments, document requests, and additional information, contact the staff member listed at the end of this notice.

The public may review the draft permit and application at the DEQ office named in this notice or may request copies of the documents from the contact person listed.

Contact Information: Alison Sinclair, Department of Environmental Quality, Piedmont Regional Office, 4949 Cox Road, Suite A, Glen Allen, VA 23060, telephone (804) 489-1008, FAX (804) 698-4178, or email alison.sinclair@deq.virginia.gov.

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

Board of Housing and Community Development Public Hearing

Pursuant to § 2.2-4006 A 12 and § 36-100 of the Code of Virginia, the Board of Housing and Community Development will hold a public hearing on the Virginia Uniform Statewide Building Code (13VAC5-63), Virginia Statewide Fire Prevention Code (13VAC5-51), Virginia Amusement Device Regulations (13VAC5-31), and the Virginia Industrialized Building Safety Regulations (13VAC5-91).

The purpose of the public hearing is to take public comment on updating the codes to the newest editions of the model codes and standards.

The public hearing will be held beginning at 10 a.m. on March 21, 2022, at the Virginia Housing Center located at 4224 Cox Road, Glen Allen, VA 23060. For more information about the meeting, contact the staff member listed at the end of this notice.

For additional meeting details, including any call-in or virtual participation options, see the Virginia Regulatory Town Hall at https://townhall.virginia.gov/l/meetings.cfm or the Board of Housing and Community Development website at https://www.dhcd.virginia.gov/board-housing-and-community-development-bhcd.

Contact Information: Kyle Flanders, Senior Policy Analyst, Department of Housing and Community Development, Main Street Centre, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 786-6761, FAX (804) 371-7090.

BOARD OF MEDICAL ASSISTANCE SERVICES

Draft Development Disabilities Waivers Appendix A Provider Manual

The draft Development Disabilities Waivers Provider Manual Appendix A is now available for public comment on the Department of Medical Assistance Services website at https://dmas.virginia.gov/for-providers/general-information/medicaid-provider-manual-drafts/ until February 17, 2022.

Contact Information: Meredith Lee, Policy, Regulations, and Manuals Supervisor, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-0552, FAX (804) 786-1680, or email meredith.lee@dmas.virginia.gov.

Draft Telehealth Services Supplement

The draft Telehealth Services Supplement Provider Manual is now available on the Department of Medical Assistance Services website at https://dmas.virginia.gov/for-providers/general-information/medicaid-provider-manual-drafts/ for public comment until February 20, 2022.

Contact Information: Meredith Lee, Policy, Regulations, and Manuals Supervisor, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-0552, FAX (804) 786-1680, or email meredith.lee@dmas.virginia.gov.

VIRGINIA DEPARTMENT OF PLANNING AND BUDGET

Commercial Activities List

Pursuant to § 2.2-1501.1 of the Code of Virginia, the Virginia Department of Planning and Budget (DPB) has updated the Commercial Activities List (CAL). The CAL is posted on the DPB website under Documents, Instructions and Publications as "Commercial Activities List – 2021" 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 February 14, 2022, and end February 28, 2022. 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 2020 and FY 2021	
NIGP	NIGP Title
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
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
91807	Advertising Consulting
91815	Architectural Consulting
91819	Buildings, Structures and Components Consulting
91831	Construction Consulting
91873	Landscaping Consulting
91875	Management Consulting
91878	Medical Consulting
91885	Personnel/Employment Consulting (Human Resources)
91891	Roofing Consultant
91895	Telecommunications Consulting
92000	Data Processing, Computer, Programming, and Software Services
92002	Access Services, Data
92022	Data Preparation and Processing Services (Including Bates Coding)
92032	Intelligent Transportation System Software (To Include 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
92480	Tutoring
92500	Engineering Services, Professional
92824	Buses, School and Mass Transit, Maintenance and Repair
93881	Scientific Equipment Maintenance and Repair

94155	HVAC Systems Maintenance and Repair, Power Plant
94620	Auditing
94649	Financial Services (Not Otherwise Classified)
94650	Fund Raising Services
94670	Payment Card Services
94807	Administration Services, Health
94828	Dental Services
94876	Psychologists/Psychological and Psychiatric Services (Including Behavioral Management Services)
95256	Housekeeping Services
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
96110	Business Plan Development Services
96114	Commissioning of Facilities Services (Functional and Prefunctional)
96129	Economic Impact Studies
96130	Employment Agency and Search Firm Services (Including Background Investigations and Drug Testing for Employment)
96196	Non-Professional Services (Not Otherwise Classified)
96269	Personnel Services, Temporary
96289	Vehicle Transporting Services
96343	Intergovernmental/Inter-Agency Contracts
96728	Computer Hardware and Software Manufacturing Services
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
99050	Installation of Security and Alarm Equipment

STATE WATER CONTROL BOARD

Availability of the 2022 Annual Monitoring Plan

Purpose of notice: The Virginia Department of Environmental Quality (DEQ) is announcing the availability of the 2022 Water Quality Monitoring Plan (MonPlan). The 2022 MonPlan is now available on the agency's website at https://www.deq.virginia.gov/water/water-quality/monitoring/water-quality-monitoring-plan.

A map view of the 2022 MonPlan is available through DEQ's GIS viewer at https://geohub-vadeq.hub.arcgis.com/datasets/fcbf74731d4d4c79a881f8dd23587e52_131.

Background: Every year, DEQ staff from the agency's six regional offices collect water samples for testing from more than 1,000 locations across the commonwealth. The agency's various monitoring activities for each calendar year are outlined in the annual statewide MonPlan.

2022 MonPlan: The 2022 MonPlan summarizes DEQ's water quality monitoring activities to be conducted from January 1 through December 31, and is developed for the purpose of implementing the goals and objectives of DEQ's water quality monitoring strategy. This water quality information is presented in compliance with the Virginia Water Quality Monitoring, Information and Restoration Act (§ 62.1-44.19:5 of the Code of Virginia) to help ensure public awareness of water quality issues and conditions. The MonPlan contains detailed information on DEQ's monitoring activities, including the station locations, specific conditions, frequency of monitoring, and costs.

Requests for more information on the 2022 MonPlan can be directed to Roger Stewart at roger.stewart@deq.virginia.gov. Additional information is also available on DEQ's Water Quality Monitoring website at https://www.deq.virginia.gov/water/water-quality/monitoring.

Citizen nominations for the 2023 MonPlan: Citizens can nominate portions of lakes, streams, and rivers of Virginia for water quality monitoring by DEQ. Nominations received on or before April 30, 2022, will be considered for inclusion in DEQ's 2023 MonPlan. More information on the citizen nomination process is available on DEQ's Citizen Monitoring website at https://www.deq.virginia.gov/water/water-quality/monitoring/citizen-monitoring. For more information regarding nominations, contact Andrew Garey using the information provided.

Contact Information: Andrew Garey, Water Monitoring Team Leader, Department of Environmental Quality, 1111 East Main Street, Suite 1400, Richmond, VA 23219, or email (804) 698-4253.

Proposed Enforcement Action for Abbas Abutaa

An enforcement action has been proposed for Abbas Abutaa for violations of the State Water Control Law and regulations at the Haymarket Evergreen Center facility located in Haymarket, Virginia. The State Water Control Board proposes to issue a consent order to resolve violations associated with the Haymarket Evergreen Center facility. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov/permits-regulations/public-notices/enforcement-orders. The staff contact will accept comments by email or postal mail from February 15, 2022, through March 17, 2022.

Contact Information: Mark Miller, Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, or email mark.miller@deq.virginia.gov.

Proposed Enforcement Action for Town of Hamilton

An enforcement action has been proposed for the Town of Hamilton for violations of the State Water Control Law and regulations and applicable permit at the Town of Hamilton sewage treatment plant located in Loudoun 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/permits-regulations/public-notices/enforcement-orders. The staff contact will accept comments by email or postal mail from February 15, 2022, through March 17, 2022.

Contact Information: Jim Datko, Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, or email james.datko@deq.virgnia.gov.

Proposed Enforcement Action for Milestone Metals Inc.

An enforcement action has been proposed for Milestone Metals Inc. for violations of the State Water Control Law and regulations at the Milestone Metals facility located in Fairfax, Virginia. The State Water Control Board proposes to issue a consent order to resolve violations associated with the Milestone Metals facility. A description of the proposed action is available at the Department of Environment Quality office listed or online at www.deq.virginia.gov/permits-regulations/public-notices/enforcement-orders. The staff contact will accept comments by email or postal mail from February 15, 2022, through March 17, 2022.

Contact Information: Mark Miller, Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, or email mark.miller@deq.virginia.gov.

Proposed Enforcement Action for NUNAA LLC

An enforcement action has been proposed for NUNAA LLC for violations of the State Water Control Law and regulations at the Magic Auto Salvage facility located in Spotsylvania, Virginia. The State Water Control Board proposes to issue a consent order to resolve violations associated with the Magic Auto Salvage facility. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov/permits-regulations/public-notices/enforcement-orders. The staff contact will accept comments by email or postal mail from February 15, 2022, through March 17, 2022.

Contact Information: Mark Miller, Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, or email mark.miller@deq.virginia.gov.

Proposed Enforcement Action for Paramveer Inc.

The State Water Control Board proposes to issue a consent special order to Paramveer Inc. for alleged violation of the State Water Control Law at 6500 Jefferson Davis Highway, Richmond, VA 23237. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. The staff contact will accept comments by email or postal mail from February 14, 2022, to March 16, 2022.

Contact Information: Jeff Reynolds, Department of Environmental Quality, Piedmont Regional Office (Enforcement), 4949-A Cox Road, Glen Allen, VA 23060, or email jefferson.reynolds@deq.virginia.gov.

Proposed Enforcement Action for Topgolf USA Richmond LLC

An enforcement action has been proposed for Topgolf USA Richmond LLC for the Westwood Avenue Golf Complex located off Westwood Avenue and bordered by Interstate 95 in Henrico County, Virginia. The State Water Control 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 http://www.deq.virginia.gov. Staff contact will accept comments by email or postal mail from February 14, 2022, to March 16, 2022.

Contact Information: Frank Lupini, Department of Environmental Quality, P.O. Box1105, Richmond, VA 23218, FAX (804) 698-4277, or email frank.lupini@deq.virginia.gov.

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

BOARD OF WILDLIFE RESOURCES

Title of Regulation: **4VAC15-20. Definitions and Miscellaneous: In General.**

Publication: 37:22 VA.R. 3392-3399 June 21, 2021.

Correction to Final Regulation:

Page 3395, 4VAC15-20-130 subsection A, line 4, beginning of the line should read: "~~[January 13, 20~~21 April 30, 2021]"

VA.R. Doc. No. R21-6734; Filed January 18, 2022 4:36 p.m.

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Title of Regulation: **4VAC15-90. Game: Deer.**

Publication: 37:22 VA.R. 3409-3430 June 21, 2021.

Correction to Final Regulation:

Page 3420, 4VAC15-90-89, column 2,

subsection E, line 2, after "Suffolk" text should read: "[~~(east of the Dismal Swamp line)~~]"

subsection F, line 2, after "Suffolk" text should read: "[~~(east of the Dismal Swamp line)~~]"

Page 3428, 4VAC15-90-540, subdivisions B 3, B 4, and B 5 should read:

"[~~3. Affidavit that elk hunters on the enrolled property shall not be charged a fee.~~

~~4.~~ 3.] Original signature of the landowner.

[~~5.~~ 4.] Only a single application per license year, per landowner."

Page 3429, 4VAC15-90-540, subsection J, line 1, after "transfer" text should read: "[~~or sell~~]" and line 2, after "Virginia." insert "[The special elk hunting license may not be sold.]"

subsection K, after "K." insert "[A landowner shall not charge a fee for hunters to hunt elk on properties enrolled in the Landowner License Program except as described in the program guidance document.

L.]"

4VAC15-90-550, subsection A, column 2, definition of "Proceeds" line 2 after "transfer of a" insert "[reserved]" and line 3, after "expenses" insert "[, including the fees associated with the license,]"

subdivision C 3 b, line 2, after "requesting" insert "[a reserved]"

subdivision C 3 c, line 2, after "transfer of the" insert "[reserved]"

subdivision C 3 d, line 2, after "transfer of the" insert "[reserved]"

subsection D, line 3, after "director to" text should read: "[~~award~~ reserve]" and line 4, after "license" text should read: "[~~to~~ for]"

subsection E, line 1, after "receiving a" insert "[reserved]" and line 3, after "such" text should read: "[~~license~~ reservation]"

Page 3430, 4VAC15-90-550, subsection F, line 1, after "transfer the" insert "[reserved]" and line 3, after "transfer of the" insert "[reserved]"

subsection G, line 1, after "Transfer of the" insert "[reserved]"

subsection I, line 1, after "organization" text should read: "[~~awarded a~~ that receives a reserved]" and line 3, after "transfer of the" insert "[reserved]"

VA.R. Doc. No. R21-6739; Filed January 18, 2022 4:36 p.m.

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Title of Regulation: **4VAC15-240. Game: Turkey.**

Publication: 37:22 VA.R. 3430-3433 June 21, 2021.

Correction to Final Regulation:

Page 3431, 4VAC15-240-40 subsection A, line 4, after "sunrise to" text should read: "[12:00 noon prevailing time during the first] ~~23~~ [16 days and from 1/2 hour before sunrise to sunset during the last] ~~13~~ [20 days of the spring season ~~sunset~~]."

VA.R. Doc. No. R21-6741; Filed January 18, 2022 4:36 p.m.

Errata