



# Virginia Register of Regulations

VOL. 23 ISS. 25

PUBLISHED EVERY OTHER WEEK BY THE VIRGINIA CODE COMMISSION

AUGUST 20, 2007

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# THE VIRGINIA REGISTER INFORMATION PAGE

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

## **ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS**

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

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

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

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

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

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

A regulation becomes effective at the conclusion of the 30-day final adoption period, or at any other later date specified by the promulgating agency, unless (i) a legislative objection has been filed, in which event the regulation, unless withdrawn, becomes effective on the date

specified, which shall be after the expiration of the 21-day objection period; (ii) the Governor exercises his authority to require the agency to provide for additional public comment, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the period for which the Governor has provided for additional public comment; (iii) the Governor and the General Assembly exercise their authority to suspend the effective date of a regulation until the end of the next regular legislative session; or (iv) the agency suspends the regulatory process, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 30-day public comment period and no earlier than 15 days from publication of the readopted action.

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

## **FAST-TRACK RULEMAKING PROCESS**

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

## **EMERGENCY REGULATIONS**

If an agency demonstrates that (i) there is an immediate threat to the public's health or safety; or (ii) Virginia statutory law, the appropriation act, federal law, or federal regulation requires a regulation to take effect no later than (a) 280 days from the enactment in the case of Virginia or federal law or the appropriation act, or (b) 280 days from the effective date of a federal regulation, it then requests the Governor's approval to adopt an emergency regulation. The emergency regulation becomes operative upon its adoption and filing with the Registrar of Regulations, unless a later date is specified. Emergency regulations are limited to addressing specifically defined situations and may not exceed 12 months in duration. Emergency regulations are published as soon as possible in the *Register*.

During the time the emergency status is in effect, the agency may proceed with the adoption of permanent regulations through the usual procedures. To begin promulgating the replacement regulation, the agency must (i) file the Notice of Intended Regulatory Action with the Registrar within 60 days of the effective date of the emergency regulation and (ii) file the proposed regulation with the Registrar within 180 days of the effective date of the emergency regulation. If the agency chooses not to adopt the regulations, the emergency status ends when the prescribed time limit expires.

## **STATEMENT**

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

## **CITATION TO THE VIRGINIA REGISTER**

The *Virginia Register* is cited by volume, issue, page number, and date. **23:7 VA.R. 1023-1140 December 11, 2006**, refers to Volume 23, Issue 7, pages 1023 through 1140 of the *Virginia Register* issued on December 11, 2006.

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

Members of the Virginia Code Commission: **R. Steven Landes**, Chairman; **John S. Edwards**, Vice Chairman; **Ryan T. McDougle**; **Robert Hurt**; **Robert L. Calhoun**; **Frank S. Ferguson**; **E.M. Miller, Jr.**; **Thomas M. Moncure, Jr.**; **James F. Almand**; **S. Bernard Goodwyn**.

Staff of the Virginia Register: **Jane D. Chaffin**, Registrar of Regulations; **June T. Chandler**, Assistant Registrar.

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# PUBLICATION SCHEDULE AND DEADLINES

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This schedule is available on the *Register's* Internet home page (<http://register.state.va.us>).

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## August 2007 through June 2008

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
23:25	August 1, 2007	August 20, 2007
23:26	August 15, 2007	September 3, 2007
<b>FINAL INDEX - Volume 23</b>		<b>October 2007</b>
24:1	August 29, 2007	September 17, 2007
24:2	September 12, 2007	October 1, 2007
24:3	September 26, 2007	October 15, 2007
24:4	October 10, 2007	October 29, 2007
24:5	October 24, 2007	November 12, 2007
24:6	November 7, 2007	November 26, 2007
24:7	November 20, 2007 ( <b>Tuesday</b> )	December 10, 2007
<b>INDEX 1 Volume 24</b>		<b>January 2008</b>
24:8	December 5, 2007	December 24, 2008
24:9	December 19, 2007	January 7, 2008
24:10	January 2, 2008	January 21, 2008
24:11	January 16, 2008	February 4, 2008
24:12	January 30, 2008	February 18, 2008
24:13	February 13, 2008	March 3, 2008
24:14	February 27, 2008	March 17, 2008
<b>INDEX 2 Volume 24</b>		<b>April 2008</b>
24:15	March 12, 2008	March 31, 2008
24:16	March 26, 2008	April 14, 2008
24:17	April 9, 2008	April 28, 2008
24:18	April 23, 2008	May 12, 2008
24:19	May 7, 2008	May 26, 2008
24:20	May 21, 2008	June 9, 2008
<b>INDEX 3 Volume 24</b>		<b>July 2008</b>
24:21	June 4, 2008	June 23, 2008

\*Filing deadlines are Wednesdays unless otherwise specified.

# CUMULATIVE TABLE OF VIRGINIA ADMINISTRATIVE CODE SECTIONS ADOPTED, AMENDED, OR REPEALED

The table printed below lists regulation sections, by Virginia Administrative Code (VAC) title, that have been amended, added or repealed in the *Virginia Register* since the regulations were originally published or last supplemented in VAC (the Fall 2006 VAC Supplement includes final regulations published through *Virginia Register* Volume 22, Issue 22, dated July 10, 2006). Emergency regulations, if any, are listed, followed by the designation "emer," and errata pertaining to final regulations are listed. Proposed regulations are not listed here. The table lists the sections in numerical order and shows action taken, the volume, issue and page number where the section appeared, and the effective date of the section.

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
<b>Title 2. Agriculture</b>			
2 VAC 5-195 (Form)	Added	23:15 VA.R. 2512	--
2 VAC 5-330-30	Amended	23:20 VA.R. 3122	7/12/07
2 VAC 5-490-10 through 2 VAC 5-490-90	Amended	23:20 VA.R. 3123-3155	5/23/07
2 VAC 5-490-15	Added	23:20 VA.R. 3130	5/23/07
2 VAC 5-490-25	Added	23:20 VA.R. 3131	5/23/07
2 VAC 5-490-31 through 2 VAC 5-490-39.6	Added	23:20 VA.R. 3132-3140	5/23/07
2 VAC 5-490-73	Added	23:20 VA.R. 3154	5/23/07
2 VAC 5-490-75	Added	23:20 VA.R. 3155	5/23/07
2 VAC 5-490-103	Added	23:20 VA.R. 3155	5/23/07
2 VAC 5-490-105	Added	23:20 VA.R. 3156	5/23/07
2 VAC 5-490-110	Amended	23:20 VA.R. 3156	5/23/07
2 VAC 5-490-120	Amended	23:20 VA.R. 3157	5/23/07
2 VAC 5-490-130	Repealed	23:20 VA.R. 3157	5/23/07
2 VAC 5-490-131 through 2 VAC 5-490-138	Added	23:20 VA.R. 3157-3162	5/23/07
2 VAC 5-490-140	Amended	23:20 VA.R. 3162	5/23/07
2 VAC 5-620-10 through 2 VAC 5-620-100	Added	23:19 VA.R. 2981-2985	7/1/07
<b>Title 3. Alcoholic Beverages</b>			
3 VAC 5-10-40	Amended	23:13 VA.R. 2117	5/19/07
3 VAC 5-10-50	Amended	23:13 VA.R. 2117	5/19/07
3 VAC 5-10-60	Amended	23:13 VA.R. 2117	5/19/07
3 VAC 5-10-130	Amended	23:13 VA.R. 2117	5/19/07
3 VAC 5-10-150	Amended	23:13 VA.R. 2117	5/19/07
3 VAC 5-10-230	Amended	23:13 VA.R. 2118	5/19/07
3 VAC 5-10-360	Amended	23:13 VA.R. 2118	5/19/07
3 VAC 5-10-400	Amended	23:13 VA.R. 2118	5/19/07
3 VAC 5-10-480	Amended	23:13 VA.R. 2129	5/19/07
3 VAC 5-40-20	Amended	23:13 VA.R. 2133	5/19/07
3 VAC 5-40-50	Amended	23:13 VA.R. 2134	5/19/07
3 VAC 5-60-20	Amended	23:13 VA.R. 2137	5/19/07
3 VAC 5-60-40	Amended	23:13 VA.R. 2138	5/19/07
3 VAC 5-60-80	Amended	23:13 VA.R. 2138	5/19/07
3 VAC 5-60-100	Added	23:13 VA.R. 2139	5/19/07
3 VAC 5-70-100	Amended	23:13 VA.R. 2142	5/19/07
3 VAC 5-70-150	Amended	23:13 VA.R. 2143	5/19/07
3 VAC 5-70-160	Amended	23:13 VA.R. 2143	5/19/07
3 VAC 5-70-230	Added	23:13 VA.R. 2143	5/19/07
<b>Title 4. Conservation and Natural Resources</b>			
4 VAC 20-70-100	Amended	23:12 VA.R. 1958	2/1/07
4 VAC 20-200-10	Amended	23:11 VA.R. 1659	2/1/07

## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
4 VAC 20-200-20	Amended	23:11 VA.R. 1659	2/1/07
4 VAC 20-200-30	Amended	23:11 VA.R. 1659	2/1/07
4 VAC 20-200-40	Amended	23:11 VA.R. 1660	2/1/07
4 VAC 20-200-50	Amended	23:11 VA.R. 1660	2/1/07
4 VAC 20-270-30 emer	Amended	23:14 VA.R. 2276	3/1/07-3/30/07
4 VAC 20-270-30	Amended	23:17 VA.R. 2737	3/30/07
4 VAC 20-270-40 emer	Amended	23:14 VA.R. 2276	3/1/07-3/30/07
4 VAC 20-270-40	Amended	23:17 VA.R. 2737	3/30/07
4 VAC 20-300-20 emer	Amended	23:14 VA.R. 2277	3/1/07-3/30/07
4 VAC 20-300-20	Amended	23:17 VA.R. 2738	3/30/07
4 VAC 20-310-55	Added	23:15 VA.R. 2481	3/1/07
4 VAC 20-370-10 through 4 VAC 20-370-30	Amended	23:19 VA.R. 2986	5/1/07
4 VAC 20-380-50	Amended	23:21 VA.R. 3446	10/1/07
4 VAC 20-380-60	Amended	23:21 VA.R. 3447	10/1/07
4 VAC 20-430-20	Amended	23:17 VA.R. 2738	3/30/07
4 VAC 20-430-45	Added	23:17 VA.R. 2738	3/30/07
4 VAC 20-450-30	Amended	23:17 VA.R. 2739	3/30/07
4 VAC 20-490-42	Amended	23:10 VA.R. 1540	12/21/06
4 VAC 20-490-42	Amended	23:19 VA.R. 2986	5/1/07
4 VAC 20-510-10	Amended	23:12 VA.R. 1958	2/1/07
4 VAC 20-510-20	Amended	23:12 VA.R. 1958	2/1/07
4 VAC 20-510-33	Added	23:12 VA.R. 1959	2/1/07
4 VAC 20-510-35	Added	23:12 VA.R. 1959	2/1/07
4 VAC 20-510-37	Added	23:12 VA.R. 1959	2/1/07
4 VAC 20-530-10 emer	Amended	23:12 VA.R. 1959	2/1/07-3/1/07
4 VAC 20-530-20 emer	Amended	23:12 VA.R. 1959	2/1/07-3/1/07
4 VAC 20-530-31 emer	Amended	23:12 VA.R. 1960	2/1/07-3/1/07
4 VAC 20-530-31	Added	23:13 VA.R. 2144	2/1/07-3/1/07
4 VAC 20-530-31	Amended	23:15 VA.R. 2482	3/1/07
4 VAC 20-530-32 emer	Amended	23:12 VA.R. 1960	2/1/07-3/1/07
4 VAC 20-530-32	Added	23:13 VA.R. 2145	2/1/07-3/1/07
4 VAC 20-530-32	Amended	23:15 VA.R. 2482	3/1/07
4 VAC 20-610-30	Amended	23:11 VA.R. 1660	2/1/07
4 VAC 20-610-60	Amended	23:11 VA.R. 1662	2/1/07
4 VAC 20-620-50	Amended	23:15 VA.R. 2483	3/1/07
4 VAC 20-620-60	Amended	23:15 VA.R. 2483	3/1/07
4 VAC 20-620-70	Amended	23:15 VA.R. 2483	3/1/07
4 VAC 20-670-15	Added	23:17 VA.R. 2739	3/30/07
4 VAC 20-670-30	Amended	23:17 VA.R. 2739	3/30/07
4 VAC 20-720-10 emer	Amended	23:19 VA.R. 2987	5/1/07-5/30/07
4 VAC 20-720-10	Amended	23:21 VA.R. 3447	5/23/07
4 VAC 20-720-20 emer	Amended	23:19 VA.R. 2987	5/1/07-5/30/07
4 VAC 20-720-40 emer	Amended	23:10 VA.R. 1540	1/1/07-1/30/07
4 VAC 20-720-50 emer	Amended	23:10 VA.R. 1541	1/1/07-1/30/07
4 VAC 20-720-60 emer	Amended	23:19 VA.R. 2988	5/1/07-5/30/07
4 VAC 20-720-60 through 4 VAC 20-720-110	Amended	23:21 VA.R. 3447-3449	5/23/07
4 VAC 20-720-70 emer	Amended	23:19 VA.R. 2989	5/1/07-5/30/07
4 VAC 20-720-90 emer	Amended	23:19 VA.R. 2989	5/1/07-5/30/07
4 VAC 20-720-105 emer	Added	23:19 VA.R. 2989	5/1/07-5/30/07
4 VAC 20-720-105	Added	23:21 VA.R. 3449	5/23/07
4 VAC 20-720-110 emer	Amended	23:19 VA.R. 2990	5/1/07-5/30/07

## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
4 VAC 20-752-20	Amended	23:19 VA.R. 2990	5/3/07
4 VAC 20-752-30	Amended	23:19 VA.R. 2991	5/3/07
4 VAC 20-890-20	Amended	23:19 VA.R. 2991	7/1/07
4 VAC 20-890-35	Amended	23:19 VA.R. 2991	7/1/07
4 VAC 20-890-40	Amended	23:19 VA.R. 2991	7/1/07
4 VAC 20-890-45	Added	23:19 VA.R. 2992	7/1/07
4 VAC 20-900-25	Amended	23:19 VA.R. 2992	7/1/07
4 VAC 20-900-35	Amended	23:19 VA.R. 2993	7/1/07
4 VAC 20-950-40 emer	Amended	23:12 VA.R. 1961	2/1/07-3/1/07
4 VAC 20-950-40	Amended	23:15 VA.R. 2484	3/1/07
4 VAC 20-950-47 emer	Amended	23:12 VA.R. 1961	2/1/07-3/1/07
4 VAC 20-950-47	Amended	23:15 VA.R. 2484	3/1/07
4 VAC 20-950-47	Amended	23:17 VA.R. 2740	3/30/07
4 VAC 20-950-48.2 emer	Amended	23:12 VA.R. 1961	2/1/07-3/1/07
4 VAC 20-950-48.2	Amended	23:15 VA.R. 2484	3/1/07
4 VAC 20-950-48	Amended	23:17 VA.R. 2740	3/30/07
4 VAC 20-1090-30	Amended	23:11 VA.R. 1663	2/1/07
4 VAC 20-1110-10 through 4 VAC 20-1110-50	Added	23:19 VA.R. 2994	5/1/07
4 VAC 20-1120-10 through 4 VAC 20-1120-50	Added	23:19 VA.R. 2994-2995	5/1/07
4 VAC 20-1120-20 emer	Amended	23:21 VA.R. 3449	5/29/07-6/28/07
4 VAC 20-1120-20	Amended	23:23 VA.R. 3871	6/28/07
4 VAC 25-20 (Forms)	Amended	23:24 VA.R. 3968	--
4 VAC 25-20-420	Amended	23:13 VA.R. 2146	4/4/07
4 VAC 25-50-10 through 4 VAC 25-50-110	Repealed	23:22 VA.R. 3696	8/8/07
4 VAC 25-130 (Forms)	Amended	23:20 VA.R. 3370-3372	--
4 VAC 25-130-700.12	Amended	23:13 VA.R. 2146	4/4/07
4 VAC 25-130-773.21	Amended	23:13 VA.R. 2147	4/4/07
4 VAC 25-130-775.11	Amended	23:13 VA.R. 2147	4/4/07
4 VAC 25-130-775.13	Amended	23:13 VA.R. 2148	4/4/07
4 VAC 25-130-777.17	Amended	23:22 VA.R. 3696	8/8/07
4 VAC 25-130-784.20	Amended	23:13 VA.R. 2148	4/4/07
4 VAC 25-130-785.25	Amended	23:16 VA.R. 2592	5/16/07
4 VAC 25-130-800.51	Amended	23:13 VA.R. 2149	4/4/07
4 VAC 25-130-816.105	Amended	23:13 VA.R. 2150	4/4/07
4 VAC 25-130-816.116	Amended	23:16 VA.R. 2592	5/16/07
4 VAC 25-130-817.11	Amended	23:13 VA.R. 2150	4/4/07
4 VAC 25-130-817.64	Amended	23:13 VA.R. 2151	4/4/07
4 VAC 25-130-817.116	Amended	23:16 VA.R. 2594	5/16/07
4 VAC 25-130-817.121	Amended	23:13 VA.R. 2151	4/4/07
4 VAC 25-130-842.15	Amended	23:13 VA.R. 2153	4/4/07
4 VAC 25-130-843.12	Amended	23:13 VA.R. 2153	4/4/07
4 VAC 25-130-843.13	Amended	23:13 VA.R. 2154	4/4/07
4 VAC 25-130-843.15	Amended	23:13 VA.R. 2155	4/4/07
4 VAC 25-130-843.16	Amended	23:13 VA.R. 2156	4/4/07
4 VAC 25-130-845.13	Amended	23:13 VA.R. 2156	4/4/07
4 VAC 25-130-845.15	Amended	23:13 VA.R. 2158	4/4/07
4 VAC 25-130-845.18	Amended	23:13 VA.R. 2158	4/4/07
4 VAC 25-130-845.19	Amended	23:13 VA.R. 2159	4/4/07
4 VAC 25-130-846.14	Amended	23:13 VA.R. 2159	4/4/07
<b>Title 5. Corporations</b>			
5 VAC 5-30-10	Amended	23:23 VA.R. 3872	7/1/07

# Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
5 VAC 5-30-20	Amended	23:23 VA.R. 3872	7/1/07
5 VAC 5-30-30	Amended	23:23 VA.R. 3873	7/1/07
5 VAC 5-30-40	Amended	23:23 VA.R. 3873	7/1/07
5 VAC 5-30-50	Amended	23:23 VA.R. 3874	7/1/07
5 VAC 5-30-60	Amended	23:23 VA.R. 3874	7/1/07
5 VAC 5-30-70	Amended	23:23 VA.R. 3875	7/1/07
<b>Title 6. Criminal Justice and Corrections</b>			
6 VAC 15-20-10 through 6 VAC 15-20-230	Amended	23:22 VA.R. 3697-3703	8/9/07
6 VAC 40-50-10 through 6VAC40-50-80 emer	Added	23:23 VA.R. 3876	7/1/06-12/29/07
<b>Title 8. Education</b>			
8 VAC 20-160-10	Amended	23:23 VA.R. 3876	8/27/07
8 VAC 20-160-20	Amended	23:23 VA.R. 3878	8/27/07
8 VAC 20-160-30	Amended	23:23 VA.R. 3878	8/27/07
8 VAC 20-160-40	Amended	23:23 VA.R. 3879	8/27/07
8 VAC 20-160-50	Amended	23:23 VA.R. 3879	8/27/07
8 VAC 20-160-60	Amended	23:23 VA.R. 3879	8/27/07
8 VAC 20-350-10 through 8 VAC 20-350-660	Repealed	23:12 VA.R. 1962	5/8/07
8 VAC 20-700-10 through 8 VAC 20-700-50	Added	23:10 VA.R. 1541-1543	2/21/07
8 VAC 20-710-10 through 8 VAC 20-710-30	Added	23:10 VA.R. 1543-1544	2/21/07
8 VAC 40-140-10 through 8 VAC 40-140-90	Added	23:22 VA.R. 3704-3706	7/1/07
<b>Title 9. Environment</b>			
9 VAC 5-20-21	Amended	23:21 VA.R. 3456	8/1/07
9 VAC 5-30-15	Added	23:21 VA.R. 3454	8/1/07
9 VAC 5-30-60	Amended	23:21 VA.R. 3454	8/1/07
9 VAC 5-30-65	Amended	23:21 VA.R. 3454	8/1/07
9 VAC 5-30-66	Added	23:21 VA.R. 3455	8/1/07
9 VAC 5-40-7550 through 9 VAC 5-40-7710	Added	23:21 VA.R. 3460-3463	8/1/07
9 VAC 5-50-400	Amended	23:17 VA.R. 2742	6/1/07
9 VAC 5-50-410	Amended	23:17 VA.R. 2742	6/1/07
9 VAC 5-60-60	Amended	23:17 VA.R. 2747	6/1/07
9 VAC 5-60-90	Amended	23:17 VA.R. 2748	6/1/07
9 VAC 5-60-100	Amended	23:17 VA.R. 2748	6/1/07
9 VAC 5-140-1010 through 9 VAC 5-140-1060	Added	23:14 VA.R. 2279-2291	4/18/07
9 VAC 5-140-1061	Added	23:14 VA.R. 2291	*
9 VAC 5-140-1062	Added	23:14 VA.R. 2291	*
9 VAC 5-140-1070 through 9 VAC 5-140-1150	Added	23:14 VA.R. 2292-2295	4/18/07
9 VAC 5-140-1200 through 9 VAC 5-140-1240	Added	23:14 VA.R. 2295-2296	4/18/07
9 VAC 5-140-1400 through 9 VAC 5-140-1430	Added	23:14 VA.R. 2296-2302	4/18/07
9 VAC 5-140-1500 through 9 VAC 5-140-1570	Added	23:14 VA.R. 2302-2306	4/18/07
9 VAC 5-140-1600 through 9 VAC 5-140-1620	Added	23:14 VA.R. 2307	4/18/07
9 VAC 5-140-1700 through 9 VAC 5-140-1750	Added	23:14 VA.R. 2307-2312	4/18/07
9 VAC 5-140-1800 through 9 VAC 5-140-1880	Added	23:14 VA.R. 2312-2317	4/18/07
9 VAC 5-140-2060	Added	23:14 VA.R. 2329	4/18/07
9 VAC 5-140-2061	Added	23:14 VA.R. 2331	*
9 VAC 5-140-2062	Added	23:14 VA.R. 2332	*
9 VAC 5-140-2070	Added	23:14 VA.R. 2333	4/18/07
9 VAC 5-140-2080	Added	23:14 VA.R. 2333	4/18/07
9 VAC 5-140-2100 through 9 VAC 5-140-2150	Added	23:14 VA.R. 2333-2336	4/18/07
9 VAC 5-140-2200 through 9 VAC 5-140-2240	Added	23:14 VA.R. 2336-2337	4/18/07

\* Effective Date Suspended 23:19

## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
9 VAC 5-140-2400 through 9 VAC 5-140-2430	Added	23:14 VA.R. 2337-2342	4/18/07
9 VAC 5-140-2500 through 9 VAC 5-140-2570	Added	23:14 VA.R. 2342-2347	4/18/07
9 VAC 5-140-2600 through 9 VAC 5-140-2620	Added	23:14 VA.R. 2347	4/18/07
9 VAC 5-140-2700 through 9 VAC 5-140-2750	Added	23:14 VA.R. 2347-2353	4/18/07
9 VAC 5-140-2800 through 9 VAC 5-140-2880	Added	23:14 VA.R. 2353-2359	4/18/07
9 VAC 5-140-3010 through 9 VAC 5-140-3060	Added	23:14 VA.R. 2359-2368	4/18/07
9 VAC 5-140-3061	Added	23:14 VA.R. 2370	*
9 VAC 5-140-3062	Added	23:14 VA.R. 2371	*
9 VAC 5-140-3070	Added	23:14 VA.R. 2371	4/18/07
9 VAC 5-140-3080	Added	23:14 VA.R. 2371	4/18/07
9 VAC 5-140-3100 through 9 VAC 5-140-3150	Added	23:14 VA.R. 2371-2374	4/18/07
9 VAC 5-140-3200 through 9 VAC 5-140-3240	Added	23:14 VA.R. 2374-2375	4/18/07
9 VAC 5-140-3400 through 9 VAC 5-140-3420	Added	23:14 VA.R. 2375	4/18/07
9 VAC 5-140-3500 through 9 VAC 5-140-3570	Added	23:14 VA.R. 2375-2380	4/18/07
9 VAC 5-140-3600 through 9 VAC 5-140-3620	Added	23:14 VA.R. 2380-2381	4/18/07
9 VAC 5-140-3700 through 9 VAC 5-140-3750	Added	23:14 VA.R. 2381-2386	4/18/07
9 VAC 5-140-3800 through 9 VAC 5-140-3880	Added	23:14 VA.R. 2386-2391	4/18/07
9 VAC 5-140-5010 through 9 VAC 5-140-5750	Added	23:13 VA.R. 2160-2186	4/4/07
9 VAC 5-140-1020	Erratum	23:16 VA.R. 2673	--
9 VAC 5-140-1061	Erratum	23:16 VA.R. 2673	--
9 VAC 5-140-1062	Erratum	23:16 VA.R. 2673	--
9 VAC 5-140-1130	Erratum	23:16 VA.R. 2673	--
9 VAC 5-140-1420	Erratum	23:16 VA.R. 2673	--
9 VAC 5-140-1700	Erratum	23:16 VA.R. 2673	--
9 VAC 5-140-1740	Erratum	23:16 VA.R. 2673	--
9 VAC 5-140-2020	Erratum	23:16 VA.R. 2673	--
9 VAC 5-140-2030	Erratum	23:16 VA.R. 2673	--
9 VAC 5-140-2040	Erratum	23:16 VA.R. 2673	--
9 VAC 5-140-2060	Erratum	23:16 VA.R. 2673	--
9 VAC 5-140-2062	Erratum	23:16 VA.R. 2673	--
9 VAC 5-140-2740	Erratum	23:16 VA.R. 2673	--
9 VAC 5-140-3062	Erratum	23:16 VA.R. 2673	--
9 VAC 5-140-3840	Erratum	23:16 VA.R. 2673	--
9 VAC 5-140-5020	Erratum	23:16 VA.R. 2672	--
9 VAC 5-140-5060	Erratum	23:16 VA.R. 2672	--
9 VAC 5-140-5100	Erratum	23:16 VA.R. 2672	--
9 VAC 5-140-5150	Erratum	23:16 VA.R. 2672	--
9 VAC 5-140-5420	Erratum	23:16 VA.R. 2672	--
9 VAC 5-140-5510	Erratum	23:16 VA.R. 2672	--
9 VAC 5-140-5540	Erratum	23:16 VA.R. 2672	--
9 VAC 5-140-5560	Erratum	23:16 VA.R. 2672	--
9 VAC 5-140-5600	Erratum	23:16 VA.R. 2672	--
9 VAC 5-151-10 through 9 VAC 5-151-70	Added	23:17 VA.R. 2755-2764	5/31/07
9 VAC 5-240-10 through 9 VAC 5-240-50	Added	23:16 VA.R. 2595-2596	5/16/07
9 VAC 20-110-90	Amended	23:11 VA.R. 1665	3/21/07
9 VAC 20-110-110	Amended	23:11 VA.R. 1665	3/21/07
9 VAC 20-200-10 through 9 VAC 20-200-70	Added	23:11 VA.R. 1666-1667	3/21/07
9 VAC 25-71-20	Amended	23:15 VA.R. 2485	5/2/07
9 VAC 25-71-50	Amended	23:15 VA.R. 2485	5/2/07
9 VAC 25-71-70	Amended	23:15 VA.R. 2485	5/2/07
9 VAC 25-210-10	Amended	23:21 VA.R. 3464	7/25/07

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
9 VAC 25-210-50	Amended	23:21 VA.R. 3468	7/25/07
9 VAC 25-210-60	Amended	23:21 VA.R. 3469	7/25/07
9 VAC 25-210-75	Added	23:21 VA.R. 3473	7/25/07
9 VAC 25-210-80 through 9 VAC 25-210-115	Amended	23:21 VA.R. 3474-3484	7/25/07
9 VAC 25-210-116	Added	23:21 VA.R. 3484	7/25/07
9 VAC 25-210-130	Amended	23:21 VA.R. 3487	7/25/07
9 VAC 25-210-140	Amended	23:21 VA.R. 3488	7/25/07
9 VAC 25-210-170	Amended	23:21 VA.R. 3489	7/25/07
9 VAC 25-210-175	Added	23:21 VA.R. 3489	7/25/07
9 VAC 25-210-180	Amended	23:21 VA.R. 3490	7/25/07
9 VAC 25-210-185	Amended	23:21 VA.R. 3492	7/25/07
9 VAC 25-210-190	Repealed	23:21 VA.R. 3492	7/25/07
9 VAC 25-210-200	Repealed	23:21 VA.R. 3493	7/25/07
9 VAC 25-210-210	Repealed	23:21 VA.R. 3493	7/25/07
9 VAC 25-210-220	Amended	23:21 VA.R. 3493	7/25/07
9 VAC 25-210-230	Amended	23:21 VA.R. 3493	7/25/07
9 VAC 25-210-260	Amended	23:21 VA.R. 3494	7/25/07
9 VAC 25-720-50	Amended	23:11 VA.R. 1669	3/21/07
9 VAC 25-720-50	Amended	23:15 VA.R. 2486	5/2/07
9 VAC 25-720-50	Amended	23:23 VA.R. 3881	10/22/07
9 VAC 25-720-50	Amended	23:23 VA.R. 3888	10/22/07
9 VAC 25-720-50	Amended	23:23 VA.R. 3895	10/22/07
9 VAC 25-720-60	Amended	23:12 VA.R. 1966	5/21/07
9 VAC 25-720-80	Amended	23:11 VA.R. 1670	3/21/07
9 VAC 25-720-80	Amended	23:23 VA.R. 3901	10/22/07
9 VAC 25-720-90	Amended	23:11 VA.R. 1671	3/21/07
9 VAC 25-720-100	Amended	23:11 VA.R. 1671	3/21/07
9 VAC 25-720-130	Amended	23:15 VA.R. 2487	5/2/07
<b>Title 10. Finance and Financial Institutions</b>			
10 VAC 5-40-50	Added	23:18 VA.R. 2882	5/1/07
10 VAC 5-160-40	Amended	23:13 VA.R. 2187	2/10/07
<b>Title 11. Gaming</b>			
11 VAC 10-20-310	Amended	23:18 VA.R. 2883	5/31/07
11 VAC 10-20-330	Amended	23:18 VA.R. 2884	5/31/07
11 VAC 10-20-340	Amended	23:18 VA.R. 2891	5/31/07
11 VAC 10-100-30	Amended	23:18 VA.R. 2892	5/31/07
11 VAC 10-110-30	Amended	23:18 VA.R. 2893	5/31/07
11 VAC 10-110-90	Amended	23:18 VA.R. 2893	5/31/07
11 VAC 10-120-80	Amended	23:18 VA.R. 2894	5/31/07
11 VAC 10-130-10	Amended	23:11 VA.R. 1672	1/10/07
11 VAC 10-130-10	Amended	23:18 VA.R. 2894	4/30/07
11 VAC 10-130-60	Amended	23:11 VA.R. 1673	1/10/07
11 VAC 10-140-12	Added	23:18 VA.R. 2896	5/31/07
11 VAC 10-140-15	Added	23:18 VA.R. 2896	5/31/07
11 VAC 10-140-210	Amended	23:18 VA.R. 2896	5/31/07
11 VAC 10-150-12	Added	23:18 VA.R. 2897	5/31/07
11 VAC 10-150-15	Added	23:18 VA.R. 2897	5/31/07
11 VAC 10-180-10	Amended	23:20 VA.R. 3164	5/18/07
11 VAC 10-180-20	Amended	23:20 VA.R. 3164	5/18/07
11 VAC 10-180-60	Amended	23:20 VA.R. 3166	5/18/07
11 VAC 10-180-80	Amended	23:20 VA.R. 3167	5/18/07

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
<b>Title 12. Health</b>			
12 VAC 5-70-10 through 12 VAC 5-70-50	Repealed	23:13 VA.R. 2187	4/4/07
12 VAC 5-71-10 through 12 VAC 5-71-190	Added	23:13 VA.R. 2188-2195	4/4/07
12 VAC 5-90 (Forms)	Erratum	23:15 VA.R. 2507-2509	--
12 VAC 5-90-10	Amended	23:15 VA.R. 2488	5/2/07
12 VAC 5-90-40	Amended	23:15 VA.R. 2493	5/2/07
12 VAC 5-90-80	Amended	23:15 VA.R. 2493	5/2/07
12 VAC 5-90-90	Amended	23:15 VA.R. 2497	5/2/07
12 VAC 5-90-100	Amended	23:15 VA.R. 2500	5/2/07
12 VAC 5-90-103	Added	23:15 VA.R. 2500	5/2/07
12 VAC 5-90-107	Added	23:15 VA.R. 2502	5/2/07
12 VAC 5-90-110	Amended	23:15 VA.R. 2503	5/2/07
12 VAC 5-90-130	Amended	23:15 VA.R. 2504	5/2/07
12 VAC 5-90-225	Amended	23:15 VA.R. 2504	5/2/07
12 VAC 5-90-250 through 12 VAC 5-90-280	Amended	23:15 VA.R. 2505-2506	5/2/07
12 VAC 5-90-330	Amended	23:15 VA.R. 2506	5/2/07
12 VAC 5-90-350	Amended	23:15 VA.R. 2507	5/2/07
12 VAC 5-90-360	Amended	23:15 VA.R. 2507	5/2/07
12 VAC 5-125-10	Added	23:23 VA.R. 3904	9/1/07
12 VAC 5-125-20	Added	23:23 VA.R. 3906	9/1/07
12 VAC 5-125-30	Added	23:23 VA.R. 3906	9/1/07
12 VAC 5-125-40	Added	23:23 VA.R. 3906	9/1/07
12 VAC 5-125-50	Added	23:23 VA.R. 3907	9/1/07
12 VAC 5-125-60	Added	23:23 VA.R. 3908	9/1/07
12 VAC 5-125-70	Added	23:23 VA.R. 3908	9/1/07
12 VAC 5-125-80	Added	23:23 VA.R. 3908	9/1/07
12 VAC 5-125-90	Added	23:23 VA.R. 3908	9/1/07
12 VAC 5-125-100	Added	23:23 VA.R. 3916	9/1/07
12 VAC 5-125-110	Added	23:23 VA.R. 3917	9/1/07
12 VAC 5-125-120	Added	23:23 VA.R. 3917	9/1/07
12 VAC 5-125-130	Added	23:23 VA.R. 3917	9/1/07
12 VAC 5-125-140	Added	23:23 VA.R. 3918	9/1/07
12 VAC 5-125-150	Added	23:23 VA.R. 3918	9/1/07
12 VAC 5-125-160	Added	23:23 VA.R. 3918	9/1/07
12 VAC 5-125-170	Added	23:23 VA.R. 3918	9/1/07
12 VAC 5-125-180	Added	23:23 VA.R. 3919	9/1/07
12 VAC 5-190-10 through 12 VAC 5-190-690	Repealed	23:21 VA.R. 3498	7/25/07
12 VAC 5-191-10 through 12 VAC 5-191-320	Added	23:21 VA.R. 3498-3509	7/25/07
12 VAC 5-371-10	Amended	23:10 VA.R. 1544	3/1/07
12 VAC 5-371-20	Repealed	23:10 VA.R. 1546	3/1/07
12 VAC 5-371-30	Amended	23:10 VA.R. 1547	3/1/07
12 VAC 5-371-40	Amended	23:10 VA.R. 1547	3/1/07
12 VAC 5-371-50	Repealed	23:10 VA.R. 1548	3/1/07
12 VAC 5-371-60	Amended	23:10 VA.R. 1548	3/1/07
12 VAC 5-371-70 through 12 VAC 5-371-130	Amended	23:10 VA.R. 1548-1551	3/1/07
12 VAC 5-371-150	Amended	23:10 VA.R. 1551	3/1/07
12 VAC 5-371-160	Amended	23:10 VA.R. 1551	3/1/07
12 VAC 5-371-190	Amended	23:10 VA.R. 1551	3/1/07
12 VAC 5-371-200	Amended	23:10 VA.R. 1552	3/1/07
12 VAC 5-371-400	Amended	23:10 VA.R. 1552	3/1/07
12 VAC 5-371-410	Amended	23:10 VA.R. 1552	3/1/07

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 5-410-10	Amended	23:10 VA.R. 1554	3/1/07
12 VAC 5-410-30	Amended	23:10 VA.R. 1555	3/1/07
12 VAC 5-410-70	Amended	23:10 VA.R. 1555	3/1/07
12 VAC 5-410-80	Amended	23:10 VA.R. 1555	3/1/07
12 VAC 5-410-100	Amended	23:10 VA.R. 1555	3/1/07
12 VAC 5-410-110	Amended	23:10 VA.R. 1555	3/1/07
12 VAC 5-410-130	Amended	23:10 VA.R. 1555	3/1/07
12 VAC 5-410-140	Amended	23:10 VA.R. 1555	3/1/07
12 VAC 5-410-150	Amended	23:10 VA.R. 1556	3/1/07
12 VAC 5-410-180	Amended	23:10 VA.R. 1556	3/1/07
12 VAC 5-410-210	Amended	23:10 VA.R. 1556	3/1/07
12 VAC 5-410-220	Amended	23:10 VA.R. 1557	3/1/07
12 VAC 5-410-270	Amended	23:10 VA.R. 1558	3/1/07
12 VAC 5-410-442	Amended	23:10 VA.R. 1558	3/1/07
12 VAC 5-410-445	Amended	23:10 VA.R. 1559	3/1/07
12 VAC 5-410-650	Amended	23:10 VA.R. 1560	3/1/07
12 VAC 5-410-720	Amended	23:10 VA.R. 1560	3/1/07
12 VAC 5-410-760	Amended	23:10 VA.R. 1560	3/1/07
12 VAC 5-410-1150	Amended	23:10 VA.R. 1560	3/1/07
12 VAC 5-410-1170	Amended	23:10 VA.R. 1561	3/1/07
12 VAC 5-410-1350	Amended	23:10 VA.R. 1561	3/1/07
12 VAC 5-410-1380	Amended	23:10 VA.R. 1561	3/1/07
12 VAC 30-10-140	Amended	23:16 VA.R. 2653	7/1/07
12 VAC 30-10-560	Amended	23:14 VA.R. 2396	9/1/07
12 VAC 30-20-140	Amended	23:14 VA.R. 2397	9/1/07
12 VAC 30-30-20 emer	Amended	23:20 VA.R. 3169	5/30/07-5/29/08
12 VAC 30-30-60	Added	23:11 VA.R. 1673	3/7/07
12 VAC 30-40-10	Amended	23:11 VA.R. 1674	3/7/07
12 VAC 30-40-20	Amended	23:18 VA.R. 2897	7/1/07
12 VAC 30-40-105 emer	Added	23:20 VA.R. 3170	5/30/07-5/29/08
12 VAC 30-40-280 emer	Amended	23:20 VA.R. 3171	5/30/07-5/29/08
12 VAC 30-40-290	Amended	23:14 VA.R. 2398	9/1/07
12 VAC 30-40-290 emer	Amended	23:20 VA.R. 3172	5/30/07-5/29/08
12 VAC 30-50-20	Amended	23:16 VA.R. 2654	7/1/07
12 VAC 30-50-35	Added	23:11 VA.R. 1675	3/7/07
12 VAC 30-50-60	Amended	23:16 VA.R. 2654	7/1/07
12 VAC 30-50-75	Added	23:11 VA.R. 1676	3/7/07
12 VAC 30-50-130	Amended	23:21 VA.R. 3518	1/1/08
12 VAC 30-50-141 emer	Added	23:21 VA.R. 3510	7/1/07-6/30/08
12 VAC 30-50-151 emer	Added	23:21 VA.R. 3510	7/1/07-6/30/08
12 VAC 30-50-181 emer	Added	23:21 VA.R. 3510	7/1/07-6/30/08
12 VAC 30-50-228 emer	Added	23:21 VA.R. 3511	7/1/07-6/30/08
12 VAC 30-50-320	Amended	23:16 VA.R. 2654	7/1/07
12 VAC 30-50-321	Added	23:16 VA.R. 2655	7/1/07
12 VAC 30-50-325	Added	23:16 VA.R. 2655	7/1/07
12 VAC 30-50-328	Added	23:16 VA.R. 2655	7/1/07
12 VAC 30-50-461 emer	Added	23:21 VA.R. 3512	7/1/07-6/30/08
12 VAC 30-50-490	Amended	23:20 VA.R. 3175	7/11/07
12 VAC 30-50-530	Amended	23:11 VA.R. 1676	3/7/07
12 VAC 30-60-250 emer	Added	23:21 VA.R. 3513	7/1/07-6/30/08
12 VAC 30-60-255 emer	Added	23:21 VA.R. 3515	7/1/07-6/30/08

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 30-70-311	Amended	23:19 VA.R. 3003	7/1/07
12 VAC 30-70-321	Amended	23:19 VA.R. 3003	7/1/07
12 VAC 30-70-331	Amended	23:20 VA.R. 3225	8/25/07
12 VAC 30-70-341	Amended	23:19 VA.R. 3003	7/1/07
12 VAC 30-70-391	Amended	23:19 VA.R. 3004	7/1/07
12 VAC 30-80-30	Amended	23:20 VA.R. 3232	7/11/07
12 VAC 30-80-32 emer	Added	23:21 VA.R. 3516	7/1/07-6/30/08
12 VAC 30-80-95	Added	23:21 VA.R. 3520	1/1/08
12 VAC 30-80-190	Amended	23:19 VA.R. 3004	7/1/07
12 VAC 30-80-190	Amended	23:20 VA.R. 3225	8/25/07
12 VAC 30-80-190	Amended	23:20 VA.R. 3242	7/11/07
12 VAC 30-90-31	Amended	23:19 VA.R. 3005	7/1/07
12 VAC 30-90-41	Amended	23:20 VA.R. 3226	8/25/07
12 VAC 30-90-271	Amended	23:20 VA.R. 3229	8/25/07
12 VAC 30-90-290	Amended	23:20 VA.R. 3230	8/25/07
12 VAC 30-90-264	Amended	23:14 VA.R. 2400	4/18/07
12 VAC 30-110-950	Amended	23:18 VA.R. 2898	7/1/07
12 VAC 30-120	Erratum	23:24 VA.R. 4080	--
12 VAC 30-120-61	Amended	23:16 VA.R. 2655	7/1/07
12 VAC 30-120-62	Amended	23:16 VA.R. 2657	7/1/07
12 VAC 30-120-64	Amended	23:16 VA.R. 2659	7/1/07
12 VAC 30-120-65	Amended	23:16 VA.R. 2660	7/1/07
12 VAC 30-120-66	Amended	23:16 VA.R. 2660	7/1/07
12 VAC 30-120-68	Amended	23:16 VA.R. 2661	7/1/07
12 VAC 30-120-310 emer	Amended	23:21 VA.R. 3516	7/1/07-6/30/08
12 VAC 30-120-370 emer	Amended	23:24 VA.R. 4029	9/1/07-8/31/08
12 VAC 30-120-380 emer	Amended	23:21 VA.R. 3517	7/1/07-6/30/08
12 VAC 30-120-380 emer	Amended	23:24 VA.R. 4032	9/1/07-8/31/08
12 VAC 30-120-700 through 12 VAC 30-120-750	Amended	23:20 VA.R. 3177-3192	7/11/07
12 VAC 30-120-752	Amended	23:20 VA.R. 3192	7/11/07
12 VAC 30-120-753	Amended	23:20 VA.R. 3194	7/11/07
12 VAC 30-120-754	Amended	23:20 VA.R. 3195	7/11/07
12 VAC 30-120-756	Amended	23:20 VA.R. 3197	7/11/07
12 VAC 30-120-758	Amended	23:20 VA.R. 3198	7/11/07
12 VAC 30-120-760	Amended	23:20 VA.R. 3198	7/11/07
12 VAC 30-120-762	Amended	23:20 VA.R. 3199	7/11/07
12 VAC 30-120-764	Amended	23:20 VA.R. 3199	7/11/07
12 VAC 30-120-766	Amended	23:20 VA.R. 3201	7/11/07
12 VAC 30-120-768	Repealed	23:20 VA.R. 3204	7/11/07
12 VAC 30-120-770	Amended	23:20 VA.R. 3206	7/11/07
12 VAC 30-120-772	Amended	23:20 VA.R. 3211	7/11/07
12 VAC 30-120-774	Amended	23:20 VA.R. 3211	7/11/07
12 VAC 30-120-776	Amended	23:20 VA.R. 3213	7/11/07
12 VAC 30-120-780	Repealed	23:20 VA.R. 3215	7/11/07
12 VAC 30-120-790	Repealed	23:20 VA.R. 3216	7/11/07
12 VAC 30-120-1600 through 12 VAC 30-120-1660	Added	23:20 VA.R. 3244-3251	7/11/07
12 VAC 30-130-900	Amended	23:12 VA.R. 1967	3/21/07
12 VAC 30-130-910	Amended	23:12 VA.R. 1968	3/21/07
12 VAC 30-130-930	Amended	23:12 VA.R. 1968	3/21/07
12 VAC 30-135-10 through 12 VAC 30-135-40	Amended	23:21 VA.R. 3520-3522	11/1/07
12 VAC 30-135-80	Amended	23:21 VA.R. 3522	11/1/07

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 30-141-740	Amended	23:19 VA.R. 3006	7/1/07
12 VAC 35-45-10	Amended	23:10 VA.R. 1562	2/21/07
12 VAC 35-45-25	Added	23:10 VA.R. 1565	2/21/07
12 VAC 35-45-70	Amended	23:10 VA.R. 1564	2/21/07
12 VAC 35-45-80	Amended	23:10 VA.R. 1564	2/21/07
12 VAC 35-45-210	Added	23:10 VA.R. 1564	2/21/07
12 VAC 35-105-20	Amended	23:10 VA.R. 1567	2/21/07
12 VAC 35-105-30	Amended	23:10 VA.R. 1575	2/21/07
12 VAC 35-105-115 emer	Added	23:10 VA.R. 1566	1/3/07-1/2/08
12 VAC 35-105-590	Amended	23:10 VA.R. 1575	2/21/07
12 VAC 35-105-660	Amended	23:10 VA.R. 1576	2/21/07
12 VAC 35-105-925	Added	23:20 VA.R. 3252	7/11/07
12 VAC 35-210-10 through 12 VAC 35-210-120	Added	23:21 VA.R. 3525-3529	7/25/07
<b>Title 13. Housing</b>			
13 VAC 5-31	Erratum	23:24 VA.R. 4079	--
13 VAC 5-91	Erratum	23:24 VA.R. 4080	--
13 VAC 5-111-10 through 13 VAC 5-111-400	Repealed	23:12 VA.R. 1971	3/21/07
13 VAC 5-112-10 through 13 VAC 5-112-560	Added	23:12 VA.R. 1971-1994	3/21/07
<b>Title 14. Insurance</b>			
14 VAC 5-200-20	Repealed	23:17 VA.R. 2766	9/1/07
14 VAC 5-200-30 through 14 VAC 5-200-60	Amended	23:17 VA.R. 2766-2770	9/1/07
14 VAC 5-200-70 through 14 VAC 5-200-90	Amended	23:17 VA.R. 2770-2774	9/1/07
14 VAC 5-200-110	Amended	23:17 VA.R. 2774	9/1/07
14 VAC 5-200-120	Amended	23:17 VA.R. 2777	9/1/07
14 VAC 5-200-153	Amended	23:17 VA.R. 2777	9/1/07
14 VAC 5-200-170	Amended	23:17 VA.R. 2780	9/1/07
14 VAC 5-200-175	Amended	23:17 VA.R. 2781	9/1/07
14 VAC 5-200-181	Added	23:17 VA.R. 2782	9/1/07
14 VAC 5-200-183	Added	23:17 VA.R. 2782	9/1/07
14 VAC 5-200-185	Amended	23:17 VA.R. 2783	9/1/07
14 VAC 5-200-187	Amended	23:17 VA.R. 2785	9/1/07
14 VAC 5-200-200	Amended	23:17 VA.R. 2786	9/1/07
14 VAC 5-200-201	Added	23:17 VA.R. 2788	9/1/07
14 VAC 5-200-205	Added	23:17 VA.R. 2788	9/1/07
14 VAC 5-215-20	Amended	23:22 VA.R. 3768	7/1/07
14 VAC 5-215-30	Amended	23:22 VA.R. 3768	7/1/07
14 VAC 5-215-50	Amended	23:22 VA.R. 3769	7/1/07
14 VAC 5-215-60	Amended	23:22 VA.R. 3770	7/1/07
14 VAC 5-215-80	Amended	23:22 VA.R. 3770	7/1/07
14 VAC 5-321-10	Amended	23:10 VA.R. 1577	1/1/07
14 VAC 5-321-20	Amended	23:10 VA.R. 1577	1/1/07
14 VAC 5-321-30	Amended	23:10 VA.R. 1578	1/1/07
14 VAC 5-321-70	Added	23:10 VA.R. 1578	1/1/07
14 VAC 5-322-10 through 14 VAC 5-322-50	Added	23:10 VA.R. 1579-1581	1/1/07
<b>Title 16. Labor and Employment</b>			
16 VAC 15-21-30	Amended	23:23 VA.R. 3933	8/23/07
16 VAC 25-55-10 and 16 VAC 25-55-20	Added	23:12 VA.R. 1995-1996	3/22/07
16 VAC 25-75-10	Added	23:21 VA.R. 3544	7/26/07
16 VAC 25-90-1910.268 (b) (7)	Repealed	23:21 VA.R. 3545	7/26/07
16 VAC 25-90-1910.134	Amended	23:12 VA.R. 1997	3/21/07
16 VAC 25-90-1910.1000	Amended	23:12 VA.R. 1996	3/21/07

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16 VAC 25-90-1910.1001	Amended	23:12 VA.R. 1997	3/21/07
16 VAC 25-90-1910.1017	Amended	23:12 VA.R. 1997	3/21/07
16 VAC 25-90-1910.1018	Amended	23:12 VA.R. 1997	3/21/07
16 VAC 25-90-1910.1025	Amended	23:12 VA.R. 1997	3/21/07
16 VAC 25-90-1910.1027	Amended	23:12 VA.R. 1997	3/21/07
16 VAC 25-90-1910.1028	Amended	23:12 VA.R. 1997	3/21/07
16 VAC 25-90-1910.1029	Amended	23:12 VA.R. 1997	3/21/07
16 VAC 25-90-1910.1043	Amended	23:12 VA.R. 1997	3/21/07
16 VAC 25-90-1910.1044	Amended	23:12 VA.R. 1997	3/21/07
16 VAC 25-90-1910.1045	Amended	23:12 VA.R. 1997	3/21/07
16 VAC 25-90-1910.1047	Amended	23:12 VA.R. 1997	3/21/07
16 VAC 25-90-1910.1048	Amended	23:12 VA.R. 1997	3/21/07
16 VAC 25-90-1910.1050	Amended	23:12 VA.R. 1997	3/21/07
16 VAC 25-90-1910.1052	Amended	23:12 VA.R. 1997	3/21/07
16 VAC 25-100-1915.5	Amended	23:12 VA.R. 1998	3/21/07
16 VAC 25-100-1915.505	Amended	23:12 VA.R. 1998	3/21/07
16 VAC 25-100-1915.507	Amended	23:12 VA.R. 1998	3/21/07
16 VAC 25-100-1915.1000	Amended	23:12 VA.R. 1996	3/21/07
16 VAC 25-100-1915.1001	Amended	23:12 VA.R. 1997	3/21/07
16 VAC 25-175-1926.55	Added	23:12 VA.R. 1996	3/21/07
16 VAC 25-175-1926.60	Amended	23:12 VA.R. 1997	3/21/07
16 VAC 25-175-1926.62	Amended	23:12 VA.R. 1997	3/21/07
16 VAC 25-175-1926.1002, Appendix A of Subpart W	Amended	23:12 VA.R. 1999	3/21/07
16 VAC 25-175-1926.1101	Amended	23:12 VA.R. 1997	3/21/07
16 VAC 25-175-1926.1127	Amended	23:12 VA.R. 1997	3/21/07
16 VAC 25-190-1928.52	Amended	23:12 VA.R. 1999	3/21/07
16 VAC 25-190-1928.53, Appendix B to Subpart C	Amended	23:12 VA.R. 1999	3/21/07
<b>Title 18. Professional and Occupational Licensing</b>			
18 VAC 5-10-10 through 18 VAC 5-10-90	Amended	23:11 VA.R. 1678-1680	4/23/07
18 VAC 10-20-230	Amended	23:21 VA.R. 3548	9/10/07
18 VAC 10-20-420	Amended	23:21 VA.R. 3550	8/1/07
18 VAC 10-20-440	Amended	23:21 VA.R. 3551	8/1/07
18 VAC 10-20-450	Amended	23:21 VA.R. 3551	8/1/07
18 VAC 15-20 (Forms)	Added	23:15 VA.R. 2514	--
18 VAC 15-30 (Forms)	Amended	23:15 VA.R. 2514	--
18 VAC 25-21-80	Amended	23:21 VA.R. 3557	8/1/07
18 VAC 25-21-90	Amended	23:21 VA.R. 3558	8/1/07
18 VAC 25-21-180	Amended	23:21 VA.R. 3558	8/1/07
18 VAC 25-21-230 through 18 VAC 25-21-280	Added	23:21 VA.R. 3559-3560	8/1/07
18 VAC 30-10-10 through 18 VAC 30-10-80	Amended	23:20 VA.R. 3276-3277	8/25/07
18 VAC 30-10-100	Amended	23:20 VA.R. 3277	8/25/07
18 VAC 30-10-110	Amended	23:20 VA.R. 3277	8/25/07
18 VAC 30-10-120	Amended	23:20 VA.R. 3277	8/25/07
18 VAC 41-60-10 through 18 VAC 41-60-220	Added	23:12 VA.R. 2000-2009	4/1/07
18 VAC 45-20-40	Amended	23:21 VA.R. 3562	9/10/07
18 VAC 47-20-10	Amended	23:21 VA.R. 3563	8/1/07
18 VAC 47-20-35	Added	23:21 VA.R. 3564	8/1/07
18 VAC 47-20-210	Amended	23:21 VA.R. 3564	8/1/07
18 VAC 47-20-240	Repealed	23:21 VA.R. 3564	8/1/07
18 VAC 47-20-250	Added	23:21 VA.R. 3564	8/1/07
18 VAC 47-20-260	Added	23:21 VA.R. 3565	8/1/07

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18 VAC 47-20-270	Added	23:21 VA.R. 3565	8/1/07
18 VAC 50-30-10 through 18 VAC 50-30-50	Amended	23:12 VA.R. 2020-2025	4/1/07
18 VAC 50-30-60	Repealed	23:12 VA.R. 2025	4/1/07
18 VAC 50-30-70	Amended	23:12 VA.R. 2025	4/1/07
18 VAC 50-30-80	Repealed	23:12 VA.R. 2025	4/1/07
18 VAC 50-30-90 through 18 VAC 50-30-150	Amended	23:12 VA.R. 2026-2028	4/1/07
18 VAC 50-30-180	Repealed	23:12 VA.R. 2028	4/1/07
18 VAC 50-30-185	Added	23:12 VA.R. 2028	4/1/07
18 VAC 50-30-190	Amended	23:12 VA.R. 2028	4/1/07
18 VAC 50-30-200	Amended	23:12 VA.R. 2029	4/1/07
18 VAC 50-30-210 through 18 VAC 50-30-260	Added	23:12 VA.R. 2030-2031	4/1/07
18 VAC 60-10-10 through 18 VAC 60-10-80	Amended	23:20 VA.R. 3283-3284	8/25/07
18 VAC 60-10-100	Amended	23:20 VA.R. 3284	8/25/07
18 VAC 60-10-110	Amended	23:20 VA.R. 3284	8/25/07
18 VAC 60-10-120	Amended	23:20 VA.R. 3284	8/25/07
18 VAC 60-20-71	Amended	23:23 VA.R. 3934	8/22/07
18 VAC 60-20-180	Amended	23:15 VA.R. 2510	5/2/07
18 VAC 60-20-210	Amended	23:20 VA.R. 3286	8/25/07
18 VAC 65-40-10	Amended	23:12 VA.R. 2031	3/21/07
18 VAC 65-40-40	Amended	23:12 VA.R. 2031	3/21/07
18 VAC 65-40-90	Amended	23:12 VA.R. 2032	3/21/07
18 VAC 65-40-110	Amended	23:12 VA.R. 2032	3/21/07
18 VAC 65-40-130	Amended	23:12 VA.R. 2032	3/21/07
18 VAC 65-40-160	Repealed	23:12 VA.R. 2032	3/21/07
18 VAC 65-40-220	Amended	23:12 VA.R. 2032	3/21/07
18 VAC 65-40-250	Amended	23:12 VA.R. 2032	3/21/07
18 VAC 65-40-300	Repealed	23:12 VA.R. 2032	3/21/07
18 VAC 65-40-320	Amended	23:12 VA.R. 2033	3/21/07
18 VAC 65-40-340	Amended	23:12 VA.R. 2033	3/21/07
18 VAC 75-10-10 through 18 VAC 75-10-80	Amended	23:20 VA.R. 3288-3290	8/25/07
18 VAC 75-10-100	Amended	23:20 VA.R. 3290	8/25/07
18 VAC 75-10-110	Amended	23:20 VA.R. 3290	8/25/07
18 VAC 75-10-120	Amended	23:20 VA.R. 3290	8/25/07
18 VAC 75-20-60	Amended	23:21 VA.R. 3574	9/10/07
18 VAC 75-20-70	Amended	23:21 VA.R. 3575	9/10/07
18 VAC 75-20-120	Added	23:21 VA.R. 3575	9/10/07
18 VAC 75-20-130	Added	23:21 VA.R. 3575	9/10/07
18 VAC 75-20-140	Added	23:21 VA.R. 3575	9/10/07
18 VAC 76-30-10 through 18 VAC 76-30-80	Amended	23:20 VA.R. 3292-3294	8/25/07
18 VAC 76-30-100	Amended	23:20 VA.R. 3294	8/25/07
18 VAC 76-30-110	Amended	23:20 VA.R. 3294	8/25/07
18 VAC 76-30-120	Amended	23:20 VA.R. 3294	8/25/07
18 VAC 85-10 through 18 VAC 85-10-70	Amended	23:20 VA.R. 3296-3297	8/25/07
18 VAC 85-10-90	Amended	23:20 VA.R. 3297	8/25/07
18 VAC 85-10-100	Amended	23:20 VA.R. 3297	8/25/07
18 VAC 85-10-110	Amended	23:20 VA.R. 3298	8/25/07
18 VAC 85-20-30	Amended	23:20 VA.R. 3299	8/25/07
18 VAC 85-20-235	Amended	23:11 VA.R. 1692	4/21/07
18 VAC 85-20-290	Amended	23:13 VA.R. 2206	4/4/07
18 VAC 85-20-290	Amended	23:23 VA.R. 3934	8/22/07
18 VAC 85-101-50	Amended	23:15 VA.R. 2511	5/2/07

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18 VAC 85-130-10 through 18 VAC 85-130-170	Added	23:10 VA.R. 1582-1586	2/21/07
18 VAC 90-10-10 through 18 VAC 90-10-80	Amended	23:20 VA.R. 3307-3309	8/25/07
18 VAC 90-10-100	Amended	23:20 VA.R. 3309	8/25/07
18 VAC 90-10-110	Amended	23:20 VA.R. 3309	8/25/07
18 VAC 90-10-120	Amended	23:20 VA.R. 3309	8/25/07
18 VAC 90-20-60	Amended	23:12 VA.R. 2033	3/21/07
18 VAC 90-25-15 through 18 VAC 90-25-80	Amended	23:21 VA.R. 3576-3581	7/25/07
18 VAC 90-25-71	Added	23:21 VA.R. 3580	7/25/07
18 VAC 90-25-72	Added	23:21 VA.R. 3580	7/25/07
18 VAC 90-25-81	Added	23:21 VA.R. 3581	7/25/07
18 VAC 90-25-100 through 18 VAC 90-25-130	Amended	23:21 VA.R. 3581-3583	7/25/07
18 VAC 90-30-120	Amended	23:14 VA.R. 2404	4/18/07
18 VAC 90-30-230	Amended	23:12 VA.R. 2034	3/21/07
18 VAC 90-40-140	Amended	23:12 VA.R. 2034	3/21/07
18 VAC 90-60-10 through 18 VAC 90-60-120	Added	23:19 VA.R. 3008-3012	7/1/07
18 VAC 90-60-120	Erratum	23:20 VA.R. 3378	--
18 VAC 105-10-10 through 18 VAC 105-10-80	Amended	23:20 VA.R. 3315-3316	8/25/07
18 VAC 105-10-100	Amended	23:20 VA.R. 3316	8/25/07
18 VAC 105-10-110	Amended	23:20 VA.R. 3316	8/25/07
18 VAC 105-10-120	Amended	23:20 VA.R. 3316	8/25/07
18 VAC 105-20-10	Amended	23:22 VA.R. 3791	9/24/07
18 VAC 110-10-10 through 18 VAC 110-10-80	Amended	23:20 VA.R. 3318-3320	8/25/07
18 VAC 110-10-100	Amended	23:20 VA.R. 3320	8/25/07
18 VAC 110-10-110	Amended	23:20 VA.R. 3320	8/25/07
18 VAC 110-10-120	Amended	23:20 VA.R. 3320	8/25/07
18 VAC 110-20-285	Amended	23:17 VA.R. 2791	5/30/07
18 VAC 112-10-10 through 18 VAC 112-10-80	Amended	23:20 VA.R. 3327-3329	8/25/07
18 VAC 112-10-100	Amended	23:20 VA.R. 3329	8/25/07
18 VAC 112-10-110	Amended	23:20 VA.R. 3329	8/25/07
18 VAC 112-10-120	Amended	23:20 VA.R. 3329	8/25/07
18 VAC 115-10-10 through 18 VAC 115-10-80	Amended	23:20 VA.R. 3331-3332	8/25/07
18 VAC 115-10-100	Amended	23:20 VA.R. 3332	8/25/07
18 VAC 115-10-110	Amended	23:20 VA.R. 3333	8/25/07
18 VAC 115-10-120	Amended	23:20 VA.R. 3333	8/25/07
18 VAC 115-20-20	Amended	23:14 VA.R. 2404	4/18/07
18 VAC 115-20-130	Amended	23:21 VA.R. 3584	7/25/07
18 VAC 115-30-30	Amended	23:14 VA.R. 2405	4/18/07
18 VAC 115-40-20	Amended	23:14 VA.R. 2405	4/18/07
18 VAC 115-50-20	Amended	23:14 VA.R. 2405	4/18/07
18 VAC 115-50-110	Amended	23:21 VA.R. 3585	7/25/07
18 VAC 115-60-20	Amended	23:14 VA.R. 2406	4/18/07
18 VAC 115-60-130	Amended	23:21 VA.R. 3587	7/25/07
18 VAC 120-30-10	Amended	23:21 VA.R. 3589	8/1/07
18 VAC 120-30-30	Amended	23:21 VA.R. 3590	8/1/07
18 VAC 120-30-40	Amended	23:21 VA.R. 3590	8/1/07
18 VAC 120-30-50	Amended	23:21 VA.R. 3591	8/1/07
18 VAC 120-30-55	Added	23:21 VA.R. 3591	8/1/07
18 VAC 120-30-90	Repealed	23:21 VA.R. 3592	8/1/07
18 VAC 120-30-100	Amended	23:21 VA.R. 3588	8/1/07
18 VAC 120-30-100	Amended	23:21 VA.R. 3592	8/1/07
18 VAC 120-30-130	Amended	23:21 VA.R. 3592	8/1/07

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18 VAC 120-30-150	Amended	23:21 VA.R. 3592	8/1/07
18 VAC 120-30-160	Amended	23:21 VA.R. 3592	8/1/07
18 VAC 120-30-180	Amended	23:21 VA.R. 3592	8/1/07
18 VAC 120-30-190	Amended	23:21 VA.R. 3593	8/1/07
18 VAC 120-30-200	Amended	23:21 VA.R. 3593	8/1/07
18 VAC 120-30-220	Amended	23:21 VA.R. 3593	8/1/07
18 VAC 120-30-230	Amended	23:21 VA.R. 3594	8/1/07
18 VAC 120-30-240	Amended	23:21 VA.R. 3594	8/1/07
18 VAC 120-30-250	Amended	23:21 VA.R. 3594	8/1/07
18 VAC 120-30-270	Amended	23:21 VA.R. 3594	8/1/07
18 VAC 120-30-280	Amended	23:21 VA.R. 3595	8/1/07
18 VAC 120-30-290	Added	23:21 VA.R. 3595	8/1/07
18 VAC 120-30-300	Added	23:21 VA.R. 3595	8/1/07
18 VAC 120-30-310	Added	23:21 VA.R. 3595	8/1/07
18 VAC 120-40-10	Amended	23:24 VA.R. 4038	9/5/07
18 VAC 120-40-15	Added	23:24 VA.R. 4039	9/5/07
18 VAC 120-40-20	Amended	23:24 VA.R. 4039	9/5/07
18 VAC 120-40-80 through 18VAC120-40-360	Amended	23:24 VA.R. 4040-4052	9/5/07
18 VAC 120-40-221	Added	23:24 VA.R. 4043	9/5/07
18 VAC 120-40-222	Added	23:24 VA.R. 4043	9/5/07
18 VAC 120-40-295	Added	23:24 VA.R. 4048	9/5/07
18 VAC 120-40-342	Added	23:24 VA.R. 4050	9/5/07
18 VAC 120-40-370	Repealed	23:24 VA.R. 4052	9/5/07
18 VAC 120-40-380	Repealed	23:24 VA.R. 4052	9/5/07
18 VAC 120-40-385	Added	23:24 VA.R. 4052	9/5/07
18 VAC 120-40-390	Amended	23:24 VA.R. 4053	9/5/07
18 VAC 120-40-400	Repealed	23:24 VA.R. 4053	9/5/07
18 VAC 120-40-410	Amended	23:24 VA.R. 4053	9/5/07
18 VAC 120-40-411	Added	23:24 VA.R. 4053	9/5/07
18 VAC 120-40-411.1 through 18VAC120-40-411.21	Added	23:24 VA.R. 4054-4064	9/5/07
18 VAC 120-40-415	Added	23:24 VA.R. 4064	9/5/07
18 VAC 120-40-415.1	Added	23:24 VA.R. 4065	9/5/07
18 VAC 120-40-415.2	Added	23:24 VA.R. 4065	9/5/07
18 VAC 120-40-415.3	Added	23:24 VA.R. 4065	9/5/07
18 VAC 120-40-420	Amended	23:24 VA.R. 4066	9/5/07
18 VAC 120-40-430	Amended	23:24 VA.R. 4066	9/5/07
18 VAC 125-10-10 through 18 VAC 125-10-80	Amended	23:20 VA.R. 3346-3348	8/25/07
18 VAC 125-10-100	Amended	23:20 VA.R. 3348	8/25/07
18 VAC 125-10-110	Amended	23:20 VA.R. 3348	8/25/07
18 VAC 125-10-120	Amended	23:20 VA.R. 3348	8/25/07
18 VAC 125-20-30	Amended	23:12 VA.R. 2035	3/21/07
18 VAC 125-30-20	Amended	23:12 VA.R. 2035	3/21/07
18 VAC 135-50-10	Amended	23:22 VA.R. 3794	9/22/07
18 VAC 135-50-20	Amended	23:22 VA.R. 3795	9/22/07
18 VAC 135-50-220	Amended	23:22 VA.R. 3795	9/22/07
18 VAC 135-50-400	Amended	23:22 VA.R. 3795	9/22/07
18 VAC 140-10-10 through 18 VAC 140-10-80	Amended	23:20 VA.R. 3350-3351	8/25/07
18 VAC 140-10-100	Amended	23:20 VA.R. 3351	8/25/07
18 VAC 140-10-110	Amended	23:20 VA.R. 3352	8/25/07
18 VAC 140-10-120	Amended	23:20 VA.R. 3352	8/25/07
18 VAC 145-30-40	Amended	23:20 VA.R. 3352	7/12/07

## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 150-10-10	Amended	23:23 VA.R. 3937	10/7/07
18 VAC 150-10-20	Amended	23:23 VA.R. 3937	10/7/07
18 VAC 150-10-30	Amended	23:23 VA.R. 3937	10/7/07
18 VAC 150-10-40	Amended	23:23 VA.R. 3938	10/7/07
18 VAC 150-10-50	Amended	23:23 VA.R. 3938	10/7/07
18 VAC 150-10-60	Amended	23:23 VA.R. 3938	10/7/07
18 VAC 150-10-70	Amended	23:23 VA.R. 3938	10/7/07
18 VAC 150-10-80	Amended	23:23 VA.R. 3938	10/7/07
18 VAC 150-10-100	Amended	23:23 VA.R. 3939	10/7/07
18 VAC 150-10-110	Amended	23:23 VA.R. 3939	10/7/07
18 VAC 150-10-120	Amended	23:23 VA.R. 3939	10/7/07
<b>Title 19. Public Safety</b>			
19 VAC 30-20-80	Amended	23:10 VA.R. 1587	3/1/07
<b>Title 21. Securities and Retail Franchising</b>			
21 VAC 5-10	Erratum	23:18 VA.R. 2935	--
21 VAC 5-10-40	Amended	23:23 VA.R. 3940	7/1/07
21 VAC 5-20	Erratum	23:18 VA.R. 2935	--
21 VAC 5-20-65	Added	23:23 VA.R. 3942	7/1/07
21 VAC 5-20-95	Added	23:23 VA.R. 3942	7/1/07
21 VAC 5-20-280	Amended	23:23 VA.R. 3943	7/1/07
21 VAC 5-20-330	Amended	23:23 VA.R. 3947	7/1/07
21 VAC 5-80-65	Added	23:23 VA.R. 3949	7/1/07
21 VAC 5-80-160	Amended	23:23 VA.R. 3950	7/1/07
21 VAC 5-80-200	Amended	23:23 VA.R. 3954	7/1/07
21 VAC 5-110	Erratum	23:18 VA.R. 2935	--
21 VAC 5-110	Erratum	23:24 VA.R. 4079	--
21 VAC 5-110-65	Added	23:23 VA.R. 3959	7/1/07
21 VAC 5-110-75	Added	23:23 VA.R. 3960	7/1/07
<b>Title 22. Social Services</b>			
22 VAC 15-10-40	Amended	23:10 VA.R. 1587	3/1/07
22 VAC 15-10-50	Amended	23:10 VA.R. 1587	3/1/07
22 VAC 15-30-10	Amended	23:20 VA.R. 3353	7/11/07
22 VAC 15-30-310	Amended	23:20 VA.R. 3356	7/11/07
22 VAC 15-30-580	Amended	23:20 VA.R. 3358	7/11/07
22 VAC 40-20-10	Repealed	23:20 VA.R. 3364	8/1/07
22 VAC 40-25-10 through 22 VAC 40-25-70	Amended	23:20 VA.R. 3360-3364	8/1/07
22 VAC 40-25-45	Added	23:20 VA.R. 3363	8/1/07
22 VAC 40-35-10	Amended	23:23 VA.R. 3962	9/1/07
22 VAC 40-35-80	Amended	23:23 VA.R. 3965	9/1/07
22 VAC 40-35-90	Amended	23:23 VA.R. 3965	9/1/07
22 VAC 40-35-100	Amended	23:23 VA.R. 3966	9/1/07
22 VAC 40-41-10 through 22 VAC 40-41-50	Amended	23:22 VA.R. 3796-3799	9/1/07
22 VAC 40-41-55	Amended	23:22 VA.R. 3799	9/1/07
22 VAC 40-41-60	Amended	23:22 VA.R. 3799	9/1/07
22 VAC 40-540-10	Repealed	23:20 VA.R. 3364	8/1/07
22 VAC 40-600-10 through 22 VAC 40-600-240	Repealed	23:20 VA.R. 3364	8/1/07
22 VAC 40-601-10 through 22 VAC 40-601-40	Added	23:20 VA.R. 3365-3366	8/1/07
22 VAC 40-740-10	Amended	23:10 VA.R. 1588	3/1/07
22 VAC 40-740-15	Added	23:10 VA.R. 1591	3/1/07
22 VAC 40-740-20	Repealed	23:10 VA.R. 1592	3/1/07
22 VAC 40-740-21	Added	23:10 VA.R. 1592	3/1/07

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## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
22 VAC 40-740-30	Repealed	23:10 VA.R. 1593	3/1/07
22 VAC 40-740-31	Added	23:10 VA.R. 1593	3/1/07
22 VAC 40-740-40	Amended	23:10 VA.R. 1593	3/1/07
22 VAC 40-740-50	Amended	23:10 VA.R. 1594	3/1/07
22 VAC 40-740-60	Amended	23:10 VA.R. 1595	3/1/07
22 VAC 40-740-70	Added	23:10 VA.R. 1596	3/1/07
22 VAC 40-740-80	Added	23:10 VA.R. 1596	3/1/07
22 VAC 40-880-200	Amended	23:20 VA.R. 3367	8/1/07
22 VAC 40-880-250	Amended	23:20 VA.R. 3367	8/1/07
22 VAC 40-880-270	Amended	23:20 VA.R. 3367	8/1/07
22 VAC 40-880-350	Amended	23:20 VA.R. 3368	8/1/07
22 VAC 40-880-620	Amended	23:20 VA.R. 3369	8/1/07
<b>Title 23. Taxation</b>			
23 VAC 10-210-485	Amended	23:24 VA.R. 4069	9/6/07
23 VAC 10-210-6041	Amended	23:24 VA.R. 4068	9/6/07
23 VAC 10-210-6042	Amended	23:24 VA.R. 4069	9/6/07
23 VAC 10-210-6043	Amended	23:24 VA.R. 4069	9/6/07
<b>Title 24. Transportation and Motor Vehicles</b>			
24 VAC 27-10-10 through 24VAC27-10-120	Added	23:24 VA.R. 4071-4075	9/20/07
24 VAC 30-155	Erratum	23:21 VA.R. 3619	--
24 VAC 30-155-10 through 24 VAC 30-155-100	Added	23:18 VA.R. 2915-2930	7/1/07
24 VAC 30-320	Repealed	23:16 VA.R. 2665	3/22/07
24 VAC 30-325-10	Added	23:16 VA.R. 2665	3/22/07
24 VAC 30-325-20	Added	23:16 VA.R. 2666	3/22/07
24 VAC 30-330	Repealed	23:16 VA.R. 2665	3/22/07

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# NOTICES OF INTENDED REGULATORY ACTION

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## Symbol Key

† Indicates entries since last publication of the *Virginia Register*

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## TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

### STATE 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 State Board of Juvenile Justice intends to consider amending regulations entitled **6VAC35-20, Regulations Governing the Monitoring, Approval and Certification of Juvenile Justice Programs**. The purpose of the proposed action is to authorize the Director of the Department of Juvenile Justice to issue orders of summary suspension of a license or certificate to operate a group home or other residential facility for children in cases of immediate and substantial threat to the health, safety, and welfare of residents. This action is necessary due to legislation enacted during the 2006 General Assembly session. Chapter 168 of the 2006 Acts of Assembly (SB 190) amends §66-24 of the Code of Virginia relating to summary suspension of licenses or certificates for group homes and residential facilities under certain circumstances.

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

Statutory Authority: §66-24 of the Code of Virginia.

Public comments may be submitted until September 30, 2007.

**Contact:** Deron Phipps, Legislative and Regulatory Manager, Department of Juvenile Justice, P.O. Box 1110, Richmond, VA 23218-1110, telephone (804) 786-6407, FAX (804) 371-0773, or email [deron.phipps@djj.virginia.gov](mailto:deron.phipps@djj.virginia.gov).

VA.R. Doc. No. R07-639; Filed August 6, 2007, 2:17 p.m.

### BOARD OF FORENSIC SCIENCE

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with §2.2-4007.01 of the Code of Virginia that the Forensic Science Board intends to consider promulgating regulations entitled **6VAC40-60, Regulations for Obtaining Information from the Data Bank and Procedures for Verification and Authorization of Persons Requesting Information from the Data Bank**. The purpose of the proposed action is to describe the process for obtaining information from the DNA data bank and for verifying the authority of persons requesting the release of information from the DNA data bank. Specification of the personnel with access to the DNA data bank along with samples is also contained in the regulation.

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

Statutory Authority: §19.2-310.5 of the Code of Virginia.

Public comments may be submitted until September 5, 2007

**Contact:** Michele M. Gowdy, Department Counsel, Department of Forensic Science, 700 North 5th St., Richmond, VA 23219, telephone (804) 786-6848, FAX (804) 786-6857, or email [michele.gowdy@dfs.virginia.gov](mailto:michele.gowdy@dfs.virginia.gov).

VA.R. Doc. No. R07-; Filed July 9, 2007, 1:45 p.m.

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## TITLE 8. EDUCATION

### STATE BOARD OF EDUCATION

#### 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 Education intends to consider promulgating regulations entitled **8VAC20-720, Regulations Governing Local School Boards and School Divisions**, and repealing regulations entitled **8VAC20-150, Management of the Student's Scholastic Record in the Public Schools of Virginia, 8VAC20-170, Regulations Governing Instructional Materials - Selection and Utilization By Local School Boards, 8VAC20-180, Regulations Governing School Community Programs, 8VAC20-240, Regulations Governing School Activity Funds, 8VAC20-250, Regulations Governing the Testing of Sight and Hearing of Pupils, 8VAC20-270, Regulations Governing Textbook Fund Management and Handling on Local Level, 8VAC20-310, Rules Governing Instructions Concerning Drugs and Substance Abuse, 8VAC20-320, Regulations Governing Physical and Health Education, 8VAC20-390, Rules Governing Division Superintendent of Schools, 8VAC20-410, Regulations Governing Allowable Credit for Teaching Experience, 8VAC20-420, Regulations Governing Personnel in Public School Libraries Operated Under Joint Contract Under Control of Local School Board or Boards, 8VAC20-460, Regulations Governing Sick Leave Plan for Teachers, 8VAC20-490, Regulations Governing School Boards Local, 8VAC20-565, Regulations for the Protection of Students as Participants in Human Research**. The purpose of the proposed action is to repeal outdated regulations and consolidate necessary sections of various regulations into new regulations entitled **Regulations Governing Local School Boards and School Divisions**.

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# Notices of Intended Regulatory Action

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

Statutory Authority: §22.1-16 of Code of Virginia.

Public comments may be submitted until September 5, 2007.

**Contact:** Dr. Margaret N. Roberts, Office of Policy & Communications, Department of Education, P.O. Box 2120, 101 N. 14th St., 25th Floor, Richmond, VA, 23219, telephone 804-225-2540, FAX 804-225-2524, or email [margaret.roberts@doe.virginia.gov](mailto:margaret.roberts@doe.virginia.gov).

VA.R. Doc. No. R07-740; Filed July 10, 2007, 12:26 p.m.

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## TITLE 9. ENVIRONMENT

### STATE WATER CONTROL BOARD

#### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with §2.2-4007.01 of the Code of Virginia that the State Water Control Board intends to consider amending regulations entitled **9VAC25-580, Underground Storage Tanks: Technical Standards and Corrective Action Requirements**. The purpose of the proposed action is to amend the technical standards and corrective actions requirements for underground storage tanks to incorporate requirements of the federal Energy Policy Act of 2005.

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

Statutory Authority: §§62.1-44.15(10) and 62.1-44.44.34:8-9 of the Code of Virginia; Resources Conservation and Recovery Act, Subtitle I, 40 CFR Parts 280 and 281.

Public comments may be submitted until September 26, 2007.

**Contact:** Russell Ellison, Department of Environmental Quality, 629 E. Main St., P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4269, FAX (804) 698-4266, or email [rpellison@deq.virginia.gov](mailto:rpellison@deq.virginia.gov).

VA.R. Doc. No. R07-749; Filed August 1, 2007, 9:10 a.m.

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with §2.2-4007.01 of the Code of Virginia that the State Water Control Board intends to consider amending regulations entitled **9VAC25-640, Aboveground Storage Tank and Pipeline Facility Financial Responsibility Requirements**. The purpose of the proposed action is to (i) reduce the cost of compliance with the regulation by proposing modified compliance requirements that are not less stringent than the existing requirements, but may be more cost effective to secure; (ii) propose administrative changes to the regulation that do not

affect the regulatory requirements; and (iii) clarify how VPSTF is used to reimburse tank operators for the cost of containment and cleanup of a petroleum release from an AST.

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

Statutory Authority: §§62.1-44.15 and 62.1-44.34:16 of the Code of Virginia.

Public comments may be submitted until August 23, 2007.

**Contact:** Josiah Bennett, Department of Environmental Quality, 629 E. Main St., P.O. Box 1105, Richmond, VA 23219, telephone (804) 698-4205 or email [jqbennett@deq.virginia.gov](mailto:jqbennett@deq.virginia.gov).

VA.R. Doc. No. R07-293; Filed July 1, 2007, Noon

#### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with §2.2-4007.01 of the Code of Virginia that the State Water Control Board intends to consider regulations entitled **9VAC25-720, Water Quality Management Planning Regulation**. The purpose of the proposed action is to consider amending the Water Quality Management Planning Regulation in response to petitions from Merck and the Frederick-Winchester Service Authority to increase their total nitrogen and total phosphorus waste load allocations set forth in 9VAC25-720-50.

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

Statutory Authority: §62.1-44.15 of the Code of Virginia 33; USC §1313(e) of the Clean Water Act.

Public comments may be submitted until September 24, 2007.

**Contact:** John M. Kennedy, Department of Environmental Quality, 629 E. Main St., P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4312, FAX (804) 698-4116, TTY 804-698-4021, or email [jmkennedy@deq.virginia.gov](mailto:jmkennedy@deq.virginia.gov).

VA.R. Doc. No. R07-805; Filed July 31, 2007, 1:43 p.m.

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## 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 regulations entitled: **12VAC5-550, Board of Health Regulations Governing Vital Records**. The purpose of the proposed action is to allow birth certificates to denote names of parents under all circumstances in cases of adoption.

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# Notices of Intended Regulatory Action

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

Statutory Authority: §§32.1-249 through 32.1-276 of the Code of Virginia.

Public comments may be submitted until September 5, 2007.

**Contact:** Janet Rainey, Director and State Registrar, Department of Health, 1601 Willow Lawn Dr., Suite 275, Richmond, VA 23230, telephone 804-662-6207, FAX 804-662-7262, or email [janet.rainey@vdh.virginia.gov](mailto:janet.rainey@vdh.virginia.gov).

VA.R. Doc. No. R07-645; Filed July 10, 2007, 10:55 a.m.

## DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with §2.2-4007.01 of the Code of Virginia that the Board of Medical Assistance Services intends to consider amending regulations entitled **12VAC30-10, State Plan Under Title XIX of the Social Security Act Medical Assistance Program; General Provisions**, and **12VAC30-20, Administration of Medical Assistance Services**. The purpose of the proposed action is to more closely reflect current agency practice based upon language provided by the Centers for Medicare and Medicaid Services. Specifically, the agency intends to delete the definitions for estate and applicable medical assistance payments, and to move these two definitions into a new regulation section, 12VAC30-20-141. The agency also intends to repeal 12VAC30-20-140 (Estate Recoveries) in order to repromulgate this section in a restructured and revised format. The agency intends to revise several of the definitions included in the section and to add two new definitions for cost effect and homestead of modest value. Finally, DMAS intends to augment the language in this section to add greater detail to enhance understanding the Medicaid Estate Recovery process.

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

Statutory Authority: §32.1-325 of the Code of Virginia; Title XIX of the Social Security Act (42 USC 1396 et seq.) of the Code of Virginia.

Public comments may be submitted until September 19, 2007.

**Contact:** Kathy Colley, DMAS Fiscal Division, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone (804) 786-3839, FAX (804) 786-1680, or email [kathy.colley@dmas.virginia.gov](mailto:kathy.colley@dmas.virginia.gov).

VA.R. Doc. No. R07-750; Filed July 24, 2007, 2:29 p.m.

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with §2.2-4007.01 of the Code of Virginia that the Department of Medical Assistance Services intends to consider amending regulations entitled **12VAC30-120, Waivered Services**. The purpose of the proposed action is to improve the service method through which long-term care recipients obtain their acute care medical needs. Based on the legislation, DMAS, in consultation with the stakeholders, was directed to develop a long-range blueprint for the development and implementation of an integrated acute and long-term care system to include (i) an explanation on how the various community and state level stakeholders will be involved in the development and implementation of the new program models; (ii) a description of the various steps for development and implementation of the program models, including a review of other states' models, funding populations served, services provided, education of clients and providers, and location of programs; (iii) a description of how the existing system is funded and how integration will impact funding; and (iv) a description of the evaluation methods that will be used to ensure that the program provides access, quality, and consumer satisfaction.

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

Statutory Authority: §§32.1-324 and 32.1-325 of the Code of Virginia.

Public comments may be submitted until September 5, 2007.

**Contact:** Adrienne Fegans, Program Operations Administrator, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone 804-786-4112, FAX 804-786-1680, or email [adrienne.fegans@dmas.virginia.gov](mailto:adrienne.fegans@dmas.virginia.gov).

VA.R. Doc. No. R07-729; Filed July 18, 2007, 10:30 a.m.

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## TITLE 16. LABOR AND EMPLOYMENT

### VIRGINIA WORKERS' COMPENSATION COMMISSION

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with §2.2-4007.01 of the Code of Virginia that the Virginia Workers' Compensation Commission intends to consider amending regulations entitled **16VAC30-50, Rules of the Virginia Workers' Compensation Commission**. The purpose of the proposed action is to establish permissible charges and other requirements regarding the provision of medical records, reports, and medical opinions in the workers' compensation context.

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# Notices of Intended Regulatory Action

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

Statutory Authority: §65.2-210 of the Code of Virginia.

Public comments may be submitted until August 23, 2007.

**Contact:** Deborah Hathcock, Virginia Workers' Compensation Commission, Office of the Chair, 1000 DMV Drive, Richmond, VA 23220, telephone (804) 367-8657, FAX (877) 299-7360 or email [deborah.hathcock@vwc.state.va.us](mailto:deborah.hathcock@vwc.state.va.us).

VA.R. Doc. No. R07-281; Filed June 19, 2007, 3:11 p.m.

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## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF PHARMACY

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with §2.2-4007.01 of the Code of Virginia that the Board of Pharmacy intends to consider amending regulations entitled: **18VAC110-20, Regulations Governing the Practice of Pharmacy**. The purpose of the proposed action is to clarify existing requirements, add new language to address problems that have arisen, delete outmoded regulation, and revise requirements to allow for newer technologies.

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

Statutory Authority: §54.1-2400 and Chapters 33 (§54.1-3300 et seq.) and 34 (§54.1-3400 et seq.) of Title 54.1 of the Code of Virginia.

Public comments may be submitted until September 5, 2007.

**Contact:** Elizabeth Scott Russell, RPh, Executive Director, Department of Health Professions, 6603 W. Broad Street, 5th Floor, Richmond, VA 23230-1712, telephone 804-662-9911, FAX 804-662-9313, TTY 804-662-7197, or email [scotti.russell@dhp.virginia.gov](mailto:scotti.russell@dhp.virginia.gov).

VA.R. Doc. No. R07-753; Filed July 16, 2007, 1:21 p.m.

### BOARD OF VETERINARY MEDICINE

#### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with §2.2-4007.01 of the Code of Virginia that the Board of Veterinary Medicine intends to consider amending regulations entitled **18VAC150-20, Regulations Governing the Practice of Veterinary Medicine**. The purpose of the proposed action is to update and clarify the board's regulations in accordance

with a periodic review conducted by a committee of the board.

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

Statutory Authority: §54.1-2400 and Chapter 38 (§54.1-3800 et seq.) of Title 54.1 of the Code of Virginia.

Public comments may be submitted until September 19, 2007.

**Contact:** Elizabeth Young, Executive Director, Board of Veterinary Medicine, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone (804) 662-9915, FAX (804) 662-7098, TTY 804-662-7197, or email [elizabeth.young@dhp.virginia.gov](mailto:elizabeth.young@dhp.virginia.gov).

VA.R. Doc. No. R07-754; Filed July 31, 2007, 9:07 a.m.

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## TITLE 22. SOCIAL SERVICES

### DEPARTMENT OF REHABILITATIVE SERVICES

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with §2.2-4007.01 of the Code of Virginia that the Department of Rehabilitative Services intends to consider amending regulations entitled: **22VAC30-40, Protection of Participants in Human Research**. The purpose of the proposed action is to conform to human subjects research federal regulations and to ensure consistency with Code of Virginia requirements.

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

Statutory Authority: §54.5-5.1 of the Code of Virginia.

Public comments may be submitted until 5 p.m. on September 5, 2007.

**Contact:** Vanessa S. Rakestraw, Policy Analyst, Department of Rehabilitative Services, 8004 Franklin Farms Dr., Richmond, VA 23229, telephone (804) 662-7612, FAX (804) 662-7696, or email [vanessa.rakestraw@dhs.virginia.gov](mailto:vanessa.rakestraw@dhs.virginia.gov).

VA.R. Doc. No. R07-294; Filed July 3, 2007, 11:02 a.m.

### STATE BOARD OF SOCIAL SERVICES

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with §2.2-4007.01 of the Code of Virginia that the State Board of Social Services intends to consider amending regulations entitled **22VAC40-35, Virginia Independence Program**. The purpose of the proposed action is to amend the Virginia Independence Program regulation by changing state code citations that changed as a result of recodification, change terms from Aid

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# Notices of Intended Regulatory Action

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to Families with Dependent Children (AFDC) to the current Temporary Assistance for Needy Families (TANF), update the definitions, remove obsolete language concerning the receipt of federal waivers, remove references to the Virginia Targeted Jobs Grant Program, update the exemptions from the Virginia Initiative for Employment not Welfare program, allow greater participation in educational activities when participating in community work experience, expand opportunities for hardship exceptions, and address situations when an applicant for TANF names multiple possible putative fathers.

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

Statutory Authority: §§63.1-105, 63.105.1, 63.105.3, 63.1-105.4, 63.1.105.6, 63.1-105.7, 63.1-133.43, 63.1-133.46, 63.1,63.1-133.49, 63.1-133.51, and 63.1-133.53 of the Code of Virginia.

Federal waivers were granted effective July 1, 1995, by the U. S. Department of Health and Human Services (HHS) and the U. S. Department of Agriculture (USD), under Section 1115 of the Social Security Act and Section 17(b) of the Food Stamp Act.

Public comments may be submitted until September 5, 2007.

**Contact:** Mark L. Golden, TANF Program Manager, Department of Social Services, Division of Benefit Programs, 7 N. 8th St., Richmond, VA 23219, telephone (804) 726-7385, FAX (804) 726-7356, TTY (800) 828-1120, or email mark.golden@dss.virginia.gov.

VA.R. Doc. No. R07-732; Filed July 13, 2007, 9:16 a.m.

## † Notice of Intended Regulatory Action

Notice is hereby given in accordance with §2.2-4007.01 of the Code of Virginia that the State Board of Social Services intends to consider promulgating regulations entitled **22VAC40-211, Resource, Foster and Adoptive Family Home Approval Standards**. The purpose of the proposed action is to adopt a new regulation specific to the approval requirements for resource, foster and adoptive family home providers approved by local departments of social services. The new regulation will include many of the provisions from 22VAC40-770, Standards and Regulations for Agency Approved Providers, which is being repealed. The new regulation will ensure compliance with changes to federal and state laws and regulations regarding resource, foster and adoptive homes.

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

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

Public comments may be submitted until September 19, 2007.

**Contact:** Phyl Parrish, Acting Program Manager, Quality Review, Department of Social Services, Division of Family Services, 7 N. 8th St., Richmond, VA 23219, telephone (804) 726-7926, FAX (804) 726-7895, TTY (800) 828-1120, or email phyl.parrish@dss.virginia.gov.

VA.R. Doc. No. R07-736; Filed July 24, 2007, 3:06 p.m.

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## TITLE 23. TAXATION

### DEPARTMENT OF TAXATION

#### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with §2.2-4007.01 of the Code of Virginia that the Department of Taxation intends to consider amending regulations entitled **23VAC10-210, Retail Sales and Use Tax**. The purpose of the proposed action is to clarify existing, long-standing policy with respect to the contractors tax treatment of floor coverings, lock and locking devices, and government contracts.

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

Statutory Authority: §58.1-203 of the Code of Virginia.

Public comments may be submitted until September 20, 2007.

**Contact:** Mark Haskins, Director; Policy Development, Department of Taxation, 600 E. Main St., Richmond, VA 23219, telephone (804) 371-2296, FAX (804) 371-2355, or email mark.haskins@tax.virginia.gov.

VA.R. Doc. No. R07-649; Filed July 31, 2007, 10:13 a.m.

#### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with §2.2-4007.01 of the Code of Virginia that the Department of Taxation intends to consider promulgating regulations entitled **23VAC10-120, Corporation Income Tax**. The purpose of the proposed action is to amend the corporate income tax law by adding §58.1-402 B 8 and 9 of the Code of Virginia, which requires the corporation to add back any royalties and interest paid to a related entity in such a situation. The amendments contain a number of safe harbors to prevent the addition from applying to legitimate transactions that are not for the purpose of tax avoidance. In addition, if a corporation does not qualify for one of the safe harbors, but believes that an addition is unreasonable as applied to its legitimate transactions, it may apply to the Tax Commissioner for a waiver of the addition requirement and a refund of tax paid on the amounts added back to Virginia taxable income. This regulatory action will add a regulation section interpreting §58.1-402 B 8 and 9 of the Code of Virginia.

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## Notices of Intended Regulatory Action

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

Statutory Authority: §58.1-203 of the Code of Virginia.

Public comments may be submitted until September 19, 2007.

**Contact:** John Cox, Analyst, Department of Taxation, 600 E. Main St., Richmond, VA 23261, telephone (804) 371-2338, FAX (804) 371-2355, or email [john.cox@tax.virginia.gov](mailto:john.cox@tax.virginia.gov).

VA.R. Doc. No. R07-713; Filed July 26, 2007, 12:03 p.m.

### † Notice of Intended Regulatory Action

Notice is hereby given in accordance with §2.2-4007.01 of the Code of Virginia that the Department of Taxation intends to consider amending regulations entitled **23VAC10-210, Retail Sales and Use Tax**. The purpose of the proposed action is to provide an explanation of the new application of the "true object test," with respect to orders issued under government contracts. The amendments provide a summary of the law applicable prior to July 1, 2006, and describe the change in law as a result of Item 268 of the 2006 appropriation act.

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

Statutory Authority: §58.1-203 of the Code of Virginia.

Public comments may be submitted until September 20, 2007.

**Contact:** Kristen Peterson, Tax Policy Analyst, Department of Taxation, P.O. Box 27185, Richmond, VA 23261-7185, telephone (804) 371-2340, FAX (804) 371-2355, or email [kristen.peterson@tax.virginia.gov](mailto:kristen.peterson@tax.virginia.gov).

VA.R. Doc. No. R07-745; Filed July 27, 2007, 4:58 p.m.

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# REGULATIONS

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

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## Symbol Key

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

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## TITLE 3. ALCOHOLIC BEVERAGES

### ALCOHOLIC BEVERAGE CONTROL BOARD

#### Fast-Track Regulation

Title of Regulation: **3VAC5-50. Retail Operations (amending 3VAC5-50-40, 3VAC5-50-50, 3VAC5-50-80, 3VAC5-50-100, 3VAC5-50-130, 3VAC5-50-140).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comments: Public comments may be submitted until September 19, 2007.

Effective Date: October 4, 2007.

Agency Contact: W. Curtis Coleburn III, Chief Operating Officer, Department of Alcoholic Beverage Control, 2901 Hermitage Rd., Richmond, VA 23220, telephone (804) 213-4409, FAX (804) 213-4411, TTY (804) 213-4687, or email [curtis.coleburn@abc.virginia.gov](mailto:curtis.coleburn@abc.virginia.gov).

Basis: Section 4.1-103 of the Code of Virginia authorizes the board to promulgate regulations in accordance with the Administrative Process Act (§2.2-4000 et seq.) and §4.1-111 of the Code of Virginia.

Section 4.1-111 of the Code of Virginia provides that the board may promulgate reasonable regulations, not inconsistent with Title 4.1 or the general laws of the Commonwealth, which it deems necessary to carry out the provisions of Title 4.1 and to prevent the illegal manufacture, bottling, sale, distribution and transportation of alcoholic beverages.

Purpose: This action is intended to revise the Alcoholic Beverage Control Board's regulations governing qualifications and operating rules for retail licensees.

The goals of this regulation are:

1. To prescribe reasonable minimum qualifications for holders of retail licenses; and
2. To promote the public health, safety, and welfare by reasonably regulating retail alcoholic beverage sales so as to prevent sales to those under the legal age or intoxicated, and to discourage overconsumption.

Rationale: The proposals do not materially change existing rules. They clarify or simplify compliance with the current

regulations. The proposal to provide an approval process for the employment of persons with criminal convictions will benefit licensees while still protecting public safety.

Substance: 3VAC5-50-40 would be revised to provide a process for licensees to apply for approval for the employment of individuals whose records of criminal or alcoholic beverage violations might subject the licensee to disciplinary action pursuant to §4.1-225 I of the Code of Virginia. In 3VAC5-50-50, a provision would be added allowing persons 18 years of age or older to sell or serve wine for on-premises consumption at a counter in an establishment selling wine only. 3VAC5-50-80 would be amended to create an exception to the prohibition against placing alcoholic beverages in containers of ice available to consumers for off-premises consumption for farm winery licensees operating a remote retail location at a wine festival. In 3VAC5-50-100, the provision in subdivision A 4 requiring grocery stores and convenience grocery stores to have at least five items from each of the basic food groups would be repealed. In subsection C of 3VAC5-50-130, the rules for nonmember use of club premises would be simplified to allow licensed clubs to admit nonmembers to the licensed club area for events at which alcohol is served up to 24 times each year. Limits on use of the unlicensed portion of club premises would be repealed. 3VAC5-50-140 would be revised to clarify that its provisions do not apply to legitimate theatrical or art exhibits or performances, and current provisions requiring partially nude performers to remain reasonably separate from patrons would be replaced with a required separation of three feet. These amendments will protect the health, safety, or welfare of citizens by allowing alcoholic beverage retailers fewer restrictions on the operation of their businesses, while continuing to discourage overconsumption. The amendments to 3VAC5-50-140 will help to protect citizens from the negative secondary effects of sexually oriented businesses.

Issues: There are no disadvantages to the public or the Commonwealth. The primary advantages to regulated businesses are simplification or clarification of existing rules to ease compliance. Businesses wishing to employ persons with convictions that could otherwise result in risking license suspension or revocation will now be able to apply for advance approval.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Regulation.

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# Regulations

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The Alcoholic Beverage Control Board (ABC) proposes to make several amendments to its retail operations regulation. ABC proposes to:

Specify a process by which board licensees may request approval for hiring individuals with criminal records.

Allow individuals between the ages of 18 and 21 to sell or serve both wine and beer at establishments that only sell the beverage being served.

Allow wineries to serve wine that has been placed in containers of ice at a location remote from the winery (specifically at wine festivals).

Eliminate specific requirements on the types of foods that convenience and grocery stores must stock in order to be licensed by the board to sell beer and wine.

Simplify and loosen restrictions on the number of times per year that clubs licensed by ABC may hold public events where alcohol will be served.

Specify how far apart adult entertainers must be from their audience in order to comply with this regulation and add an exemption to this regulation's nudity provisions for legitimate theatrical productions.

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

Estimated Economic Impact. Currently the Code of Virginia allows ABC to suspend the license of any licensee who knowingly hires any individual convicted of a felony, a misdemeanor that involves moral turpitude or a misdemeanor violation of any alcohol control law. ABC does have internal guidelines for when such a suspension is appropriate but licensees have not had a means to determine whether any individual hire of someone with a criminal background had the potential to get their license suspended. This proposed regulation includes a provision that will allow licensees to apply for approval by the board before hiring an individual with a criminal conviction when that conviction might be grounds for license suspension. This regulatory change will give the same procedural rights to licensees and potential employees as are afforded licensees when they are charged with violations of the Beer and Wine Franchise Act. This means that licensees and potential employees will have the right to be represented by counsel and may call witnesses and present evidence.

This regulatory change will benefit licensee employers in that they will no longer have to choose between not hiring the employees they would prefer to hire and hiring those employees knowing that their license might be at risk. These employers may also see employment costs decrease by a small amount if this change widens the pool of individuals from which they may hire. Individuals who have criminal histories and want to work for businesses licensed by ABC will benefit because they likely stand a greater chance of

being hired after promulgation of procedures that will protect licensee employers from possible repercussions of their hiring decisions. ABC will likely incur extra costs associated with the application and approval process being promulgated.

Current regulation allows individuals over 18 to serve and sell beer at licensed establishments that only sell beer but does not have a similar allowance for licensed establishments that only sell wine. Additionally, current regulation prohibits licensees from entreating or enticing any patron to purchase any alcoholic beverage. One example of such enticement that is specifically prohibited in the current regulation is placing alcohol in containers of ice that are accessible by patrons. ABC proposes to extend employment rules to include licensed establishments that only sell wine and to allow alcohol to be placed in containers of ice "at a remote location in connection with a wine festival." Both of these proposed changes will benefit wineries: the first change will likely decrease their employment costs as they will now be able to choose employees from a wider labor pool. The second change will allow wineries to sell chilled wines at wine festivals that may lack any refrigeration capabilities other than ice in a bucket.

Current regulation requires that convenience and grocery stores that sell wine and beer to stock at least five items from each food group that may be used to prepare meals. ABC proposes to simplify this requirement by eliminating regulatory reference to food groups and specific numbers of foods. So the proposed regulation will require these establishments generally stock food items that can be used to prepare meals but allows greater latitude for licensees to decide what items to stock. This change will likely benefit licensees in that they will be able to stock what their customers demand without having to also meet ABC requirements.

Current regulation limits the number of times that licensed clubs (Lions Club, Elks Club, etc.) may hold events: they may hold events (where alcohol will be served), on the licensed portion of their premises, not more than 12 times a year for members and not more than 12 times a year for non-members who have obtained banquet licenses. Additionally, the unlicensed portion of club premises may currently be open for events (where alcohol will be served) not more than 12 times a year. The proposed regulation lumps all usage of licensed premises together and allows events at such premises not more than 24 times a year. Who holds these events is left to the discretion of the club. The proposed regulation does not contain a limitation on the number of events (where alcohol will be served) that may be held on unlicensed portions of club premises. These changes allow clubs significantly more freedom to use their premises as they see fit. Clubs that rent out their premises, particularly the unlicensed portions of their premises, for weddings or other events will likely see their revenues increase as they will no longer be limited to 12 rentals a year.

Current regulation requires that scantily clad adult entertainers in licensed establishments remain "reasonably separated" from customers but does not provide a definition of what separation ABC would consider to be reasonable. Additionally, current regulation prohibits complete nudity and other inappropriate behavior in licensed establishments but does not specifically exempt legitimate theatrical productions as required by several court decisions. The proposed regulation will define "reasonably separated" as at least three feet from any customer and will explicitly exempt theatrical productions held in licensed establishments from the requirements of the section of current regulation that governs prohibited behavior. These changes should increase voluntary regulant compliance with separation requirements and allow agency compliance with past judicial rulings.

**Businesses and Entities Affected.** These proposed regulatory changes will generally affect all of the approximately 14,000 establishments that are licensed by ABC and will particularly wineries in the Commonwealth.

**Localities Particularly Affected.** These proposed regulatory changes will affect all localities in the Commonwealth.

**Projected Impact on Employment.** These proposed regulatory changes may affect who is employed for various jobs at licensed establishments; for instance, more individuals between the ages of 18 and 21 may be hired to work in winery tasting rooms. There will likely be no measurable change in total employment in the Commonwealth, however, on account of this proposed regulation.

**Effects on the Use and Value of Private Property.** Licensed establishments may experience a small decrease in employment costs if these regulatory changes widen the pool of individuals from which they may hire. In addition wineries may be able to sell greater quantities of their product at wine festivals once they are allowed to chill wine at remote locations. Clubs will likely also earn extra revenues from renting out their premises for events. If costs decrease, or if revenues increase because of extra sales and there is not a cost increase of the same magnitude associated with those sales, licensees may earn increased profits.

**Small Businesses: Costs and Other Effects.** ABC estimates that at least 95% of their approximately 14,000 licensees are small businesses. These businesses are unlikely to incur any new costs on account of the proposed regulation.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** ABC estimates that at least 95% of their approximately 14,000 licensees are small businesses. These businesses are unlikely to incur any new costs on account of the proposed regulation.

**Legal Mandate.** The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with §2.2-4007 H of the Administrative Process Act and Executive Order Number 21

(02). Section 2.2-4007 H requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, §2.2-4007 H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Alcoholic Beverage Control Board concurs with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

*The proposed amendments (i) provide a process for licensees to apply for permission to employ individuals with certain criminal convictions, (ii) allow persons 18 and over to serve wine at a counter in establishments selling wine only, (iii) allow wine to be placed in containers of ice by farm wineries at wine festivals, (iv) simplify food requirements for grocery stores and convenience grocery stores, (v) simplify the limitations of nonmember use of licensed club facilities, and (vi) clarify the rules with respect to partially nude entertainers at licensed establishments to define the separation that must be maintained from customers, and clarify that this regulation does not restrict legitimate theatrical productions.*

**3VAC5-50-40. Designated managers of licensees; appointment generally; disapproval by board; restrictions upon employment.**

A. Each licensee, except a licensed individual who is on the premises, shall have a designated manager present and in actual charge of the business being conducted under the license at any time the licensed establishment is kept open for business, whether or not the privileges of the license are being exercised. The name of the designated manager of every retail licensee shall be kept posted in a conspicuous place in the establishment, in letters not less than one inch in size, during the time he is in charge.

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# Regulations

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The posting of the name of a designated manager shall qualify such person to act in that capacity until disapproved by the board.

B. The board reserves the right to disapprove any person as a designated manager if it shall have reasonable cause to believe that any cause exists which would justify the board in refusing to issue such person a license, or that such person has committed any act that would justify the board in suspending or revoking a license.

Before disapproving a designated manager, the board shall accord him the same notice, opportunity to be heard, and follow the same administrative procedures accorded a licensee cited for a violation of Title 4.1 of the Code of Virginia.

C. No licensee of the board shall knowingly permit a person under 21 years of age, nor one who has been disapproved by the board within the preceding 12 months, to act as designated manager of his business.

D. If a licensee wishes to employ a person who has committed an act that would justify the board in suspending or revoking a license under subdivision 1 i of §4.1-225 of the Code of Virginia, the licensee may apply to the board for approval of such employment. The board will cause the Bureau of Law Enforcement Operations to conduct an investigation into the suitability of the person for employment and recommend approval or disapproval. Before disapproving the employment of a person, the board shall accord him the same notice, opportunity to be heard, and follow the same administrative procedures accorded a licensee cited for a violation of Title 4.1 of the Code of Virginia.

### **3VAC5-50-50. Restrictions upon employment of minors.**

No person licensed to sell alcoholic beverages at retail shall permit any employee under the age of 18 years to sell, serve or dispense in any manner any alcoholic beverage in his licensed establishment for on-premises consumption, nor shall such person permit any employee under the age of 21 years to prepare or mix alcoholic beverages in the capacity of a bartender. "Bartender" is defined as a person who sells, serves or dispenses alcoholic beverages for on-premises consumption at a counter, as defined in 3VAC5-50-110, and does not include a person employed to serve food and drink to patrons at tables as defined in that section. However, a person who is 18 years of age or older may sell or serve beer for on-premises consumption at a counter in an establishment that sells beer only, or may sell or serve wine for on-premises consumption in an establishment that sells wine only.

### **3VAC5-50-80. Entreating, urging or enticing patrons to purchase prohibited.**

No retail licensee shall entreat, urge or entice any patron of his establishment to purchase any alcoholic beverage; nor shall such licensee allow any other person to so entreat, urge

or entice a patron upon his licensed premises. Entreating, urging or enticing shall include, but not be limited to, placing alcoholic beverages in containers of ice which are visible, located in public display areas and available to patrons of retail establishments for off-premises sales, except for farm winery licensees operating at a remote location in connection with a wine festival. Knowledge by a manager of the licensee of a violation of this section shall be imputed to the licensee.

This section shall not be construed to prohibit the taking of orders in the regular course of business, the purchase of a drink by one patron for another patron as a matter of normal social intercourse, nor advertising in accordance with regulations of the board.

### **3VAC5-50-100. Definitions and qualifications for retail off-premises wine and beer licenses and off-premises beer licenses; exceptions; further conditions; temporary licenses.**

A. Retail off-premises wine and beer licenses may be issued to persons operating the following types of establishments provided the total monthly sales and inventory (cost) of the required commodities listed in the definitions are not less than those shown:

1. "Delicatessen." An establishment which sells a variety of prepared foods or foods requiring little preparation such as cheeses, salads, cooked meats and related condiments:

Monthly sales .....\$2,000  
Inventory (cost) .....\$2,000

2. "Drugstore." An establishment selling medicines prepared by a registered pharmacist according to prescription and other medicines and articles of home and general use;

Monthly sales .....\$2,000  
Inventory (cost) .....\$2,000

3. "Grocery store." An establishment which sells edible items intended for human consumption, including a variety of staple foodstuffs used in the preparation of meals:

Monthly sales .....\$2,000  
Inventory (cost) .....\$2,000

4. "Convenience grocery store." An establishment which has an enclosed room in a permanent structure where stock is displayed and offered for sale, and which sells edible items intended for human consumption, consisting of a variety of such items of the type normally sold in grocery stores:

Monthly sales .....\$2,000  
Inventory (cost) .....\$2,000

In regard to both grocery stores and convenience grocery stores, "edible items" shall mean such items normally used in the preparation of meals, including liquids, ~~and which shall~~

include a variety (at least five) of representative items from each of the basic food groups: dairy, meat, grain, vegetables and fruit.

5. "Gourmet shop." An establishment provided with adequate shelving and storage facilities which sell products such as cheeses and gourmet foods:

Monthly sales .....	\$2,000
Inventory (cost) .....	\$2,000

B. Retail off-premises beer licenses may be issued to persons operating the following types of establishments provided the total monthly sales and inventory (cost) of the required commodities listed in the definitions are not less than those shown:

1. "Delicatessen." An establishment as defined in subsection A:

Monthly sales .....	\$1,000
Inventory (cost) .....	\$1,000

2. "Drugstore." An establishment as defined in subsection A:

Monthly sales .....	\$1,000
Inventory (cost) .....	\$1,000

3. "Grocery store." An establishment as defined in subsection A:

Monthly sales .....	\$1,000
Inventory (cost) .....	\$1,000

4. "Marina store." An establishment operated by the owner of a marina which sells food and nautical and fishing supplies:

Monthly sales .....	\$1,000
Inventory (cost) .....	\$1,000

C. The board may grant a license to an establishment not meeting the qualifying figures in subsections A and B provided it affirmatively appears that there is a substantial public demand for such an establishment and that public convenience will be promoted by the issuance of the license.

D. The board in determining the eligibility of an establishment for a license shall give consideration to, but shall not be limited to, the following:

1. The extent to which sales of required commodities are secondary or merely incidental to sales of all products sold in such establishment;
2. The extent to which a variety of edible items of the types normally found in grocery stores are sold; and
3. The extent to which such establishment is constructed, arranged or illuminated to allow reasonable observation of the age and sobriety of purchasers of alcoholic beverages.

E. Notwithstanding the above, the board may issue a temporary license for any of the above retail operations. Such licenses may be issued only after application has been filed in accordance with §4.1-230 of the Code of Virginia and in cases where the sole objection to issuance of a license is that the establishment will not be qualified in terms of the sale of food or edible items. If a temporary license is issued, the board shall conduct an audit of the business after a reasonable period of operation not to exceed 180 days. Should the business be qualified, the license applied for may be issued. If the business is not qualified, the application will become the subject of a hearing if the applicant so desires. No further temporary license shall be issued to the applicant or to any other person with respect to that establishment for a period of one year from the expiration and, once the application becomes the subject of a hearing, no temporary license may be issued.

**3VAC5-50-130. Clubs; applications; qualifications; reciprocal arrangements; changes; financial statements.**

A. Each applicant for a club license shall furnish the following information:

1. A certified copy of the charter, articles of association or constitution;
2. A copy of the bylaws;
3. A list of the officers and directors showing names, addresses, ages and business employment;
4. The average number of members for the preceding 12 months. Only natural persons may be members of clubs; and
5. A financial statement for the latest calendar or fiscal year of the club, and a brief summary of the financial condition as of the end of the month next preceding the date of application.

B. In determining whether an applicant qualifies under the statutory definition of a club, as well as whether a club license should be suspended or revoked, the board will consider, but is not limited to, the following factors:

1. The club's purposes and its compliance with the purposes;
2. The club's qualification for tax exempt status from federal and state income taxes; and
3. The club's permitted use of club premises by nonmembers, including reciprocal arrangements.

C. The club shall limit nonmember use of club premises according to this section and shall notify the board each time the club premises are used in accordance with subdivision 1 of this subsection. The notice shall be received by the board at least two business days in advance of any such event.

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# Regulations

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1. A licensed club may ~~allow nonmembers, who would otherwise qualify for a banquet or banquet special events license, to use club premises, where the privileges of the club license are exercised, 12 times per calendar year for (i) hold public events held at the licensed premises, such events allowing nonmembers to attend and participate in the event at the licensed premises; or (ii) allow its premises to be used by organizations or groups who obtain banquet or banquet special events licenses. The total number of such events in both categories may not exceed 24 per calendar year.~~

2. A member of a licensed club may sponsor private functions on club premises for an organization or group of which he is a member, such attendees being guests of the sponsoring member; ~~or.~~

3. ~~Notwithstanding subdivisions C 1 and C 2, a licensed club may allow its premises to be used no more than a total of 12 times per calendar year by organizations or groups who obtain banquet or banquet special events licenses.~~

3. Additionally, there shall be no limitation on the numbers of times a licensed club may allow its premises to be used by organizations or groups if alcoholic beverages are not served at such functions.

~~D. A licensed club may not obtain a banquet special events license or a mixed beverage special events license for use on its premises. However, a club may obtain a banquet special events license or a mixed beverage special events license not more than 12 times per calendar year upon the unlicensed portion of its premises.~~

~~E. D.~~ Persons who are resident members of other clubs located at least 100 miles from the club licensed by the board (the "host club") and who are accorded privileges in the host club by reason of bona fide, prearranged reciprocal arrangements between the host club and such clubs shall be considered guests of the host club and deemed to have members' privileges with respect to the use of its facilities. The reciprocal arrangements shall be set out in a written agreement and approved by the board prior to the exercise of the privileges thereunder.

The mileage limitations of this subsection notwithstanding, members of private, nonprofit clubs or private clubs operated for profit located in separate cities which are licensed by the board to operate mixed beverage restaurants on their respective premises and which have written agreements approved by the board for reciprocal dining privileges may be considered guests of the host club and deemed to have members' privileges with respect to its dining facilities.

~~F. E.~~ Any change in the officers and directors of a club shall be reported to the board within 30 days, and a certified copy of any change in the charter, articles of association or by-laws shall be furnished the board within 30 days thereafter.

~~G. F.~~ Each club licensee shall prepare and sign an annual financial statement on forms prescribed by the board. The statement may be on a calendar year or fiscal year basis, but shall be consistent with any established tax year of the club. The statement must be prepared and available for inspection on the club premises no later than 120 days next following the last day of the respective calendar or fiscal year, and each such statement must be maintained on the premises for a period of three consecutive years. In addition, each club holding a mixed beverage license shall be required to prepare and timely submit the mixed beverage annual review report required by 3VAC5-70-90 D.

## **3VAC5-50-140. Lewd or disorderly Prohibited conduct on licensed premises.**

~~While not limited thereto, the board shall consider the~~ The following conduct upon any licensed premises to constitute lewd or disorderly conduct is prohibited:

1. The real or simulated display of any portion of the genitals, pubic hair or buttocks, or any portion of the breast below the top of the areola, by any employee, or by any other person; except that when entertainers are on a platform or stage and reasonably separated from the patrons of the establishment, they shall be in conformity with subdivision 2;

2. The real or simulated display of any portion of the genitals, pubic hair or anus by an entertainer, or any portion of the areola of the breast of a female entertainer. When not on a platform or stage and reasonably separate from the patrons of the establishment, entertainers shall be in conformity with subdivision 1;

3. Any real or simulated act of sexual intercourse, sodomy, masturbation, flagellation or any other sexual act prohibited by law, by any person, whether an entertainer or not; or

4. The fondling or caressing by any person, whether an entertainer or not, of his own or of another's breast, genitals or buttocks.

As used in this section, the term "reasonably separated" shall mean that no portion of the body of an entertainer is less than three feet from any portion of the body of a patron.

The provisions of this section shall not apply to the exhibition, presentation, showing or performance of any play, ballet, drama, tableau, production or motion picture in any theater, concert hall, museum of fine arts, school, institution of higher learning or other similar establishment that is primarily devoted to such exhibitions, presentations, shows or performances as a form of expression of opinion, communication, speech, ideas, information, art or drama of serious literary, artistic, scientific or political value, and in which the predominant business or attraction is not the offering to customers of entertainment that is intended to

provided sexual stimulation or sexual gratification to such customers.

VA.R. Doc. No. R07-625; Filed July 26, 2007, 3:29 p.m.

## TITLE 4. CONSERVATION AND NATURAL RESOURCES

### BOARD OF GAME AND INLAND FISHERIES

**REGISTRAR'S NOTICE:** The Board of Game and Inland Fisheries is exempt from the Administrative Process Act pursuant to subdivision A 3 of §2.2-4002 of the Code of Virginia when promulgating regulations regarding the management of wildlife. The board is required by §2.2-4031 of the Code of Virginia to publish all proposed and final wildlife management regulations, including length of seasons and bag limits allowed on the wildlife resources within the Commonwealth of Virginia.

#### NOTICE TO THE PUBLIC

The Board of Game and Inland Fisheries has ordered to be published, pursuant to §§29.1-501 and 29.1-502 of the Code of Virginia, the following proposed amendments to board regulations. A public comment period on the proposed regulations opened July 24, 2007, and remains open until September 24, 2007. Comments submitted must be in writing; must be accompanied by the name, address and telephone number of the party offering the comments; should state the regulatory action desired; and should state the justification for the desired action. Comments may be submitted online at [www.dgif.virginia.gov](http://www.dgif.virginia.gov), mailed to the Department of Game and Inland Fisheries, Attn: Policy Analyst and Regulatory Coordinator, 4016 West Broad Street, Richmond, Virginia 23230, or emailed to [regcomments@dgif.virginia.gov](mailto:regcomments@dgif.virginia.gov).

A public hearing on the advisability of adopting or amending and adopting the proposed regulations, or any parts thereof, will be held during a meeting of the board to take place at the Department of Game and Inland Fisheries, 4000 West Broad Street, Richmond, Virginia, beginning at 9 a.m. on Tuesday, October 16, 2007, at which time any interested citizen present shall be heard. If the board is satisfied that the proposed regulation, or any parts thereof, is advisable, in the form in which published or as amended after receipt of the public's comments, the board may adopt regulation amendments as final at the October 16 meeting. The regulations or regulation amendments adopted may be either more liberal or more restrictive than those proposed and being advertised under this notice.

### Proposed Regulation

**Title of Regulation:** 4VAC15-20. Definitions and Miscellaneous: in General (amending 4VAC15-20-50, 4VAC15-20-130, 4VAC15-20-200, 4VAC15-20-210).

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

**Public Hearing Information:**

October 16, 2007 - 9 a.m. - Department of Game and Inland Fisheries, 4000 West Broad Street, Richmond, VA

**Public Comments:** Public comments may be submitted until September 24, 2007.

**Agency Contact:** Phil Smith, Policy Analyst, Regulatory Coordinator, and Freedom of Information Officer, Department of Game and Inland Fisheries, 4016 West Broad Street, Richmond, VA 23230, telephone (804) 367-1000, FAX (804) 367-0488, or email [regcomments@dgif.virginia.gov](mailto:regcomments@dgif.virginia.gov).

**Summary:**

*The proposed amendments (i) update the department's "List of Native and Naturalized Fauna of Virginia," consistent with current nomenclature and knowledge of the wildlife of the Commonwealth; (ii) add the pistolgrip (*Tritogonia verrucosa*, a species of freshwater mollusk) and the Big Sandy crayfish (*Cambarus veteranus*) to the Virginia List of Endangered and Threatened Species, thereby prohibiting the taking, transportation, possession, or sale of these rare native species without a permit; (iii) update the Virginia List of Endangered and Threatened Species by adopting current taxonomic nomenclature for a species on the list; (iv) delete the reference in this regulation to §29.1-743 of the Code of Virginia and the subsequent permit that was authorized by the code language and add the word annual to clarify that these are annual fees; and (v) add the Chinese mitten crab (*Eriocheir sinensis*) to the list of Nonindigenous Aquatic Nuisance Species, thereby prohibiting the importation, possession, transportation, sale, etc., of this species within Virginia except as allowed by law, regulation, or permit.*

**4VAC15-20-50. Definitions; "wild animal," "native animal," "naturalized animal," "nonnative (exotic) animal" and "domestic animal."**

In accordance with §29.1-100 of the Code of Virginia, the following terms shall have the meanings ascribed to them by this section when used in regulations of the board:

"Wild animal" means any member of the animal kingdom, except domestic animals, including without limitation any native, naturalized, or nonnative (exotic) mammal, fish, bird, amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, and includes any hybrid of them, except as otherwise specified in regulations of the board, or part,

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product, egg, or offspring of them, or the dead body or parts of them.

"Native animal" means those species and subspecies of animals naturally occurring in Virginia, as included in the department's ~~2000~~ 2007 "List of Native and Naturalized Fauna of Virginia," with copies available in the Richmond and regional offices of the department.

"Naturalized animal" means those species and subspecies of animals not originally native to Virginia which have established wild, self-sustaining populations, as included in the department's ~~2000~~ 2007 "List of Native and Naturalized Fauna of Virginia," with copies available in the Richmond and regional offices of the department.

"Nonnative (exotic) animal" means those species and subspecies of animals not naturally occurring in Virginia, excluding domestic and naturalized species.

The following animals are defined as domestic animals:

Domestic dog (*Canis familiaris*), including wolf hybrids.

Domestic cat (*Felis catus*), including hybrids with wild felines.

Domestic horse (*Equus caballus*), including hybrids with *Equus asinus*.

Domestic ass, burro, and donkey (*Equus asinus*).

Domestic cattle (*Bos taurus* and *Bos indicus*).

Domestic sheep (*Ovis aries*) including hybrids with wild sheep.

Domestic goat (*Capra hircus*).

Domestic swine (*Sus scrofa domestica*), including pot-bellied pig.

Llama (*Lama glama*).

Alpaca (*Lama pacos*).

Camels (*Camelus bactrianus* and *Camelus dromedarius*).

Domesticated races of hamsters (*Mesocricetus* spp.).

Domesticated races of mink (*Mustela vison*) where adults are heavier than 1.15 kilograms or their coat color can be distinguished from wild mink.

Domesticated races of red fox (*Vulpes*) where their coat color can be distinguished from wild red fox.

Domesticated races of guinea pigs (*Cavia porcellus*).

Domesticated races of gerbils (*Meriones unguiculatus*).

Domesticated races of chinchillas (*Chinchilla laniger*).

Domesticated races of rats (*Rattus norvegicus* and *Rattus rattus*).

Domesticated races of mice (*Mus musculus*).

Domesticated races of European rabbit (*Oryctolagus cuniculus*).

Domesticated races of chickens (*Gallus*).

Domesticated races of turkeys (*Meleagris gallopavo*).

Domesticated races of ducks and geese distinguishable morphologically from wild birds.

Feral pigeons (*Columba domestica* and *Columba livia*) and domesticated races of pigeons.

Domesticated races of guinea fowl (*Numida meleagris*).

Domesticated races of peafowl (*Pavo cristatus*).

## **4VAC15-20-130. Endangered and threatened species; adoption of federal list; additional species enumerated.**

A. The board hereby adopts the Federal Endangered and Threatened Species List, Endangered Species Act of December 28, 1973 (16 USC §§1531-1543), as amended, and declares all species listed thereon to be endangered or threatened species in the Commonwealth. Pursuant to §29.1-103.12 of the Code of Virginia, the director of the department is hereby delegated authority to propose adoption of modifications and amendments to the Federal Endangered and Threatened Species List in accordance with the procedures of §§29.1-501 and 29.1-502 of the Code of Virginia.

B. In addition to the provisions of subsection A, the following species are declared endangered or threatened in this Commonwealth, and are afforded the protection provided by Article 6 (§29.1-563 et seq.) of Chapter 5 of Title 29.1 of the Code of Virginia:

### 1. Fish:

#### Endangered:

Dace, Tennessee	<i>Phoxinus tennesseensis</i>
Darter, sharphead	<i>Etheostoma acuticeps</i>
Darter, variegate	<i>Etheostoma variatum</i>
Sunfish, blackbanded	<i>Enneacanthus chaetodon</i>

#### Threatened:

Darter, Carolina	<i>Etheostoma collis</i>
Darter, <del>Tippecanoe</del> <u>golden</u>	<i>Etheostoma</i> <u>denoncourti</u> <del>tippecanoe</del>
Darter, greenfin	<i>Etheostoma chlorobranchium</i>
Darter, longhead	<i>Percina macrocephala</i>
Darter, western sand	<i>Ammocrypta clara</i>
Madtom, orangefin	<i>Noturus gilberti</i>

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Paddlefish	<i>Polyodon spathula</i>
Shiner, emerald	<i>Notropis atherinoides</i>
Shiner, steelcolor	<i>Cyprinella whipplei</i>
Shiner, whitemouth	<i>Notropis alborus</i>

## 2. Amphibians:

### Endangered:

Salamander, eastern tiger	<i>Ambystoma tigrinum tigrinum</i>
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### Threatened:

Salamander, Mabee's	<i>Ambystoma mabeei</i>
Treefrog, barking	<i>Hyla gratiosa</i>

## 3. Reptiles:

### Endangered:

Rattlesnake, canebrake (Coastal Plain population of timber rattlesnake)	<i>Crotalus horridus</i>
Turtle, bog	<i>Glyptemys muhlenbergii</i>
Turtle, eastern chicken	<i>Deirochelys reticularia</i>

### Threatened:

Lizard, eastern glass	<i>Ophisaurus ventralis</i>
Turtle, wood	<i>Glyptemys insculpta</i>

## 4. Birds:

### Endangered:

Plover, Wilson's	<i>Charadrius wilsonia</i>
Wren, Bewick's	<i>Thryomanes bewickii bewickii</i>

### Threatened:

Eagle, bald	<i>Haliaeetus leucocephalus</i> (see note A below for effective date)
Falcon, peregrine	<i>Falco peregrinus</i>
Sandpiper, upland	<i>Bartramia longicauda</i>
Shrike, loggerhead	<i>Lanius ludovicianus</i>
Sparrow, Bachman's	<i>Aimophila aestivalis</i>
Sparrow, Henslow's	<i>Ammodramus henslowii</i>
Tern, gull-billed	<i>Sterna nilotica</i>

## 5. Mammals:

### Endangered:

Bat, Rafinesque's eastern big-eared	<i>Corynorhinus rafinesquii</i>
Hare, snowshoe	<i>Lepus americanus</i>
Shrew, American water	<i>Sorex palustris</i>
Vole, rock	<i>Microtus chrotorrhinus</i>

### Threatened:

Shrew, Dismal Swamp southeastern	<i>Sorex longirostris fisheri</i>
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## 6. Molluscs:

### Endangered:

Ghostsail, thankless	<i>Holsingeria unthinksensis</i>
Coil, rubble	<i>Helicodiscus lirellus</i>
Coil, shaggy	<i>Helicodiscus diadema</i>
Deertoe	<i>Truncilla truncata</i>
Elephantear	<i>Elliptio crassidens</i>
Elimia, spider	<i>Elimia arachnoidea</i>
Floater, brook	<i>Alasmidonta varicosa</i>
Heelsplitter, Tennessee	<i>Lasmigona holstonia</i>
Lilliput, purple	<i>Toxolasma lividus</i>
Mussel, slippershell	<i>Alasmidonta viridis</i>
Pigtoe, Ohio cordatum	<i>Pleurobema</i>
Pigtoe, pyramid	<i>Pleurobema rubrum</i>
Snuffbox	<i>Epioblasma triquetra</i>
Springsnail, Appalachian	<i>Fontigens bottimeri</i>
Springsnail (no common name)	<i>Fonitgens morrisoni</i>
Spectaclecase	<i>Cumberlandia monodonta</i>
Supercoil, spirit	<i>Paravitrea hera</i>

### Threatened:

Floater, green	<i>Lasmigona subviridis</i>
Papershell, fragile	<i>Leptodea fragilis</i>
Pearlymussel, slabside	<i>Lexingtonia dolabellodes</i>
Pigtoe, Atlantic	<i>Fusconaia masoni</i>
Pimpleback	<i>Quadrula pustulosa pustulosa</i>
Pistolgrip	<i>Tritogonia verrucosa</i>

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Riversnail, spiny	Iofluvialis
Sandshell, black	Ligumia recta
Sheepnose	Plethobasus cyphus
Supercoil, brown	Paravitrea septadens

## 7. Arthropods:

### Threatened:

Amphipod, Madison Cave	Stygobromus stegerorum
Pseudotremia, Ellett Valley	Pseudotremia cavernarum
Xystodesmid, Laurel Creek	Sigmoria whiteheadi

## 8. Crustaceans:

### Endangered:

Crayfish, Big Sandy	Cambarus veteranus
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<sup>A</sup> Notwithstanding the prospective removal of the bald eagle from the federal list of endangered or threatened species, the bald eagle continues to be threatened in the Commonwealth of Virginia, and is hereby declared to be a threatened species in Virginia effective as of, and simultaneously with, the date of its removal from the federal list.

C. It shall be unlawful to take, transport, process, sell, or offer for sale within the Commonwealth any threatened or endangered species of fish or wildlife except as authorized by law.

### 4VAC15-20-200. Fees for ~~Miscellaneous~~ **Permits miscellaneous permits.**

A. Pursuant to §§29.1-417, 29.1-418, 29.1-422, ~~29.1-743~~ and other applicable provisions of the Code of Virginia, except as provided by this chapter the following annual fees shall be paid by applicants for the specified permits before any such permit may be issued.

Boat Ramp Special Use	
Nonprofit Public Use	\$10
Private/Commercial Use	\$50
<del>Boat Regattas/Tournaments</del>	<del>\$50/day</del>
Collect and Sell	\$50
Commercial Nuisance Animals	\$25
Exhibitors	
Commercial Use	\$50
Educational/Scientific Use	\$20
Exotic Importation and Holding	\$10

Field Trial	\$25
Foxhound Training Preserves	\$50
Hold for Commercial Use	\$10
Propagation	\$12.50
Rehabilitation	\$10
Scientific Collection	\$20
Special Hunting Permit	\$10
Striped Bass Tournament	\$10
Threatened & Endangered Species	\$20
Trout Catch-Out Pond	\$50

B. Veterinarians shall not be required to pay a permit fee or to obtain a permit to hold wildlife temporarily for medical treatment.

### 4VAC15-20-210. **Definitions; nonindigenous aquatic nuisance species.**

A. In addition to the species already listed in §29.1-571 of the Code of Virginia, the board hereby designates the following species as nonindigenous aquatic nuisance species pursuant to §29.1-100 of the Code of Virginia.

1. Fish.
  - a. Black carp (*Mylopharyngodon piceus*).
2. Invertebrates.
  - a. New Zealand mudsnail (*Potamopyrgus antipodarum*).
  - b. Rusty crayfish (*Orconectes rusticus*).
  - c. Chinese mitten crab (*Eriocheir sinensis*).

B. It shall be unlawful to take, possess, transport, import, sell, or offer for sale within the Commonwealth any nonindigenous aquatic nuisance species except as authorized by law or regulation.

VA.R. Doc. No. R07-823; Filed August 1, 2007, 10:28 a.m.

### Proposed Regulation

Title of Regulation: **4VAC15-30. Definitions and Miscellaneous: Importation, Possession, Sale, Etc., of Animals (amending 4VAC15-30-5, 4VAC15-30-10, 4VAC15-30-40).**

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

### Public Hearing Information:

October 16, 2007 - 9 a.m. - Department of Game and Inland Fisheries, 4000 West Broad Street, Richmond, VA

Public Comments: Public comments may be submitted until September 24, 2007.

Agency Contact: Phil Smith, Policy Analyst, Regulatory Coordinator, and Freedom of Information Officer, Department of Game and Inland Fisheries, 4016 West Broad Street, Richmond, VA 23230, telephone (804) 367-1000, FAX (804) 367-0488, or email regcomments@dgif.virginia.gov.

Summary:

*The proposed amendments (i) add language to make reference to the code section that gives the board the authority for special permits, which it has in turn conferred upon the director with the regulation; (ii) prohibit the take, possession, importation, exportation, sale and release of captive-reared waterfowl in Virginia except as otherwise permitted; (iii) prohibit the release of captive-reared mallards except as specified; and (iv) add the Chinese mitten crab (Eriocheir sinensis) to the Virginia list of nonnative (exotic) predatory and undesirable species, thereby prohibiting the importation, possession or sale of this species without a permit.*

**4VAC15-30-5. Powers, authorities, and duties of the director in permitting.**

~~Under~~ Pursuant to §29.1-413 of the Code of Virginia and under authority granted to the board in subdivision 12 of §29.1-103 of the Code of Virginia, the board hereby confers authority upon the director to set the permit schedule, establish permit conditions, delegate signature authority, establish protocols for responding to permit decision appeals, and render final permit decisions. The director shall also have authority to establish a policy on the issuance of new permits to individuals whose previous permits or applications have been revoked or denied for infractions of wildlife laws, regulations, or conditions.

**4VAC15-30-10. Possession, importation, sale, etc., of wild animals.**

A. Under the authority of §§29.1-103 and 29.1-521 of the Code of Virginia it shall be unlawful to take, possess, import, cause to be imported, export, cause to be exported, buy, sell, offer for sale, or liberate within the Commonwealth any wild animal, including captive-reared waterfowl, unless otherwise specifically permitted by law or regulation.

B. Furthermore, it shall be unlawful to release any captive-reared mallards in Virginia except during permitted field trials, on licensed shooting preserves permitted for tower shoots and on a valid licensed mallard release area permitted to do so prior to July 1, 2007.

C. Unless otherwise stated, for the purposes of identifying species regulated by the board, when both the scientific and common names are listed, the scientific reference to genus and species will take precedence over common names.

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

A. Permit required. A special permit is required and may be issued by the department, if consistent with the department's fish and wildlife management program, to import, possess, or sell those nonnative (exotic) animals listed below and in 4VAC15-20-210 that the board finds and declares to be predatory or undesirable within the meaning and intent of §29.1-542 of the Code of Virginia, in that their introduction into the Commonwealth will be detrimental to the native fish and wildlife resources of Virginia:

AMPHIBIANS:			
Order	Family	Genus/Species	Common Name
Anura	Bufo	Bufo marinus	Giant or marine toad*
	Pipidae	Xenopus spp.	Tongueless or African clawed frog
Caudata	Ambystomatidae	Ambystoma tigrum mavortium	Barred tiger salamander
		A. t. diaboli	Gray tiger salamander
		A. t. melanostictum	Blotched tiger salamander
BIRDS:			
Order	Family	Genus/Species	Common Name
Psittaciformes	Psittacidae	Myiopsitta monachus	Monk parakeet*
Anseriformes	Anatidae	Cygnus olor	Mute swan

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FISH:			
Order	Family	Genus/Species	Common Name
Cypriniformes	Catostomidae	Ictiobus bubalus	Smallmouth* buffalo
		I. cyprinellus	Bigmouth* buffalo
		I. niger	Black buffalo*
	Characidae	Pygopristis spp.	Piranhas
		Pygocentrus spp.	
		Rooseveltiella spp.	
		Serrasalmo spp.	
		Serrasalmus spp.	
		Taddyella spp.	
	Cyprinidae	Aristichyhs nobilis	Bighead carp*
		Ctenopharyngodon idella	Grass carp or white amur
		Cyprinella lutrensis	Red shiner
		Hypophthalmichthys molitrix	Silver carp*
Mylopharyngodon piceus		Black carp*	
Scardinius erythrophthalmus		Rudd	
Tinca tinca		Tench*	
Gobiesociformes	Gobiidae	Proterorhinus marmoratus	Tube-nose goby
		Neogobius melanostomus	Round goby
Perciformes	Channidae	Channa spp.	Snakeheads
		Parachanna spp.	
	Cichlidae	Tilapia spp.	Tilapia
Gymnocephalus cernuum		Ruffe*	
Siluriformes	Clariidae	All species	Air-breathing catfish
Synbranchiformes	Synbranchidae	Monopterus albus	Swamp eel
MAMMALS:			
Order	Family	Genus/Species	Common Name
Artiodactyla	Suidae	All Species	Pigs or Hogs*
	Cervidae	All Species	Deer*
Carnivora	Canidae	All Species	Wild Dogs*, Wolves, Coyotes or Coyote hybrids, Jackals and Foxes
	Ursidae	All Species	Bears*
	Procyonidae	All Species	Raccoons and* Relatives

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	Mustelidae	All Species (except <i>Mustela putorius furo</i> )	Weasels, Badgers,* Skunks and Otters Ferret
	Viverridae	All Species	Civets, Genets,* Lingsangs, Mongooses, and Fossas
	Herpestidae	All Species	Mongooses*
	Hyaenidae	All Species	Hyenas*
	Protelidae	<i>Proteles cristatus</i>	Aardwolf*
	Felidae	All Species	Cats*
Chiroptera		All Species	Bats*
Lagomorpha	Leporidae	<i>Lepus europeaeus</i>	European hare
		<i>Oryctolagus cuniculus</i>	European rabbit
Rodentia		All species native to Africa	All species native to Africa
	Sciuridae	<i>Cynomys</i> spp.	Prairie dogs
MOLLUSKS:			
Order	Family	Genus/Species	Common Name
Neotaenioglossa	Hydrobiidae	<i>Potamopyrgus antipodarum</i>	New Zealand mudsnail
Veneroida	Dreissenidae	<i>Dreissena bugensis</i>	Quagga mussel
		<i>Dreissena polymorpha</i>	Zebra mussel
REPTILES:			
Order	Family	Genus/Species	Common Name
Squamata	Alligatoridae	All species	Alligators, caimans*
	Colubridae	<i>Boiga irregularis</i>	Brown tree snake*
	Crocodylidae	All species	Crocodiles*
	Gavialidae	All species	Gavials*
CRUSTACEANS:			
Order	Family	Genus/Species	Common Name
Decapoda	Cambaridae	<i>Orconectes rusticus</i>	Rusty crayfish
	Parastacidae	<i>Cherax</i> spp.	Australian crayfish
	Varunidea	<i>Eriocheir sinensis</i>	Chinese mitten crab

B. Temporary possession permit for certain animals. Notwithstanding the permitting requirements of subsection A, a person, company or corporation possessing any nonnative (exotic) animal, designated with an asterisk (\*) in subsection A, prior to July 1, 1992, must declare such possession in writing to the department by January 1, 1993. This written declaration shall serve as a permit for possession only, is not transferable, and must be renewed every five years. This written declaration must include species name, common

name, number of individuals, date or dates acquired, sex (if possible), estimated age, height or length, and other characteristics such as bands and band numbers, tattoos, registration numbers, coloration, and specific markings.

Possession transfer will require a new permit according to the requirements of this subsection.

C. Exception for certain monk parakeets. A permit is not required for monk parakeets (quakers) that have been captive bred and are closed-banded with a seamless band.

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D. Exception for parts or products. A permit is not required for parts or products of those nonnative (exotic) animals listed in subsection A that may be used for personal use, in the manufacture of products, or used in scientific research, provided that such parts or products be packaged outside the Commonwealth by any person, company, or corporation duly licensed by the state in which the parts originate. Such packages may be transported into the Commonwealth, consistent with other state laws and regulations, so long as the original package remains unbroken, unopened and intact until

its point of destination is reached. Documentation concerning the type and cost of the animal parts ordered, the purpose and date of the order, point and date of shipping, and date of receiving shall be kept by the person, business or institution ordering such nonnative (exotic) animal parts. Such documentation shall be open to inspection by a representative of the Department of Game and Inland Fisheries.

E. Exception for certain mammals. Nonnative (exotic) mammals listed in subsection A, except members of the Cervidae family, African rodents, and prairie dogs, that are imported or possessed by dealers, exhibitors, transporters, and researchers who are licensed or registered by the United States Department of Agriculture under the Animal Welfare Act (7 USC §§2131 et seq.) will be deemed to be permitted pursuant to this section, provided that those individuals wanting to import such animals notify the department 24 hours prior to importation with a list of animals to be imported, a schedule of dates and locations where those animals will be housed while in the Commonwealth, and a copy of the current license or licenses or registration or registrations from the U.S. Department of Agriculture, and further provided that such animals shall not be liberated within the Commonwealth.

F. Exception for prairie dogs. The effective date of listing of prairie dogs under subsection A of this section shall be January 1, 1998. Prairie dogs possessed in captivity in Virginia on December 31, 1997, may be maintained in captivity until the animals' deaths, but they may not be sold on or after January 1, 1998, without a permit.

G. Exception for snakehead fish. Anglers may legally harvest snakehead fish of the family Channidea, provided that they immediately kill such fish and that they notify the department, as soon as practicable, of such actions.

H. All other nonnative (exotic) animals. All other nonnative (exotic) animals not listed in subsection A of this section may be possessed, purchased, and sold; provided, that such animals shall be subject to all applicable local, state, and federal laws and regulations, including those that apply to threatened/endangered species, and further provided, that such animals shall not be liberated within the Commonwealth.

VA.R. Doc. No. R07-811; Filed August 1, 2007, 10:28 a.m.

## Proposed Regulation

**Title of Regulation:** 4VAC15-40. **Game: in General (amending 4VAC15-40-30, 4VAC15-40-70, 4VAC15-40-190, 4VAC15-40-210, 4VAC15-40-220).**

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

**Public Hearing Information:**

October 16, 2007 - 9 a.m. - Department of Game and Inland Fisheries, 4000 West Broad Street, Richmond, VA

**Public Comments:** Public comments may be submitted until September 24, 2007.

**Agency Contact:** Phil Smith, Policy Analyst, Regulatory Coordinator, and Freedom of Information Officer, Department of Game and Inland Fisheries, 4016 West Broad Street, Richmond, VA 23230, telephone (804) 367-1000, FAX (804) 367-0488, or email regcomments@dgif.virginia.gov.

**Summary:**

*The proposed amendments (i) expand opportunities for hunters to use electronic calls on public lands beyond department-owned wildlife management areas; (ii) prohibit the release of captive reared and properly marked mallards during open dog training seasons; (iii) modify the requirement that large body-gripping traps in excess of 7 1/2 inches be covered by water so that they can be set when only half submerged by water; and (iv) specify that the maximum jaw spread of foothold traps set above the ground be measured to the inside of the jaws.*

*The proposed amendments also (i) increase the maximum snare height by changing the measurement location from the top to the bottom of the snare loop, (ii) require cable stops that prevent the loop from closing smaller than 2 1/2 inches in diameter on snares capable of opening more than four inches, and (iii) provide exemptions to snare restrictions for department personnel and other individuals authorized by the director to conduct certain types of wildlife damage management activities.*

**4VAC15-40-30. Recorded wild animal or wild bird calls or sounds prohibited in taking game; bobcats, coyotes, crows, and foxes excepted.**

It shall be unlawful to take or attempt to take wild animals and wild birds with the exception of bobcats, coyotes, crows, and foxes by the use or aid of recorded animal or bird calls or sounds; provided, that electronic calls may be used on private lands for hunting bobcats, coyotes, and foxes with the written permission of the landowner and on ~~department-owned wildlife management areas unless otherwise posted by wildlife management area rules~~ public lands except where specifically prohibited.

## **4VAC15-40-70. Open dog training season.**

A. Private lands and certain military areas. It shall be lawful to train dogs during daylight hours on rabbits and nonmigratory game birds on private lands, Fort A.P. Hill, Fort Pickett, and Quantico Marine Reservation. Participants in this dog training season shall not have any weapons other than starter pistols in their possession, must comply with all regulations and laws pertaining to hunting and no game shall be taken; provided, however, that weapons may be in possession when training dogs on ~~captive raised and properly marked mallards and~~ pigeons so that they may be immediately shot or recovered, except on Sunday.

B. Designated portions of certain department-owned lands. It shall be lawful to train dogs on quail on designated portions of the Amelia Wildlife Management Area, Chester F. Phelps Wildlife Management Area, Chickahominy Wildlife Management Area, and Dick Cross Wildlife Management Area from September 1 to the day prior to the opening date of the quail hunting season, both dates inclusive. Participants in this dog training season shall not have any weapons other than starter pistols in their possession, shall not release pen-raised birds, must comply with all regulations and laws pertaining to hunting and no game shall be taken.

C. Designated department-owned lands. It shall be lawful to train dogs during daylight hours on rabbits and nonmigratory game birds on the Weston Wildlife Management Area from September 1 to March 31, both dates inclusive. Participants in this dog training season shall not have any weapons other than starter pistols in their possession, shall not release pen-raised birds, must comply with all regulations and laws pertaining to hunting and no game shall be taken.

## **4VAC15-40-190. Restricted use of body-gripping traps in excess of 7½ inches.**

The use of body-gripping traps with a jaw spread in excess of 7½ inches is prohibited except when such traps are ~~covered~~ at least half submerged by water.

## **4VAC15-40-210. Restricted use of certain steel ~~leg-hold~~ foothold traps.**

It shall be unlawful to set above the ground any steel ~~leg-hold~~ foothold trap with teeth set upon the jaws or with a maximum inside jaw spread exceeding 6½ inches measured perpendicular to the hinges.

## **4VAC15-40-220. Use of deadfalls prohibited; restricted use of snares.**

It shall be unlawful to trap, or attempt to trap, on land any wild bird or wild animal with any deadfall or snare; provided, that snares with loops no more than 12 inches in diameter and with the ~~top~~ bottom of the snare loop set not to exceed 12 inches above ground level may be used with the written permission of the landowner; provided further that any snare set above the surface of the ground and capable of opening

more than four inches in diameter must include a cable stop that prevents the loop from closing smaller than 2½ inches in diameter. The provisions of this section shall not apply to department personnel while in performance of their official duties and other individuals specifically exempted by the director for the purpose of conducting wildlife damage management activities.

VA.R. Doc. No. R07-809; Filed August 1, 2007, 10:28 a.m.

## **Proposed Regulation**

**Title of Regulation:** **4VAC15-50. Game: Bear (amending 4VAC15-50-20, 4VAC15-50-25, 4VAC15-50-81, 4VAC15-50-91).**

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

### Public Hearing Information:

October 16, 2007 - 9 a.m. - Department of Game and Inland Fisheries, 4000 West Broad Street, Richmond, VA

**Public Comments:** Public comments may be submitted until September 24, 2007.

**Agency Contact:** Phil Smith, Policy Analyst, Regulatory Coordinator, and Freedom of Information Officer, Department of Game and Inland Fisheries, 4016 West Broad Street, Richmond, VA 23230, telephone (804) 367-1000, FAX (804) 367-0488, or email [regcomments@dgif.virginia.gov](mailto:regcomments@dgif.virginia.gov).

### Summary:

*The proposed amendments establish a two-week open season on bear on lands soon to be purchased by the Department of Forestry in Washington and Russell counties; change the opening date of the bear season from the first Monday in November to October 1, an increase of five weeks in the cities of Suffolk, Chesapeake and Virginia Beach; and remove the requirements to "seal" (with a nose tag) black bears harvested by licensees when they are checked at bear check stations.*

## **4VAC15-50-20. Open season; first Monday in December and for 11 consecutive hunting days following in certain counties or portions of counties and on the Clinch Mountain and Hidden Valley Wildlife Management Areas and on Department of Forestry lands in Washington and Russell counties.**

It shall be lawful to hunt bear from the first Monday in December and for 11 consecutive hunting days following, both dates inclusive, on the Clinch Mountain and Hidden Valley Wildlife Management Areas, on Department of Forestry lands in Washington and Russell counties, and in the counties of Buchanan, Campbell (west of Norfolk Southern Railroad), Carroll, Dickenson, Floyd, Franklin, Grayson, Henry, Lee, Montgomery (south of Interstate 81), Patrick, Pittsylvania (west of Norfolk Southern Railroad), Pulaski

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(south of Interstate 81), Roanoke (south of Interstate 81), Russell, Scott, Smyth (south of Interstate 81), Tazewell (that part north of Route 19 that is west of Route 16), Washington (south of Interstate 81 and that part north of Interstate 81 that is west of Route 19), Wise, and Wythe (south of Interstate 81)

#### **4VAC15-50-25. Open season; cities of Chesapeake, Suffolk and Virginia Beach.**

It shall be lawful to hunt bear from ~~the first Monday in November~~ October 1 through the first Saturday in January, both dates inclusive, in the cities of Chesapeake, Suffolk and Virginia Beach.

#### **4VAC15-50-81. Validating tags and checking bear by licensee or permittee.**

A. Any person killing a bear shall, before removing the carcass from the place of kill, validate an appropriate tag on their special license for hunting bear, deer, and turkey or special permit by completely removing the designated notch area from the tag. Place of kill shall be defined as the location where the animal is first reduced to possession. It shall be unlawful for any person to validate (notch) a bear tag from any special license for hunting bear, deer, and turkey or special permit prior to the killing of a bear. A bear tag that is mistakenly validated (notched) prior to the killing of a bear must be immediately voided by the licensee or permittee by writing, in ink, the word "VOID" on the line provided on the license tag.

B. Upon killing a bear and validating (notching) a license tag or special permit, as provided above, the licensee shall, upon vehicle transport of the carcass or at the conclusion of legal hunting hours, whichever occurs first, and without unnecessary delay, present the carcass and validated (notched) license tag or special permit to an authorized bear checking station or to an appropriate representative of the department in the county or adjoining county in which the bear was killed. Upon presentation of the carcass and validated (notched) license tag or special permit to the bear checking station, the licensee shall surrender or allow to be removed one premolar tooth from the carcass ~~and have a seal, furnished by the department, permanently attached by the check station operator.~~ At such time, the person checking the carcass will be given a game check card. The successful hunter shall then immediately record the game check card number, in ink, on the line provided adjacent to the license tag that was validated (notched) in the field. The game check card must be kept in possession with the carcass until the carcass is processed. If the carcass is left unattended, the game check card must be securely attached to the carcass.

C. It shall be unlawful for any person to destroy the identity (sex) of any bear killed unless and until the license tag or special permit is validated (notched) and checked as required by this section. Successful bear hunters are allowed to dismember the carcass to pack it out from the place of kill,

after an appropriate license tag has been validated (notched) as required above, as long as the sex of the animal remains identifiable and all the parts of the carcass are present when the bear is checked at an authorized bear checking station. Any bear found in the possession of any person without a validated (notched) license tag or documentation that the bear has been checked at an authorized bear checking station as required by this section shall be forfeited to the Commonwealth to be disposed of as provided by law.

#### **4VAC15-50-91. Checking bear by persons exempt from license requirements or holding a license authorization number.**

A. Upon killing a bear, any person exempt from license requirements as prescribed in §29.1-301 of the Code of Virginia, or issued a complimentary license as prescribed in §29.1-339, or the holder of a permanent license issued pursuant to §29.1-301 E, or the holder of a Virginia license authorization number issued by a telephone or electronic media agent pursuant to §29.1-327 B of the Code of Virginia shall, upon vehicle transport of the carcass or at the conclusion of legal hunting hours, whichever occurs first, and without unnecessary delay, present the carcass to an authorized bear checking station or to any appropriate representative of the department in the county or adjoining county in which the bear was killed. Upon presentation of the carcass to the bear checking station, the person checking the carcass shall surrender or allow to be removed one premolar tooth from the carcass ~~and have a seal, furnished by the department, permanently attached by the check station operator.~~ At such time, the person checking or reporting the carcass shall be given a game check card furnished by the department. The game check card must be kept in possession with the carcass until the carcass is processed. If the carcass is left unattended, the game check card must be securely attached to the carcass.

B. It shall be unlawful for any person to destroy the identity of the sex of any bear killed until the bear is checked as required by this section. Successful bear hunters are allowed to dismember the carcass to pack it out from the place of kill as long as they do not destroy the identity of the sex and all the parts of the carcass are present when the bear is checked at a big game check station.

V.A.R. Doc. No. R07-804; Filed August 1, 2007, 10:29 a.m.

#### **Proposed Regulation**

Title of Regulation: **4VAC15-70. Game: Bobcat (amending 4VAC15-70-50; adding 4VAC15-70-70).**

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

Public Hearing Information:

October 16, 2007 - 9 a.m. - Department of Game and Inland Fisheries, 4000 West Broad Street, Richmond, VA

Public Comments: Public comments may be submitted until September 24, 2007.

Agency Contact: Phil Smith, Policy Analyst, Regulatory Coordinator, and Freedom of Information Officer, Department of Game and Inland Fisheries, 4016 West Broad Street, Richmond, VA 23230, telephone (804) 367-1000, FAX (804) 367-0488, or email regcomments@dgif.virginia.gov.

Summary:

*The proposed amendments (i) remove the requirement to affix a Convention on International Trade in Endangered Species (CITES) seal on bobcats that are mounted or tanned for personal use (not sold) and (ii) add a provision for the department to authorize individuals to affix CITES tags to bobcats themselves instead of requiring tagging by an "agent" of the department.*

*The proposed amendments also (i) establish a new mandatory automated harvest reporting system for all bobcats harvested by hunters and trappers and describe the procedures for reporting the harvest of bobcat within 24 hours after the kill and (ii) provide for a confirmation process as proof of compliance with the regulation.*

**4VAC15-70-50. Pelts to be sealed before sale, etc.**

It shall be unlawful to ~~tan, mount,~~ buy, sell, barter, exchange, traffic or trade in, bargain for, solicit for, purchase, or transport out of the Commonwealth, any bobcat pelts until the pelts have been sealed by an agent ~~of~~ or other individual designated by the department. All bobcat pelts or unskinned carcasses required to be sealed under the provisions of this section must be sealed not later than April 1 of the license year in which the animal is taken.

**4VAC15-70-70. Checking requirements.**

Any hunter or trapper who kills a bobcat shall report the kill within 24 hours through the department's automated harvest reporting system. At such time, the person reporting the kill will be furnished with a confirmation number. The hunter or trapper shall immediately record this confirmation number in a location where it can later be retrieved to prove compliance with checking requirements or to request a department seal. Any bobcat received by a taxidermist for mounting or tanning shall have written documentation securely attached to the carcass that includes the full name of the hunter or trapper, date of kill, and the harvest confirmation number.

VA.R. Doc. No. R07-814; Filed August 1, 2007, 10:29 a.m.

**Proposed Regulation**

Title of Regulation: **4VAC15-90. Game: Deer (amending 4VAC15-90-22, 4VAC15-90-70, 4VAC15-90-80, 4VAC15-90-90, 4VAC15-90-91).**

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

Public Hearing Information:

October 16, 2007 - 9 a.m. - Department of Game and Inland Fisheries, 4000 West Broad Street, Richmond, VA

Public Comments: Public comments may be submitted until September 24, 2007.

Agency Contact: Phil Smith, Policy Analyst, Regulatory Coordinator, and Freedom of Information Officer, Department of Game and Inland Fisheries, 4016 West Broad Street, Richmond, VA 23230, telephone (804) 367-1000, FAX (804) 367-0488, or email regcomments@dgif.virginia.gov.

Summary:

*The proposed amendments (i) extend the special late antlerless deer open season in the counties of Fairfax, Loudoun, and Prince William through the last Saturday in March; (ii) include Fauquier County in the special late antlerless deer open season; (iii) begin the urban archery deer season on the first, rather than the third, Saturday in September; and (iv) establish an antlerless deer archery season in Loudoun and Prince William counties with dates that correspond to the urban archery season.*

*The proposed amendments also (i) add one week to the beginning of the early special muzzleloading season west of the Blue Ridge and on national forest lands in Amherst, Bedford, and Nelson counties, (ii) establish a late muzzleloading deer season in the City of Suffolk (east of the Dismal Swamp line) and make the last six days of the season either-sex deer hunting days, and (iii) increase the number of either-sex deer hunting days during the late muzzleloading season on private lands in Grayson County from one to six days.*

*The proposed amendments (i) establish a special "Earn A Buck" regulation on private lands in the counties of Bedford, Fairfax, Fauquier, Franklin, Loudoun, Patrick, Prince William and Roanoke, (ii) require that in these counties at least one antlerless deer must be taken before the second antlered deer of the license year can be taken, and (iii) require that in these counties an additional antlerless deer must be taken before the third antlered deer of the license year can be taken.*

*Finally, the proposed amendments (i) increase either-sex deer hunting days in 16 eastern Virginia cities and counties (Albemarle, Chesapeake, Chesterfield, Essex, Goochland (east of US Route 522), Halifax, Hanover, Henrico, King George, King and Queen, New Kent, Pittsylvania (east of Norfolk Southern Railroad), Powhatan, Suffolk (east and west of the Dismal Swamp line), Virginia Beach and Westmoreland), (ii) reduce either-sex deer hunting days on private lands in two western Virginia counties (Rockbridge and a portion of Rockingham), (iii) reduce either-sex deer hunting days on*

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*National Forest and department-owned lands (public lands) in 12 counties (Amherst, Bedford, Bland, Botetourt, Carroll, Craig, Giles, Montgomery, Nelson, Pulaski, Roanoke, and Wythe), (iv) increase either-sex deer hunting days on Featherfin WMA, and (v) include a soon to be purchased Virginia Department of Forestry property in the public land either-sex day regulation in Russell and Washington counties.*

## **4VAC15-90-22. Special late antlerless only open season; Fairfax, Fauquier, Loudoun, and Prince William counties.**

It shall be lawful to hunt antlerless deer from the Monday following the first Saturday in January through the ~~first~~ last Saturday in ~~February~~ March, both dates inclusive, in Fairfax, Fauquier, Loudoun and Prince William counties.

## **4VAC15-90-70. Bow and arrow hunting.**

A. It shall be lawful to hunt deer during the early special archery season with bow and arrow from the first Saturday in October through the Friday prior to the third Monday in November, both dates inclusive, except where there is a closed general hunting season on deer.

B. In addition to the season provided in subsection A of this section, it shall be lawful to hunt deer during the late special archery season with bow and arrow from the Monday following the close of the general firearms season on deer through the first Saturday in January, both dates inclusive, in all cities, towns, and counties west of the Blue Ridge Mountains (except Clarke County and on non-national forest lands in Frederick County) and in the counties (including the cities and towns within) of Amherst (west of U.S. Route 29), Bedford, Campbell (west of Norfolk Southern Railroad), Franklin, Henry, Nelson (west of Route 151), Patrick and Pittsylvania (west of Norfolk Southern Railroad) and on the Chester F. Phelps Wildlife Management Area and on national forest lands in Frederick County and from December 1 through the first Saturday in January, both dates inclusive, in the cities of Chesapeake, Suffolk (east of the Dismal Swamp line) and Virginia Beach.

C. Deer of either sex may be taken full season during the special archery seasons as provided in subsections A and B of this section (except on PALS (Public Access Lands) in Dickenson County where it shall be unlawful to take antlerless deer during the special archery seasons provided for in subsections A and B of this section).

D. It shall be unlawful to carry firearms while hunting with bow and arrow during the special archery seasons.

E. Arrows used for hunting big game must have a minimum width head of 7/8 of an inch and the bow used for such hunting must be capable of casting a broadhead arrow a minimum of 125 yards.

F. It shall be unlawful to use dogs when hunting with bow and arrow during any special archery season.

G. For the purpose of the application of subsections A through ~~H~~ I to this section, the phrase "bow and arrow" includes crossbows.

H. It shall be lawful to hunt antlerless deer during the special urban archery season with bow and arrow from the ~~third~~ first Saturday in September through the Friday prior to the first Saturday in October, both dates inclusive, and from the Monday following the first Saturday in January through the last Saturday in March, both dates inclusive, within the incorporated limits of any city or town in the Commonwealth (except in the cities of Chesapeake, Suffolk, and Virginia Beach) and the counties of Fairfax and York provided that its governing body submits by certified letter to the department prior to April 1, its intent to participate in the special urban archery season. Any city, town, or county no longer participating in this season shall submit by certified letter to the department prior to April 1 notice of its intent not to participate in the special urban archery season.

I. It shall be lawful to hunt antlerless deer during the special antlerless archery season with bow and arrow from the first Saturday in September through the Friday prior to the first Saturday in October, both dates inclusive, in Loudoun and Prince William counties, except on department-owned lands.

## **4VAC15-90-80. Muzzleloading gun hunting.**

A. It shall be lawful to hunt deer during the early special muzzleloading season with muzzleloading guns from the Saturday prior to the first Monday in November through the Friday prior to the third Monday in November, both dates inclusive, in all cities, towns, and counties where deer hunting with a rifle or muzzleloading gun is permitted ~~east of the Blue Ridge Mountains, except on national forest lands in Amherst, Bedford and Nelson counties and~~ in the cities of Chesapeake, Suffolk (east of the Dismal Swamp Line) and Virginia Beach. ~~It shall be lawful to hunt deer during the early special muzzleloading season with muzzleloading guns from the Saturday prior to the second Monday in November through the Friday prior to the third Monday in November, both dates inclusive, in all cities, towns, and counties where deer hunting with a rifle or muzzleloading gun is permitted west of the Blue Ridge Mountains and on national forest lands in Amherst, Bedford, and Nelson counties.~~

B. It shall be lawful to hunt deer during the late special muzzleloading season with muzzleloading guns from the Saturday prior to the third Monday in December through the first Saturday in January, both dates inclusive, in all cities, towns, and counties west of the Blue Ridge Mountains (except Clarke County and on non-national forest lands in Frederick County), and east of the Blue Ridge Mountains in the counties (including the cities and towns within) of Amherst (west of U.S. Route 29), Bedford, Campbell (west of Norfolk Southern Railroad), Franklin, Henry, Nelson (west of Route 151), Patrick and Pittsylvania (west of Norfolk Southern Railroad) and on national forest lands in Frederick

County and in the cities of Chesapeake, Suffolk (east of the Dismal Swamp line), and Virginia Beach.

C. Deer of either sex may be taken during the entire early special muzzleloading season in all cities, towns, and counties east of the Blue Ridge Mountains (except on national forest lands, state forest lands, state park lands except Occoneechee State Park, department-owned lands and Philpott Reservoir) and on the second Saturday only east of the Blue Ridge Mountains on state forest lands, state park lands except Occoneechee State Park, department-owned lands and on Philpott Reservoir. Deer of either sex may be taken during the entire early special muzzleloading season on Occoneechee State Park. Deer of either sex may be taken during the early special muzzleloading season only on the second Monday in November in all counties west of the Blue Ridge Mountains (except Clarke, Buchanan, Dickenson, Floyd, Lee, Russell, Scott, Smyth, Tazewell, Washington, Wise, and in Grayson Highlands State Park and national forest lands in Grayson County, and on private lands in Frederick, Roanoke, and Warren counties) and on national forest and department-owned lands in Roanoke County and on national forest lands in Frederick and Warren counties and on national forest lands in Amherst, Bedford, and Nelson counties. Additionally, deer of either sex may be taken during the entire early special muzzleloading season in Clarke and Floyd counties and on private lands in Frederick, Roanoke and Warren counties.

D. Deer of either sex may be taken during the entire late special muzzleloading season in the counties (including the cities and towns within) of Amherst (west of U.S. Route 29 except on national forest lands), Bedford (except on national forest lands), Campbell (west of Norfolk Southern Railroad), Franklin, Henry, Nelson (west of Route 151 except on national forest lands), Patrick, and Pittsylvania (west of Norfolk Southern Railroad). It shall be lawful to hunt deer of either sex during the last six days of the late special muzzleloading season in all counties west of the Blue Ridge Mountains (except Buchanan, Dickenson, Floyd, in Grayson Highlands State Park and national forest lands in Grayson, Lee, Russell, Scott, Smyth, Tazewell, Washington, Wise, and on private lands in Roanoke County) and on national forest and department-owned lands in Roanoke County and on national forest lands in Amherst, Bedford, Frederick, and Nelson counties and in the cities of Chesapeake, Suffolk (east of the Dismal Swamp line), and Virginia Beach. Provided further it shall be lawful to hunt deer of either sex during the last day only of the late special muzzleloading season in the counties of ~~Grayson~~, Lee, Russell, Scott, Smyth, Tazewell, and Washington and in Grayson Highlands State Park and national forest lands in Grayson County. Additionally, deer of either-sex may be taken during the entire late special muzzleloading season in Floyd County and on private lands in Roanoke County.

E. Deer of either sex may be taken full season during the special muzzleloading seasons within the incorporated limits

of any city or town in the Commonwealth that allows deer hunting except in the counties of Buchanan, Dickenson, and Wise and in the cities of Chesapeake, Suffolk, and Virginia Beach.

F. It shall be unlawful to hunt deer with dogs during any special season for hunting with muzzleloading guns.

G. A muzzleloading gun, for the purpose of this section, means a single shot flintlock or percussion weapon, excluding muzzleloading pistols, .45 caliber or larger, firing a single projectile or sabot (with a .38 caliber or larger projectile) of the same caliber loaded from the muzzle of the weapon and propelled by at least 50 grains of black powder (or black powder equivalent).

H. It shall be unlawful to have in immediate possession any firearm other than a muzzleloading gun while hunting with a muzzleloading gun in a special muzzleloading season.

#### **4VAC15-90-90. Bag limit, bonus deer permits and special antlerless provision for youth hunters and earn a buck.**

A. The bag limit for deer east of the Blue Ridge Mountains (except on national forest lands in Amherst, Bedford, and Nelson counties) is two per day, six per license year, three of which must be antlerless.

B. The bag limit for deer west of the Blue Ridge Mountains and on national forest lands in Amherst, Bedford, and Nelson counties is one per day, five per license year, three of which must be antlerless. Only one antlered buck may be taken during the special early muzzleloading season per hunter. Only one antlered buck taken in Shenandoah County per license year may have less than four antler points one inch or longer on one side of the antlers.

C. Antlerless deer may be taken only during designated either-sex deer hunting days during the special archery seasons, special muzzleloading seasons, and the general firearms season.

D. Bonus deer permits shall be valid on private land in counties and cities where deer hunting is permitted (except Buchanan, Dickenson, and Wise counties) during the special archery seasons, special muzzleloading seasons, and the general firearms season. Bonus deer permits shall be valid on public lands, including state parks, state forests, national wildlife refuges, military areas, etc., as authorized by the managing agency. Unless otherwise posted or authorized in writing for wildlife management areas by the department, or for national forest lands by the U.S. Forest Service, the use of bonus permits is prohibited on department-owned and national forest lands. Bonus deer permits shall be valid for antlerless deer only. Deer taken on bonus permits shall count against the daily bag limit but are in addition to the seasonal bag limit.

E. Deer hunters 15 years of age and under, including those exempt from purchasing a hunting license, when in

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compliance with all applicable laws and license requirements, may take one antlerless deer per license year on days other than designated either-sex deer hunting days during the special muzzleloading seasons or the general firearms season in all counties that have at least one either-sex deer hunting day during the general firearms deer season.

F. Earn a buck. At least one antlerless deer must be taken on private lands in Bedford, Fairfax, Fauquier, Franklin, Loudoun, Patrick, Prince William, or Roanoke counties before the second antlered deer of the license year may be taken on private lands in any of these counties. Furthermore, at least two antlerless deer must have been taken on private lands in Bedford, Fairfax, Fauquier, Franklin, Loudoun, Patrick, or Prince William counties before the third antlered deer of the license year may be taken on private lands in any of these counties.

## **4VAC15-90-91. General firearms season either-sex deer hunting days.**

A. During the general firearms deer season, deer of either sex may be taken within:

Accomack County: full season.

Albemarle County: ~~the second, third, and fourth Saturdays and the last 24 hunting days~~ full season.

Alleghany County: the second Saturday and the last two hunting days.

-National forest lands: the second Saturday and the last hunting day.

Amelia County: the second and third Saturdays and the last six hunting days.

Amherst County (east of U.S. Route 29): the second, third, and fourth Saturdays and the last 24 hunting days.

Amherst County (west of U.S. Route 29): full season.

-National forest lands: the second Saturday and the last ~~six~~ hunting days day.

Appomattox County: the second and third Saturdays and the last six hunting days.

-Appomattox-Buckingham State Forest: the second Saturday.

-Featherfin WMA: the second, third, and fourth Saturdays and the last 24 hunting days.

Arlington County: full season.

Augusta County: the second Saturday and the last six hunting days.

-National forest and department-owned lands: the second Saturday and the last hunting day.

Bath County: the second Saturday and the last two hunting days.

-National forest and department-owned lands: the second Saturday and the last hunting day.

Bedford County: full season.

-National forest lands: the second Saturday and the last ~~six~~ hunting days day.

Bland County: the second Saturday and the last six hunting days.

-National forest lands: the second Saturday and the last ~~two~~ hunting days day.

Botetourt County: full season.

-National forest lands: the second Saturday and the last ~~two~~ hunting days day.

Brunswick County: the second and third Saturdays and the last six hunting days.

Buchanan County: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Buckingham County: the second and third Saturdays and the last six hunting days.

-Appomattox-Buckingham State Forest: the second Saturday.

-Featherfin WMA: the second, third, and fourth Saturdays and the last 24 hunting days.

Campbell County (east of Norfolk Southern Railroad): the second, third, and fourth Saturdays and the last 24 hunting days.

Campbell County (west of Norfolk Southern Railroad): full season.

Caroline County: the second and third Saturdays and the last six hunting days.

Carroll County: full season.

-National forest and department-owned lands: the second Saturday and the last ~~two~~ hunting days day.

Charles City County: the second and third Saturdays and the last 12 hunting days.

-Chickahominy WMA: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Charlotte County: the second and third Saturdays and the last six hunting days.

Chesapeake (City of): the first ~~Saturday~~ and second Saturdays following October 1st and the last ~~six~~ 12 hunting days.

Chesterfield County: the second and third Saturdays and the last ~~six~~ 12 hunting days.

Clarke County: full season.

Craig County: the second Saturday and the last six hunting days.

-National forest lands: the second Saturday and the last ~~two~~ hunting ~~days~~ day.

Culpeper County: the second, third, and fourth Saturdays and the last 24 hunting days.

-Chester F. Phelps WMA: the second Saturday.

Cumberland County: the second and third Saturdays and the last six hunting days.

-Cumberland State Forest: the second Saturday.

Dickenson County: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Dinwiddie County: the second and third Saturdays and the last six hunting days.

Essex County: the second ~~and~~ third, and fourth Saturdays and the last ~~12~~ 24 hunting days.

Fairfax County: full season (restricted to certain parcels of land by special permit).

Fauquier County: full season.

-G.Richard Thompson WMA: the second Saturday and the last hunting day.

-Chester F. Phelps WMA: the second Saturday.

Floyd County: full season.

Fluvanna County: second and third Saturdays and the last six hunting days.

Franklin County: full season.

-Philpott Reservoir: the second Saturday and the last six hunting days.

-Turkeycock Mountain WMA: the second Saturday and the last two hunting days.

Frederick County: full season

-National forest lands: the second Saturday and the last hunting day.

Giles County: the second Saturday and the last six hunting days.

-National forest lands: the second Saturday and the last ~~two~~ hunting ~~days~~ day.

Gloucester County: the second, third, and fourth Saturdays and the last 24 hunting days.

Goochland County (east of U.S. Route 522): the second ~~and~~ third, and fourth Saturdays and the last ~~12~~ 24 hunting days.

Goochland County (west of U.S. Route 522): the second and third Saturdays and last six hunting days.

Grayson County: full season.

-National forest lands and portions of Grayson Highland State Park open to hunting: the second Saturday and the last hunting day.

Greene County: the second, third, and fourth Saturdays and the last 24 hunting days.

Greensville County: full season.

Halifax County: the second ~~and~~ third, and fourth Saturdays and the last ~~12~~ 24 hunting days.

Hanover County: the second ~~and~~ third, and fourth Saturdays and the last ~~12~~ 24 hunting days.

Henrico County: the second ~~and~~ third, and fourth Saturdays and the last ~~12~~ 24 hunting days.

Henry County: full season.

-Fairystone Farms WMA, Fairystone State Park, and Philpott Reservoir: the second Saturday and the last six hunting days.

-Turkeycock Mountain WMA: the second Saturday and the last two hunting days.

Highland County: the second Saturday and the last two hunting days.

-National forest and department-owned lands: the second Saturday and the last hunting day.

Isle of Wight County: full season.

-Ragged Island WMA: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

James City County: the second and third Saturdays and last 12 hunting days.

King and Queen County: the second ~~and~~ third, and fourth Saturdays and the last ~~12~~ 24 hunting days.

King George County: the second and third Saturdays and the last ~~six~~ 12 hunting days.

King William County: the second and third Saturdays and the last 12 hunting days.

Lancaster County: the second, third, and fourth Saturdays and the last 24 hunting days.

Lee County: the second Saturday and the last two hunting days.

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-National forest lands: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Loudoun County: full season.

Louisa County: the second and third Saturdays and the last six hunting days.

Lunenburg County: the second and third Saturdays and the last six hunting days.

Madison County: the second, third, and fourth Saturdays and the last 24 hunting days.

Mathews County: the second and third Saturdays and last 12 hunting days.

Mecklenburg County: the second and third Saturdays and the last six hunting days.

Middlesex County: the second and third Saturdays and last 12 hunting days.

Montgomery County: full season.

-National forest lands: the second Saturday and the last ~~two~~ two hunting ~~days~~ day.

Nelson County (east of Route 151): the second, third, and fourth Saturdays and the last 24 hunting days.

-James River WMA: the second Saturday and the last six hunting days.

Nelson County (west of Route 151): full season.

-National forest lands: the second Saturday and the last ~~six~~ six hunting ~~days~~ day.

New Kent County: the second ~~and~~ third, and fourth Saturdays and ~~the last 12~~ 24 hunting days.

Northampton County: full season.

Northumberland County: the second, third, and fourth Saturdays and the last 24 hunting days.

Nottoway County: the second and third Saturdays and the last six hunting days.

Orange County: the second, third, and fourth Saturdays and the last 24 hunting days.

Page County: the second Saturday and the last two hunting days.

-National forest lands: the second Saturday and the last hunting day.

Patrick County: full season.

-Fairystone Farms WMA, Fairystone State Park, and Philpott Reservoir: the second Saturday and the last six hunting days.

Pittsylvania County (east of Norfolk Southern Railroad): the second ~~and~~ third, and fourth Saturdays and ~~the last 12~~ 24 hunting days.

-White Oak Mountain WMA: the second Saturday and the last hunting day.

Pittsylvania County (west of Norfolk Southern Railroad): full season.

Powhatan County: the second and third Saturdays and the last ~~six~~ 12 hunting days.

-Powhatan WMA: the second and third Saturdays and the last six hunting days.

Prince Edward County: the second and third Saturdays and the last six hunting days.

-Featherfin WMA: the second, third, and fourth Saturdays and the last 24 hunting days.

-Prince Edward State Forest: the second Saturday.

Prince George County: the second and third Saturdays and the last six hunting days.

Prince William County: full season.

Pulaski County: the second Saturday and the last six hunting days.

-National forest lands: the second Saturday and the last ~~two~~ two hunting ~~days~~ day.

Rappahannock County: the second, third, and fourth Saturdays and the last 24 hunting days.

Richmond County: the second, third, and fourth Saturdays and the last 24 hunting days.

Roanoke County: full season.

-National forest and department-owned lands: the second Saturday and the last ~~two~~ two hunting ~~days~~ day.

Rockbridge County: the second Saturday and the last ~~six~~ two hunting days.

-National forest and department-owned lands: the second Saturday and the last hunting day.

Rockingham County: the second Saturday and the last six hunting days.

-National forest lands and private lands west of Routes 613 and 731: the second Saturday and the last hunting day.

Russell County: the second Saturday and the last two hunting days.

-Clinch Mountain WMA, and Hidden Valley WMA, and state forest lands: the second Saturday and the last hunting day.

Scott County: the second Saturday and the last six hunting days.

-National forest lands: antlered bucks only—no either-sex days.

Only deer with antlers above the hairline may be taken.

Shenandoah County: full season.

-National forest lands: the second Saturday and the last hunting day.

Smyth County: the second Saturday and the last two hunting days.

-National forest lands, Clinch Mountain WMA, and Hidden Valley WMA: the second Saturday and the last hunting day.

Southampton County: full season.

Spotsylvania County: the second, third, and fourth Saturdays and the last 24 hunting days.

Stafford County: the second, third, and fourth Saturdays and the last 24 hunting days.

Suffolk (City of; east of the Dismal Swamp line): the first and second Saturdays following October 1st and the last ~~six~~ 12 hunting days.

Suffolk (City of; west of the Dismal Swamp line): the second ~~and~~, third, and fourth Saturdays and the last ~~12~~ 24 hunting days.

Surry County: full season.

-Carlisle Tract of the Hog Island WMA: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Sussex County: full season.

Tazewell County: the second Saturday and the last two hunting days.

-National forest lands, Clinch Mountain WMA, and Hidden Valley WMA: the second Saturday and the last hunting day.

Virginia Beach (City of): the first ~~Saturday~~ and second Saturdays following October 1 and the last ~~six~~ 12 hunting days.

Warren County: full season.

-National forest lands: the second Saturday and the last hunting day.

Washington County: the second Saturday and the last two hunting days.

-National forest lands, Clinch Mountain WMA, ~~and~~ Hidden Valley WMA, and state forest lands: the second Saturday and the last hunting day.

Westmoreland County: the second ~~and~~, third, and fourth Saturdays and ~~the last 12~~ 24 hunting days.

Wise County: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Wythe County: the second Saturday and the last six hunting days.

-National forest lands and Big Survey WMA: the second Saturday and the last ~~two~~ hunting days day.

York County: full season.

B. Except as provided in the subsection A of this section, deer of either sex may be taken full season during the general firearms deer season within the incorporated limits of any city or town, state park, national wildlife refuge, or military installation that allows deer hunting.

VA.R. Doc. No. R07-803; Filed August 1, 2007, 10:29 a.m.

## Proposed Regulation

**Title of Regulation:** **4VAC15-110. Game: Fox (amending 4VAC15-110-10, 4VAC15-110-75).**

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

### Public Hearing Information:

October 16, 2007 - 9 a.m. - Department of Game and Inland Fisheries, 4000 West Broad Street, Richmond, VA

**Public Comments:** Public comments may be submitted until September 24, 2007.

**Agency Contact:** Phil Smith, Policy Analyst, Regulatory Coordinator, and Freedom of Information Officer, Department of Game and Inland Fisheries, 4016 West Broad Street, Richmond, VA 23230, telephone (804) 367-1000, FAX (804) 367-0488, or email [regcomments@dgif.virginia.gov](mailto:regcomments@dgif.virginia.gov).

### Summary:

*The proposed amendments align the season dates for dog-only fox hunting on designated public areas with the period when it is lawful to hunt foxes with firearms; and allow coyotes to be released in foxhound training preserves that meet certain conditions as approved by the director or his designee.*

### 4VAC15-110-10. Closed season in certain areas.

It shall be unlawful to hunt foxes with dogs on the George Washington/Jefferson National Forest and on the Gathright, Goshen, G. Richard Thompson, Highland, Little North Mountain and Rapidan Wildlife Management Areas ~~from February 1 through October 31, both dates inclusive~~ except during the period when it is lawful to hunt foxes with firearms.

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## **4VAC15-110-75. Foxhound training preserves; live-trapping for release.**

It shall be lawful for any foxhound training preserve permittee or those licensed trappers designated in writing by the permittee to live-trap and transport coyotes (Canis latrans), and red (Vulpes vulpes) and gray (Urocyon cinereoargenteus) foxes from September 1 through the last day of February, both dates inclusive, only for the purpose of stocking foxhound training preserves covered by permits authorized by the board and issued by the department and containing conditions approved by the director or his designee. For the purpose of this section, coyotes and foxes may be live-trapped on private land with landowner permission or on public lands designated by the department. For the purposes of this section, coyotes and foxes may be live-trapped and transported within the Commonwealth of Virginia.

VA.R. Doc. No. R07-808; Filed August 1, 2007, 10:29 a.m.

### **Proposed Regulation**

**Title of Regulation: 4VAC15-200. Game: Rabbit and Hares (amending 4VAC15-200-10).**

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

#### **Public Hearing Information:**

October 16, 2007 - 9 a.m. - Department of Game and Inland Fisheries, 4000 West Broad Street, Richmond, VA

**Public Comments:** Public comments may be submitted until September 24, 2007.

**Agency Contact:** Phil Smith, Policy Analyst, Regulatory Coordinator, and Freedom of Information Officer, Department of Game and Inland Fisheries, 4016 West Broad Street, Richmond, VA 23230, telephone (804) 367-1000, FAX (804) 367-0488, or email [regcomments@dgif.virginia.gov](mailto:regcomments@dgif.virginia.gov).

#### **Summary:**

*The proposed amendment changes the closing date of the rabbit season from February 14 to the last day in February, statewide.*

## **4VAC15-200-10. Open season; generally.**

Except as otherwise specifically provided by the sections appearing in this chapter, it shall be lawful to hunt rabbit from the Saturday prior to the first Monday in November through the last day in February 14, both dates inclusive.

VA.R. Doc. No. R07-806; Filed August 1, 2007, 10:30 a.m.

### **Proposed Regulation**

**Title of Regulation: 4VAC15-240. Game: Turkey (amending 4VAC15-240-20, 4VAC15-240-31, 4VAC15-240-40, 4VAC15-240-50; adding 4VAC15-240-11, 4VAC15-240-51).**

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

#### **Public Hearing Information:**

October 16, 2007 - 9 a.m. - Department of Game and Inland Fisheries, 4000 West Broad Street, Richmond, VA

**Public Comments:** Public comments may be submitted until September 24, 2007.

#### **Summary:**

*The proposed amendments shift the late segment of the six-week fall turkey season in most counties east of the Blue Ridge Mountains so that it begins on the Monday nearest December 2 and ends on the last Saturday in December and add the City of Suffolk, Accomack County, and Northampton County to the two-week and Thanksgiving Day fall turkey season*

*The proposed amendments also (i) shift the late segment of the four-week fall turkey season so that it begins on the Monday nearest December 2 and continues for 11 hunting days following; (ii) change the ending of legal shooting hours during the spring youth hunt day from 12 noon to sunset; (iii) remove Accomack and Northampton counties and the City of Suffolk from the continuous closed fall season regulation; and (iv) provide a youth fall turkey hunt day on the third Saturday in October for youth 15 years of age and under.*

**4VAC15-240-11. Open season; certain counties and areas; Saturday prior to the last Monday in October and for 11 hunting days following, on Thanksgiving Day, and on the Monday closest to December 2 through the last Saturday in December, both dates inclusive.**

Except as otherwise specifically provided in the sections appearing in this chapter, it shall be lawful to hunt turkeys in counties, cities and towns east of the Blue Ridge Mountains except Amherst (west of U.S. Route 29), Bedford, Campbell (west of Norfolk Southern Railroad), Franklin, Henry, Nelson (west of Route 151), Patrick and Pittsylvania (west of Norfolk Southern Railroad) from the Saturday prior to the last Monday in October and for 11 consecutive hunting days following, on Thanksgiving Day, and on the Monday nearest December 2 through the last Saturday in December, both dates inclusive.

**4VAC15-240-20. Open season; certain counties and areas; Saturday prior to the last Monday in October and for 11 hunting days following, and on Thanksgiving Day.**

It shall be lawful to hunt turkeys on the Saturday prior to the last Monday in October and for 11 consecutive hunting days following, and on Thanksgiving Day in the counties of Accomack, Buchanan, Isle of Wight, Northampton, Prince George, Southampton, Surry, and Sussex and the City of Suffolk.

**4VAC15-240-31. Open season; certain counties and areas; Saturday prior to the last Monday in October and for 11 hunting days following, on Thanksgiving Day, and on the Monday closest to December 9 2 and for 11 hunting days following.**

It shall be lawful to hunt turkeys on the Saturday prior to the last Monday in October and for 11 consecutive hunting days following, on Thanksgiving Day, and on the Monday closest to December 9 2 and for 11 hunting days following in the counties of Charles City, Gloucester, James City, King George, Lancaster, Mathews, Middlesex, New Kent, Northumberland, Richmond, Westmoreland, and York (except on Camp Peary).

**4VAC15-240-40. Open season; spring season for bearded turkeys.**

A. Except as otherwise provided in this section, it shall be lawful to hunt bearded turkeys from the second Saturday in April and for 30 consecutive hunting days following, both dates inclusive, from 1/2 hour before sunrise to 12:00 noon prevailing time during the first 19 hunting days and from 1/2 hour before sunrise to sunset during the last 12 hunting days of the spring season.

B. Turkey hunters 15 years of age and under may hunt on the first Saturday in April from 1/2 hour before sunrise to ~~12:00 noon prevailing time~~ sunset, when in compliance with applicable license requirements and when accompanied and directly supervised by an adult who has a valid Virginia hunting license on his person or an adult that is exempt from purchasing a hunting license. Adult hunters accompanying youth hunters on this day may assist with calling but they shall not carry or discharge weapons

C. Bearded turkeys may be hunted by calling.

D. It shall be unlawful to use dogs or organized drives for the purpose of hunting.

E. It shall be unlawful to use or have in possession any shot larger than number 2 fine shot when hunting turkeys with a shotgun.

**4VAC15-240-50. Continuous closed season in certain counties, cities and areas.**

There shall be continuous closed turkey season, except where a special spring season for bearded turkeys is provided

for in 4VAC15-240-40, in the ~~counties~~ county of ~~Accomack~~, Arlington, ~~and Northampton~~, and in the cities of Chesapeake, Hampton, Newport News, ~~Suffolk~~, and Virginia Beach.

**4VAC15-240-51. Youth fall turkey hunt.**

In counties, cities, and areas with a fall turkey season, hunters 15 years of age and under may hunt turkey on the third Saturday in October when in compliance with applicable license requirements and when accompanied and directly supervised by an adult who has a valid Virginia hunting license on his person or is exempt from purchasing a hunting license. Adult hunters accompanying youth hunters on this day may assist with calling turkey but they shall not carry or discharge weapons.

VA.R. Doc. No. R07-807; Filed August 1, 2007, 10:30 a.m.

**Proposed Regulation**

Title of Regulation: **4VAC15-260. Game: Waterfowl and Waterfowl Blinds (amending 4VAC15-260-140).**

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

Public Hearing Information:

October 16, 2007 - 9 a.m. - Department of Game and Inland Fisheries, 4000 West Broad Street, Richmond, VA

Public Comments: Public comments may be submitted until September 24, 2007.

Agency Contact: Phil Smith, Policy Analyst, Regulatory Coordinator, and Freedom of Information Officer, Department of Game and Inland Fisheries, 4016 West Broad Street, Richmond, VA 23230, telephone (804) 367-1000, FAX (804) 367-0488, or email [regcomments@dgif.virginia.gov](mailto:regcomments@dgif.virginia.gov).

Summary:

*The proposed amendment adds rails, snipe, moorhens, gallinules and mergansers to the list of species for which the use of nontoxic shot is required when hunting such species.*

**4VAC15-260-140. Nontoxic shot required for waterfowl hunting requirement for hunting of certain migratory game birds.**

It shall be unlawful to take or attempt to take ducks, geese, brant, swans, ~~or~~ coots, ~~mergansers~~, rails, snipe, gallinules or moorhens while possessing shotshells loaded with shot other than steel, bismuth-tin, tungsten-iron or other nontoxic shot approved for such use by the director of the department, if such shot is permissible under federal migratory waterfowl regulations.

VA.R. Doc. No. R07-813; Filed August 1, 2007, 10:30 a.m.

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# Regulations

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## Proposed Regulation

Title of Regulation: **4VAC15-270. Game: Firearms (amending 4VAC15-270-40; adding 4VAC15-270-80).**

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

Public Hearing Information:

October 16, 2007 - 9 a.m. - Department of Game and Inland Fisheries, 4000 West Broad Street, Richmond, VA

Public Comments: Public comments may be submitted until September 24, 2007.

Agency Contact: Phil Smith, Policy Analyst, Regulatory Coordinator, and Freedom of Information Officer, Department of Game and Inland Fisheries, 4016 West Broad Street, Richmond, VA 23230, telephone (804) 367-1000, FAX (804) 367-0488, or email regcomments@dgif.virginia.gov.

Summary:

*The proposed amendments allow licensed trappers to shoot a .22 caliber rimfire firearm on or over public waters for the purpose of dispatching trapped animals, and (ii) authorize department personnel to carry and shoot rifles and pistols while conducting wildlife management activities on public waters.*

*The proposed amendments also (i) allow the use of shotguns without a restriction on the number of shells in the magazine and chamber combined for the hunting of nonmigratory game, and (ii) authorize the director to remove the three shell limitation in shotguns when hunting migratory game birds if allowed by federal regulation.*

### **4VAC15-270-40. Shooting or carrying rifle or pistol over public inland waters.**

It shall be unlawful to shoot a rifle or pistol at wild birds or animals on or over the public inland waters of this Commonwealth; provided, however that licensed trappers may shoot a .22 caliber rimfire rifle or pistol on or over public inland waters for the purpose of dispatching a trapped animal. It shall be unlawful to carry a loaded rifle or pistol on a boat or other floating device on the public inland waters for the purpose of hunting wild birds and wild animals; provided, however, that unloaded rifles or pistols may be transported by boat from one point to another. Nothing in this regulation applies to department personnel conducting wildlife management activities on the public waters of the Commonwealth.

### **4VAC15-270-80. Shotgun shell capacity for nonmigratory game and migratory game birds.**

A. It shall be lawful to hunt nonmigratory game with unplugged shotguns.

B. It shall be unlawful to hunt migratory game birds with a shotgun capable of holding more than three shells in the magazine and chamber combined, unless otherwise authorized by the director and consistent with applicable federal regulations.

VA.R. Doc. No. R07-810; Filed August 1, 2007, 10:30 a.m.

## Proposed Regulation

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

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

Public Hearing Information:

October 16, 2007 - 9 a.m. - Department of Game and Inland Fisheries, 4000 West Broad Street, Richmond, VA

Public Comments: Public comments may be submitted until September 24, 2007.

Agency Contact: Phil Smith, Policy Analyst, Regulatory Coordinator, and Freedom of Information Officer, Department of Game and Inland Fisheries, 4016 West Broad Street, Richmond, VA 23230, telephone (804) 367-1000, FAX (804) 367-0488, or email regcomments@dgif.virginia.gov.

Summary:

*The proposed amendments (i) establish a "No walleye less than 18 inches" regulation in the Middle Fork Holston and South Fork Holston rivers, (ii) correct the "No possession (catch and release only)" demarcation lines for American shad and hickory shad by adding "above Harvell Dam" after "Appomattox River" and adding "and the Mattaponi River" after "Pamunkey River," (iii) modify anadromous (coastal) alewife and blueback herring creel and length limit regulations above and below the fall line in all coastal rivers of the Chesapeake Bay to be set by the Virginia Marine Resources Commission, and (iv) modify the creel and length limits for anadromous (coastal) alewife and blueback herring in the Meherrin, Nottoway, Blackwater (Chowan Drainage), North Landing, and Northwest rivers and their tributaries plus Back Bay to "No Possession."*

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

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

Type of fish	Subtype or location	Creel and length limits	Geographic exceptions	Creel or length limits for exceptions
largemouth bass, smallmouth bass, spotted bass		5 per day in the aggregate; No statewide length limits	<b>Lakes</b>	
			Briery Creek Lake	No bass 14 to 24 inches, only 1 per day longer than 24 inches
			Buggs Island (Kerr)	Only 2 of 5 bass less than 14 inches
			Claytor Lake	No bass less than 12 inches
			Flannagan Reservoir	No bass less than 12 inches
			Lake Gaston	Only 2 of 5 bass less than 14 inches
			Leesville Reservoir	Only 2 of 5 bass less than 14 inches
			Lake Moomaw	No bass less than 12 inches
			Philpott Reservoir	No bass less than 12 inches
			Quantico Marine Base waters	No bass 12 to 15 inches
			Smith Mt. Lake and its tributaries below Niagara Dam	Only 2 of 5 bass less than 14 inches
			<b>Rivers</b>	
			Clinch River – within the boundaries of Scott, Wise, Russell, or Tazewell counties	No bass 11 to 14 inches
			Dan River and tributaries down stream from the Brantley Steam Plant, Danville	Only 2 of 5 bass less than 14 inches
			James River – Confluence of the Jackson and Cowpasture rivers (Botetourt County) downstream to the 14th Street Bridge in Richmond	No bass 14 to 22 inches, only 1 per day longer than 22 inches
			New River – Fields Dam (Grayson County) downstream to the VA – WV state line and its tributary Little River downstream from Little River Dam in Montgomery County (This does not include Claytor Lake which is delineated as: The upper end of the island at Allisonia downstream to the dam)	No bass 14 to 20 inches, only 1 per day longer than 20 inches
			North Fork Holston River - Rt. 91 bridge upstream of Saltville, VA downstream to the VA-TN state line	No bass less than 20 inches, only 1 per day longer than 20 inches

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			North Fork Shenandoah River – Rt. 42 bridge, Rockingham Co. downstream to the confluence with S. Fork Shenandoah at Front Royal	No bass 11 to 14 inches
			Potomac River - Virginia tidal tributaries above Rt. 301 bridge	No bass less than 15 inches from March 1 through June 15
			Roanoke (Staunton) River - and its tributaries below Difficult Creek, Charlotte Co.	Only 2 of 5 bass less than 14 inches
			Shenandoah River – Confluence of South Fork and North Fork rivers, Front Royal, downstream, to the Warren Dam, near Front Royal	No bass 11 to 14 inches
			Base of Warren Dam, near Front Royal downstream to Rt. 17/50 bridge	No bass 14 to 20 inches, only 1 per day longer than 20 inches
			Rt. 17/50 bridge downstream to VA - WV state line	No bass 11 to 14 inches
			South Fork Shenandoah River - Confluence of North and South rivers, below Port Republic, downstream to Shenandoah Dam, near Town of Shenandoah	No bass 11 to 14 inches
			Base of Shenandoah Dam, near Town of Shenandoah, downstream to Luray Dam, near Luray	No bass 14 to 20 inches, only 1 per day longer than 20 inches
			Base of Luray Dam, near Luray, downstream to the confluence with North Fork of Shenandoah, Front Royal	No bass 11 to 14 inches
striped bass	landlocked striped bass and landlocked striped bass x white bass hybrids	4 per day in the aggregate; No fish less than 20 inches	Buggs Island (Kerr) reservoir including the Staunton River to Leesville Dam and the Dan River to Brantly Steam Plant (Danville)	October 1 - May 31: 2 per day in the aggregate; No striped bass less than 26 inches; June 1 - September 30: 4 per day in the aggregate; No length limit
			Smith Mountain Lake and its tributaries, including the Roanoke River upstream to Niagara Dam	2 per day in the aggregate; October 1 - May 31: No striped bass 26 to 36 inches; June 1 - September 30: No length limit

	anadromous (coastal) striped bass above the fall line in all coastal rivers of the Chesapeake Bay	Creel and length limits shall be set by the Virginia Marine Resources Commission for recreational fishing in tidal waters		
	anadromous (coastal) in the Meherrin, Nottoway, Blackwater (Chowan Drainage), North Landing and Northwest Rivers and their tributaries plus Back Bay	2 per day; No striped bass less than 18 inches		
white bass		5 per day; No statewide length limits		
walleye		5 per day; No statewide length limits	Flannagan, Philpott, and South Holston reservoirs, <u>and the Middle Fork Holston and South Fork Holston rivers</u>	No walleye less than 18 inches
			Claytor Lake and New River upstream of Claytor Lake Dam	No walleye less than 20 inches
sauger		2 per day; No statewide length limits		
chain pickerel		5 per day; No statewide length limits	Gaston and Buggs Island (Kerr) reservoirs	No daily limit
northern pike		2 per day; No pike less than 20 inches		
muskellunge		2 per day; No muskellunge less than 30 inches	New River - Fields Dam (Grayson County) downstream to the VA - WV state line, including Claytor Lake	1 per day No muskellunge less than 42 inches
bluegill (breem) and other sunfish excluding crappie, rock bass (redeye) and Roanoke bass		50 per day in the aggregate; No statewide length limits	Gaston and Buggs Island (Kerr) reservoirs and that portion of the New River from the VA - NC state line downstream to the confluence of the New and Little Rivers in Grayson County	No daily limit

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crappie (black or white)		25 per day in the aggregate; No statewide length limits	Gaston and Buggs Island (Kerr) reservoirs and that portion of the New River from the VA - NC state line downstream to the confluence of the New and Little Rivers in Grayson County	No daily limit
			Flannagan and South Holston reservoirs	No crappie less than 10 inches
rock bass (redeye)		25 per day; No statewide length limits	Gaston and Buggs Island (Kerr) reservoirs and that portion of the New River from the VA - NC state line downstream to the confluence of the New and Little Rivers in Grayson County.	No daily limit
			Nottoway and Meherrin rivers and their tributaries	5 per day in the aggregate with Roanoke bass; No rock bass less than 8 inches
Roanoke bass		No statewide daily limit; No statewide length limits	Nottoway and Meherrin rivers and their tributaries	5 per day in the aggregate with rock bass; No Roanoke bass less than 8 inches
trout	See 4VAC15-330. Fish: Trout Fishing.			
catfish	channel, white, and flathead catfish	20 per day; No length limits	All rivers below the fall line	No daily limit
	blue catfish	20 per day, only 1 blue catfish per day longer than 32 inches	All rivers below the fall line	No daily limit, except only 1 blue catfish per day longer than 32 inches
	yellow, brown, and black bullheads	No daily limit; No length limits		

American shad and hickory shad	James River above the fall line (14th Street Bridge), the Meherrin River above Emporia Dam, the Chickahominy River above Walkers Dam, the Appomattox River <del>and above Harvell Dam</del> , the Pamunkey River <u>and the Mattaponi River</u> above the Rt. 360 bridge, and the Rappahannock River above the Rt. 1 bridge	No possession (catch and release only)		
	(below the fall line) in tidal rivers of the Chesapeake Bay	Creel and length limits shall be those set by the Virginia Marine Resources Commission		
	Meherrin River below Emporia Dam Nottoway River, Blackwater River (Chowan Drainage), North Landing and Northwest rivers, and their tributaries plus Back Bay	10 per day in the aggregate No length limits		

# Regulations

anadromous (coastal) alewife and blueback herring	James River above Boshers Dam, the Meherrin River above Emporia Dam, the Chickahominy River above Walkers Dam, the Appomattox River above Harvell Dam, the South Anna River above the U.S. Rt. 1 bridge, and the Rappahannock River above Embrey Dam	No possession (catch and release only)		
	Above and below the fall line in <del>tidal</del> <u>tidal</u> <u>all</u> <u>coastal</u> rivers of the Chesapeake Bay	Creel and length limits shall be those set by the Virginia Marine Resources Commission		
	Meherrin River below Emporia Dam, Nottoway River, Blackwater River (Chowan Drainage), North Landing and Northwest rivers, and their tributaries plus Back Bay	No <u>daily limits</u> <u>possession</u> No length limits		
other native or naturalized nongame fish	See 4VAC15-360-10. Fish: Aquatic Invertebrates, Amphibians, Reptiles, and Nongame Fish. Taking aquatic invertebrates, amphibians, reptiles and nongame fish for private use.			
endangered or threatened fish	See 4VAC15-20-130. Definitions and Miscellaneous: In General. Endangered and threatened species; adoption of federal list; additional species enumerated.			
nonnative (exotic) fish	See 4VAC15-30-40. Definitions and Miscellaneous: Importation, Possession, Sale, Etc., of Animals. Importation requirements, possession and sale of nonnative (exotic) animals.			

V.A.R. Doc. No. R07-819; Filed August 1, 2007, 10:31 a.m.

**Proposed Regulation**

**Title of Regulation:** 4VAC15-330. **Fish:** Trout Fishing (amending 4VAC15-330-30, 4VAC15-330-100, 4VAC15-330-120, 4VAC15-330-160, 4VAC15-330-171, 4VAC15-330-200).

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

**Public Hearing Information:**

October 16, 2007 - 9 a.m. - Department of Game and Inland Fisheries, 4000 West Broad Street, Richmond, VA

**Public Comments:** Public comments may be submitted until September 24, 2007.

**Agency Contact:** Phil Smith, Policy Analyst, Regulatory Coordinator, and Freedom of Information Officer, Department of Game and Inland Fisheries, 4016 West Broad Street, Richmond, VA 23230, telephone (804) 367-1000, FAX (804) 367-0488, or email regcomments@dgif.virginia.gov.

**Summary:**

*The proposed amendments (i) remove Philpott Reservoir from waters that have a special daily creel limit of two trout; (ii) clarify that once trout are caught and taken into possession by an angler, these trout become part of that angler's daily creel and cannot be released (culled); (iii) clarify that a multiple number of single-hook artificial lures, such as dropper flies, fished in a series, may be used in single-hook artificial lure only waters; (iv) remove the*

*special trout regulation section of Jackson River from the "16-inch minimum size (no trout less than 16 inches), 2 trout/day, only artificial lures with single hooks" special regulation trout streams and move it to 4VAC15-330-171, to clarify the types of lures that can be used on this portion of stream; (v) expand the current 1.9-mile section to a 3.1-mile section of Accotink Creek (Fairfax County) that is a delayed harvest trout stream (catch and release from October 1 - May 31; trout may be creeled from June 1 - September 30); (vi) add the "16-inch minimum size (no fish less than 16 inches), 2 trout/day" special trout regulation section of Jackson River from the swinging bridge located just upstream from the mouth of Muddy Run, upstream three miles to the last ford on FS 481D, to existing special regulation 4VAC15-330-171 for Jackson River as subsection B, in order to clarify that multiple-hook artificial lures can be used; and (vii) clarify that, in Urban Fishing Program waters, once trout are caught and taken into possession by an angler, these trout become part of that angler's daily creel and cannot be released (culled).*

**4VAC15-330-30. Creel limit; generally.**

Except as otherwise specifically provided in the sections appearing in this chapter, the daily creel limit for taking trout

shall be six, except the daily creel limit shall be two in Lake Moomaw and Philpott reservoirs. Once a trout is taken into possession by placing in the creel, it becomes a part of the daily creel limit and may not be released (culled).

**4VAC15-330-100. "Artificial lure" defined.**

For the purposes of this chapter "artificial lure" shall include manufactured or handmade flies, spinners, plugs, spoons and facsimiles of live animals, but shall not be construed to include artificially produced organic baits and fish eggs that are intended to be ingested. Artificial lures with single hook shall mean any single point lure (with no multiple point hooks). Where single-hook artificial lures are required, a multiple number of single-hook lures (such as dropper flies) fished in series are permitted.

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

A. It shall be lawful year around to fish using only artificial lures with single hooks in that portion of Buffalo Creek in Rockbridge County from the confluence of Colliers Creek upstream 2.9 miles to the confluence of North and South Buffalo Creeks, in that portion of Smith River in Henry County from signs below the east bank of Towne Creek downstream to the State Route 666 (Trent Hill Road) bridge, in that portion of the Dan River in Patrick County from Talbott Dam approximately six miles downstream to a sign posted just upstream from the confluence of Dan River and Townes Reservoir, in that portion of the Pound River from a sign posted 0.4 miles below the Flannagan Dam, downstream 1.2 miles to a sign posted just upstream of the confluence of the Pound River and the Russell Fork River, in that portion of the South Fork Holston River in Smyth County from a sign posted at the upper Jefferson National Forest boundary downstream approximately four miles to a sign posted 500 feet upstream of the concrete dam at Buller Fish Culture Station, and in that portion of Roaring Run in Botetourt County from a sign posted at the third footbridge above the Roaring Run Furnace Day Use Area upstream approximately one mile to a sign posted at the Botetourt/Alleghany County line, and in that portion of Jackson River in Bath County from the swinging bridge located just upstream from the mouth of Muddy Run upstream three miles to the last ford on FS 481D.

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

**4VAC15-330-160. Special provisions applicable to certain portions of Accotink Creek, Back Creek, Chestnut Creek, Hardware River, Holliday Creek, Holmes Run, North**

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# Regulations

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## **River, Passage Creek, Peak Creek, Pedlar River, North Fork of Pound and Pound rivers, Roanoke River, and South River.**

It shall be lawful to fish from October 1 through May 31, both dates inclusive, using only artificial lures in Accotink Creek (Fairfax County) from ~~Route 236 (Little River Turnpike)~~ King Arthur Road downstream ~~4.9~~ 3.1 miles to Route 620 (Braddock Road), in Back Creek (Bath County) from the Route 600 bridge just below the Virginia Power Back Creek Dam downstream 1.5 miles to the Route 600 bridge at the lower boundary of the Virginia Power Recreational Area, in Chestnut Creek (Carroll County) from the U.S. Route 58 bridge downstream 11.4 miles to the confluence with New River, in the Hardware River (Fluvanna County) from the Route 646 bridge upstream 2.6 miles to Muleshoe Bend as posted, in Holliday Creek (Appomattox/Buckingham Counties) from the Route 640 crossing downstream 2.8 miles to a sign posted at the headwaters of Holliday Lake, in Holmes Run (Fairfax County) from the Lake Barcroft Dam downstream 1.2 miles to a sign posted at the Alexandria City line, in the North River (Augusta County) from the base of Elkhorn Dam downstream 1.5 miles to a sign posted at the head of Staunton City Reservoir, in Passage Creek (Warren County) from the lower boundary of the Front Royal State Hatchery upstream 0.9 miles to the Shenandoah/Warren County line, in Peak Creek (Pulaski County) from the confluence of Tract Fork downstream 2.7 miles to the Route 99 bridge, in the Pedlar River (Amherst County) from the City of Lynchburg/George Washington National Forest boundary line (below Lynchburg Reservoir) downstream 2.7 miles to the boundary line of the George Washington National Forest, in North Fork of Pound and Pound rivers from the base of North Fork of Pound Dam downstream to the confluence with Indian Creek, in the Roanoke River (Roanoke County) from the Route 760 bridge (Diuguids Lane) upstream 1.0 miles to a sign posted at the upper end of Green Hill Park (Roanoke County), in the Roanoke River (City of Salem) from the Route 419 bridge upstream 2.2 miles to the Colorado Street bridge, and in the South River from the Second Street Bridge upstream 2.4 miles to the base of Rife Loth Dam in the City of Waynesboro. From October 1 through May 31, all trout caught in these waters must be immediately returned to the water unharmed, and it shall be unlawful for any person to have in possession any bait or trout. During the period of June 1 through September 30, the above restrictions will not apply.

### **4VAC15-330-171. Special provisions applicable to certain portion portions of Jackson River.**

A. The daily creel limit shall be four trout per day and the minimum size limit shall be 12 inches in length on that portion of the Jackson River from Gathright Dam downstream to the Westvaco Dam at Covington in Alleghany County. All trout caught in this section of the Jackson River under 12 inches in length shall be immediately returned to the

water. It shall be unlawful for any person to have in his possession any trout under 12 inches in length in this area.

B. The trout daily creel limit shall be two, the minimum size limit shall be 16 inches in length, and only artificial lures may be used in that portion of Jackson River in Bath County from the swinging bridge located just upstream from the mouth of Muddy Run, upstream three miles to the last ford on FS 481D. All trout caught in these waters under 16 inches in length shall be immediately returned to the water unharmed. It shall be unlawful for any person to have in his possession any bait or any trout under 16 inches in length in these areas.

### **4VAC15-330-200. Special provisions applicable to Urban Fishing Program waters.**

Waters selected by the director for inclusion into the Urban Fishing Program will be considered designated stocked trout waters only from November 1 through April 30, thus a trout license is not required from May 1 through October 31. In addition, trout may be creeled from these waters year around and the daily trout creel limit shall be four. Once a trout is taken into possession by placing in the creel, it becomes a part of the daily creel limit and may not be released (culled).

V.A.R. Doc. No. R07-820; Filed August 1, 2007, 10:31 a.m.

### **Proposed Regulation**

Title of Regulation: **4VAC15-340. Fish: Seines and Nets (amending 4VAC15-340-10, 4VAC15-340-30, 4VAC15-340-40).**

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

Public Hearing Information:

October 16, 2007 - 9 a.m. - Department of Game and Inland Fisheries, 4000 West Broad Street, Richmond, VA

Public Comments: Public comments may be submitted until September 24, 2007.

Agency Contact: Phil Smith, Policy Analyst, Regulatory Coordinator, and Freedom of Information Officer, Department of Game and Inland Fisheries, 4016 West Broad Street, Richmond, VA 23230, telephone (804) 367-1000, FAX (804) 367-0488, or email regcomments@dgif.virginia.gov.

Summary:

*The proposed amendments make it illegal to harvest anadromous (coastal) alewife and blueback herring using (i) a haul seine and gill nets in Virginia Beach area waters and (ii) dip nets.*

### **4VAC15-340-10. Haul seines to take fish for sale.**

A. Authorization to take fish for sale. A haul seine permit shall authorize the person to whom issued to take fish for sale

as specified with a haul seine from the waters designated in this section.

B. Permit holder to be present when seine operated. The holder of a haul seine permit must be present with the seine at all times when it is being operated. The holder, however, may have others to assist him and such persons assisting are not required to have a permit.

C. Length and size of nets. The length of haul seine nets shall not be more than 500 yards. The size of mesh shall be 1-1/2 inch bar mesh.

D. Season and fish to be taken in Virginia Beach City. In Back Bay and its natural tributaries (not including Lake Tecumseh and Red Wing Lake), North Landing River from the North Carolina line to Pungo Ferry (not including Blackwater River), the open season to take all fish, except game fish, alewife, and blueback herring, with a haul seine shall be from November 1 through March 31, both dates inclusive. The harvest limit for anadromous American and hickory shad shall be 10 per day, in the aggregate.

E. Labeling packages containing fish taken with haul seine. It shall be unlawful for any person to ship or otherwise transport any package, box or other receptacle containing fish taken under a haul seine permit unless the same bears a label showing the name and address of the owner of the seine and a statement of the kind of fish contained in it.

F. Reporting. The holder of a permit to take fish for sale by means of haul seines shall keep a record of the pounds of fish taken by species and location (name and county of water body), and the pounds of each species sold.

**4VAC15-340-30. Gill nets.**

A. Authorization to take fish. A gill net permit shall authorize the holder thereof to take nongame fish during the times and in the waters and for the purposes provided for in this section. Such gill net shall not be more than 300 feet in length. The mesh size shall be not less than 1 inch bar or square mesh (three-inch stretch mesh). Applicants must annually purchase tags for each net the applicant intends to operate and attach a department tag to each net prior to use. A single permit will be issued to the permittee and shall list each tag number the permittee has been issued. All nets must be checked daily and all game fish returned to the wild.

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

C. Times and places permitted in Virginia Beach City; fish which may be taken. Gill nets may be used in Virginia Beach City in Back Bay and its natural tributaries (not including

Lake Tecumseh and Red Wing Lake) and North Landing River from the North Carolina line to Pungo Ferry (not including Blackwater River) for the taking of mullet only for table use and also for sale from July 1 through November 1, both dates inclusive; and for the taking of other nongame fish, except mullet, alewife, and blueback herring, for table use and also for sale from November 1 through March 31, both dates inclusive. The harvest limit for anadromous American and hickory shad shall be 10 per day, in the aggregate. Gill nets set in Back Bay waters shall be at least 300 feet from any other net and at least 300 feet from the shoreline. All such nets must be marked at both ends and at least every 100 feet along the length of the net with a five-inch by 12-inch minimum dimensions float.

**4VAC15-340-40. Dip nets; generally.**

A. Authorization to take fish with dip nets. A county dip net permit shall authorize the holder to take shad, ~~herring~~, mullet and suckers (daily creel (possession) limits for shad ~~and herring~~ are found in 4VAC15-320-25, there is no limit for mullet, and subsection D of this section provides limits for suckers), in the county named on the face of the permit with a dip net in inland waters, except where otherwise prohibited by local legislation or by the sections appearing in this chapter.

B. Persons required to have permit; inspection by game wardens. A dip net permit, or valid fishing license, shall be required for all persons using or assisting in the use of a dip net and permits, or licenses, shall be carried at all times while using such nets and shall be subject to inspection by game wardens.

C. Release of certain fish netted. All fish, except shad, ~~herring~~, mullet, suckers and carp, when taken with a dip net shall be returned to the water alive with as little injury as possible.

D. Special provisions applicable only to suckers. The following special provisions shall apply only to the taking of suckers, with a dip net:

1. Not more than 20 may be taken by any person in one day;
2. The open season for taking same with a dip net shall be from February 15 through May 15, both dates inclusive; and
3. Dip nets for taking such fish shall not be more than six feet square.

VA.R. Doc. No. R07-821; Filed August 1, 2007, 10:31 a.m.

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# Regulations

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## Proposed Regulation

**Title of Regulation:** **4VAC15-350. Fish: Gigs, Grab Hooks, Trotlines, Snares, Etc (amending 4VAC15-350-20, 4VAC15-350-30, 4VAC15-350-60, 4VAC15-350-70).**

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

**Public Hearing Information:**

October 16, 2007 - 9 a.m. - Department of Game and Inland Fisheries, 4000 West Broad Street, Richmond, VA

**Public Comments:** Public comments may be submitted until September 24, 2007.

**Agency Contact:** Phil Smith, Policy Analyst, Regulatory Coordinator, and Freedom of Information Officer, Department of Game and Inland Fisheries, 4016 West Broad Street, Richmond, VA 23230, telephone (804) 367-1000, FAX (804) 367-0488, or email regcomments@dgif.virginia.gov.

**Summary:**

*The proposed amendments (i) add a reference to clarify the creel and length limits for nongame fish, (ii) add the word "common" to "carp," (iii) add northern snakehead to the list of fish that can be taken with a bow and arrow, (iv) remove "crossbows" from the prohibited type of bows and arrows, and (v) add a section to clarify that an unlimited number of common carp, northern snakehead, and gar can be taken with a bow and arrow, and snakeheads must be reported to the department.*

**4VAC15-350-20. Gigs, grab hooks, etc.; certain counties east of the Blue Ridge Mountains.**

It shall be lawful to take nongame fish (daily creel (possession) and length limits for nongame fish are found in 4VAC15-320-25) at any time by snagging, grabbing, snaring, gigging, and with a striking iron in all waters of the following counties, except public impoundments, the Roanoke (Staunton) and Dan rivers, the James River in Goochland County and those waters stocked by the department: Amelia, Appomattox, Brunswick, Buckingham, Campbell, Charlotte, Cumberland, Dinwiddie, Goochland, Greenville, Halifax, Louisa, Lunenburg, Mecklenburg, Nottoway, Pittsylvania and Prince Edward.

**4VAC15-350-30. Gigs, grab hooks, etc.; certain counties west of the Blue Ridge Mountains.**

Except as otherwise provided by local legislation, it shall be lawful to take nongame fish (daily creel (possession) and length limits for nongame fish are found in 4VAC15-320-25) in the daytime by snagging, grabbing, snaring, gigging, and with a striking iron from April 1 through May 15, both dates inclusive, and October 1 through November 30, both dates inclusive, in the following waters: Buchanan County, all

waters except Dismal River; Grayson County, New River; Lee County, Powell River; Russell County, Clinch River; Scott County, Clinch River and its tributaries; Tazewell County, Dry Run Creek; Washington County, Middle and South Forks of the Holston River; Wise County, Clinch River. The bag limit for taking suckers or red horse provided for in this section shall be 20 per day.

**4VAC15-350-60. Trotlines, juglines or set poles.**

A. Generally. Except as otherwise provided by local legislation and by subsection B of this section, and except on waters stocked with trout and within 600 feet of any dam, it shall be lawful to use trotlines, juglines or set poles for the purpose of taking nongame fish (daily creel (possession) and length limits for nongame fish are found in 4VAC15-320-25) and turtles (limits for turtles are found in 4VAC15-360-10), provided that no live bait is used. Notwithstanding the provisions of this section, live bait other than game fish may be used on trotlines to take catfish in the Clinch River in the Counties of Russell, Scott and Wise. Any person setting or in possession of a trotline, jugline or set pole shall have it clearly marked by permanent means with his name, address and telephone number, and is required to check all lines at least once each day and remove all fish and animals caught. This requirement shall not apply to landowners on private ponds, nor to a bona fide tenant or lessee on private ponds within the bounds of land rented or leased by him, nor to anyone transporting any such device from its place of purchase.

B. Quantico Marine Reservation. It shall be unlawful to fish with trotlines in any waters within the confines of Quantico Marine Reservation.

**4VAC15-350-70. Taking common carp, northern snakehead, and gar with bow and arrow.**

A. Season. Except as otherwise provided by local legislation or as posted, it shall be lawful to take common carp, northern snakehead, and gar from the public inland waters of the Commonwealth, except waters stocked with trout, by means of bow and arrow.

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

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

D. Creel limits. Common carp, northern snakehead, and gar – unlimited, provided that any angler taking northern snakehead immediately kill such fish and notify the department, as soon as practicable, of such actions.

VA.R. Doc. No. R07-822; Filed August 1, 2007, 10:31 a.m.

**Proposed Regulation**

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

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

**Public Hearing Information:**

October 16, 2007 - 9 a.m. - Department of Game and Inland Fisheries, 4000 West Broad Street, Richmond, VA

**Public Comments:** Public comments may be submitted until September 24, 2007.

**Agency Contact:** Phil Smith, Policy Analyst, Regulatory Coordinator, and Freedom of Information Officer, Department of Game and Inland Fisheries, 4016 West Broad Street, Richmond, VA 23230, telephone (804) 367-1000, FAX (804) 367-0488, or email regcomments@dgif.virginia.gov.

**Summary:**

*The proposed amendment allows for (i) personal possession of selected species under certain conditions, (ii) liberation of certain species of native species of wildlife captured and held live under certain conditions, and (iii) use of turtle traps (hoop nets) for the taking of snapping turtles.*

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

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

1. The following species may be taken in unlimited numbers from inland waters statewide: carp, bowfin, longnose gar, mullet, yellow bullhead, brown bullhead, black bullhead, flat bullhead, snail bullhead, white sucker, northern hogsucker, gizzard shad, threadfin shad, blueback herring (see 4VAC15-320-25 for anadromous blueback herring limits), white perch, yellow perch, alewife (see 4VAC15-320-25 for anadromous alewife limits), stoneroller (hornyhead), fathead minnow, golden shiner, and goldfish.

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

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

4. The daily limit for bullfrogs and snapping turtles shall be 15 and bullfrogs and snapping turtles may not be taken from the banks or waters of designated stocked trout waters.

5. The following species may not be taken in any number for private use: candy darter, eastern hellbender, diamondback terrapin, and spotted turtle. Any individual of these species possessed in captivity in Virginia on June 30, 2006, may be maintained in captivity until the animal's death, but the animal may not be sold or released on or after July 1, 2006. Any transfer of animals must have prior authorization of the director or his designee and may only be made to an educational facility.

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

a. Period of captivity does not exceed 30 days;

b. Animals must be liberated at the site of capture;

c. Animals must have been housed separately from other wild-caught and domestic animals; and

d. Animals that demonstrate symptoms of disease or illness or that have sustained injury during their captivity may not be released.

B. Methods of taking species in subsection A. Except as otherwise provided for in the Code of Virginia, 4VAC15-20-130, 4VAC15-320-40, and other regulations of the board, and except in any waters where the use of nets is prohibited, the species listed in subsection A may only be taken by hand, hook and line, with a seine not exceeding four feet in depth by 10 feet in length, an umbrella type net not exceeding five by five feet square, small minnow traps with throat openings no larger than one inch in diameter, cast nets, and hand-held bow nets with diameter not to exceed 20 inches and handle length not to exceed eight feet (such cast net and hand-held bow nets when so used shall not be deemed dip nets under the provisions of §29.1-416 of the Code of Virginia). Gizzard

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# Regulations

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shad and white perch may also be taken from below the fall line in all tidal rivers of the Chesapeake Bay using a gill net in accordance with Virginia Marine Resources Commission recreational fishing regulations. Bullfrogs may also be taken by gigging or bow and arrow and, from private waters, by firearms no larger than .22 caliber rimfire. Snapping turtles may be taken for personal use with hoop nets not exceeding six feet in length with a throat opening not exceeding 36 inches.

C. Areas restricted from taking mollusks. Except as provided for in §§29.1-418 and 29.1-568 of the Code of Virginia, it shall be unlawful to take mussels and the spiny river snail (*Io fluviatilis*) in the Tennessee drainage in Virginia (Clinch, Powell and the North, South and Middle Forks of the Holston Rivers and tributaries). It shall be unlawful to take mussels in the James River and tributaries west of U.S. Route 29, in the entire North Fork of the Shenandoah River, and in the entire Nottoway River.

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

VA.R. Doc. No. R07-825; Filed August 1, 2007, 10:31 a.m.

## VIRGINIA SOIL AND WATER CONSERVATION BOARD

### Proposed Regulation

Title of Regulation: **4VAC50-20. Impounding Structure Regulations (amending 4VAC50-20-20 through 4VAC50-20-90, 4VAC50-20-150 through 4VAC50-20-180, 4VAC50-20-200 through 4VAC50-20-240, 4VAC50-20-260 through 4VAC50-20-320; adding 4VAC50-20-52, 4VAC50-20-54, 4VAC50-20-58, 4VAC50-20-105, 4VAC50-20-125, 4VAC50-20-155, 4VAC50-20-165, 4VAC50-20-175, 4VAC50-20-177, 4VAC50-20-330, 4VAC50-20-340, 4VAC50-20-350, 4VAC50-20-360, 4VAC50-20-370, 4VAC50-20-380, 4VAC50-20-390, 4VAC50-20-400; repealing 4VAC50-20-100, 4VAC50-20-110, 4VAC50-20-120, 4VAC50-20-130, 4VAC50-20-140, 4VAC50-20-250).**

Statutory Authority: §10.1-605 of the Code of Virginia.

#### Public Hearing Information:

October 4, 2007 - 7 p.m. - Roanoke City Council Chambers, Noel C. Taylor Municipal Building, 215 Church Avenue Southwest, Roanoke, VA 24011

October 9, 2007 - 7 p.m. - Hampton City Hall, 22 Lincoln Street, 8th Floor, Hampton, VA 23669

October 10, 2007 - 7 p.m. - Henrico County Government Complex Board Room, 4301 East Parham Road, Richmond, VA 23228

October 11, 2007 - 7 p.m. - Augusta County Government Center, 18 Government Center Lane, Verona, VA 24482

October 16, 2007 - 7 p.m. - City of Manassas Council Chambers, 9027 Center Street, Manassas, VA 20110

Public Comments: Public comments may be submitted until 5 p.m. on October 19, 2007.

Agency Contact: David C. Dowling, Policy, Planning, and Budget Director, Department of Conservation and Recreation, 203 Governor Street, Suite 302, Richmond, VA 23219, telephone (804) 786-2291, FAX (804) 786-6141, or email david.dowling@dcr.virginia.gov.

Basis: The Virginia Dam Safety Act (§10.1-604 et seq. of the Code of Virginia) ensures public safety through the proper and safe design, construction, operation, and maintenance of impounding structures in the Commonwealth. This is accomplished through the effective administration of the Virginia Dam Safety Program (program). Authority for the program rests with the Virginia Soil and Water Conservation Board (board) and it is administered on behalf of the board by the Department of Conservation and Recreation's Division of Dam Safety and Floodplain Management. The program focuses on enhancing public safety through bringing all impounding structures of regulated size under Regular Operation and Maintenance Certificates.

Pursuant to §10.1-605, the board is directed to promulgate regulations for impounding structures.

Purpose: As there have been no regulatory changes made to the impounding structure regulations since the late 1980's except to update the definition of regulated dams to conform it with the 2001 legislative change in definition (Chapter 92 (SB1166) of the 2001 Virginia Acts of Assembly), it was determined that this body of regulations required a substantive review and potential revisions. Since the 1980's, public safety concerns have evolved and engineering and technology and methodologies have advanced. These events have resulted in the need to consider amendments to the regulations. Further with the significant revisions made to the Virginia Dam Safety Act during the 2006 legislative session (Chapter 30 (HB597) of the 2006 Virginia Acts of Assembly) it is necessary to update the regulations to reflect those revised and enhanced powers and authorities. It has also been determined that the administration and implementation of the Dam Safety Program could be improved through regulatory updates and that the intent and procedures embodied within the regulations could be clarified for the regulated community's and the public's benefit.

For the purposes outlined above and most importantly for the purpose of protecting the safety and welfare of the public and

their property from the impacts of a dam failure, this regulatory action amends the Virginia Soil and Water Conservation Board's Impounding Structure Regulations to:

1. Revise the dam hazard potential classification system;
2. Specify that spillway design requirements are applicable to all state regulated dams;
3. Modify the spillway design requirements to enhance public safety and reduce subjectivity;
4. Allow for the potential reduction of the spillway design flood requirement through an incremental damage assessment for all qualified dams;
5. Establish dam break inundation zone mapping requirements;
6. Expand emergency action plan requirements for High and Significant Hazard Potential dams and emergency preparedness plan requirements for Low Hazard Potential dams;
7. Establish permit application fees for the administration of the Dam Safety Program that will create a stream of revenue sufficient to support an additional dam safety engineer;
8. Remove the forms that are incorporated by reference and move reporting standards into the regulations;
9. Create new definitions or modify current definitions;
10. Reorganize, clarify, and expand sections related to permitting procedures; and
11. Update sections related to inspections, enforcement, and unsafe conditions.

Making these key modifications to the regulations will result in a Dam Safety Program that will be better able to protect the public's safety, treat all dam owners similarly and fairly in accordance with the regulations, increase awareness of dams and their potential impacts within local governments and their citizens, and help improve the administration of the program to the benefit of the public. The implementation of the criteria established in this regulation should minimize dam failure and the potential significant impacts associated with such a failure.

It should also be noted that many of these impounding structures also have environmental benefits in that they serve as sediment retention basins thus improving water quality. However, alternatively, the failure of such an impounding structure may result in significant downstream environmental damages should the sediment be released.

Substance:

Key provisions of this regulatory action include the following:

1. A revision of the dam classification system from four categories (Class I, II, III, and IV) to three hazard classifications (High, Significant, and Low). This will conform the classification categories to those used by federal agencies and many states. Functionally, the change will primarily involve grouping Class III and Class IV dams together into the Low category. Currently the Class IV dams do not have to have an engineer, an inspection, or an Emergency Action Plan (EAP). It was determined that all dams should be regulated similarly for dam safety purposes.

2. A specification that the Spillway Design Flood requirements (Table 1) are applicable to all dams not just "new" (post July 1982) dams. In addition, Table 1 is revised to:

- a. Reflect the revised dam classifications.
- b. Update spillway design requirements to enhance public safety and to move towards federal standards.
- c. Eliminate spillway design flood ranges that may result in inconsistency in application.
- d. Require that the spillway of all High hazard dams be engineered to pass the full Probable Maximum Flood.
- e. Specify minimum thresholds for incremental damage assessment. It was determined that for the purposes of public safety that all dams should be regulated in accordance with standardized spillway design requirements and evaluation procedures.

3. The creation of a new section that allows for the potential reduction of the spillway design flood requirement through an incremental damage assessment for those dams meeting the specified administrative requirements. This would now be applicable to all eligible dams where previously it was only available to dams constructed prior to July 1982. Additionally, it is specified that the spillway design flood shall not be reduced below the minimum threshold values as determined by Table 1. In consultation with the technical advisory committee, it was determined that the incremental damage assessment should be made available to all dam owners to see if a reduction in the required Spillway Design flood (SDF) could be considered where the breach of a dam would not significantly worsen downstream flooding. It was determined that a minimum threshold be established below which the SDF could not be reduced to set out a baseline that adequately protects public safety.

4. The creation of a new section that sets out dam break inundation zone mapping requirements. In consultation with the TAC, it was determined that both for hazard potential classification determination for all dams and for Emergency Action Plans for High and Significant dams that a dam break inundation zone map should be required.

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The map will specify the areas that might be inundated during both a sunny day failure and a probable maximum flood (PMF) failure in order to demonstrate the levels where failure of the dam does not further constitute a hazard to downstream life or property. The areas to be impacted during a break should be the areas of focus for emergency warnings and evacuations.

5. A specification that for each Operation and Maintenance certificate (Regular or Conditional) issued, the impounding structure owner shall send a copy of the certificate to the appropriate local government(s) with planning and zoning responsibilities. As downstream development approved by a locality may result in the change in hazard potential classification of an upstream dam and for the need for the dam to upgrade its spillway design at a significant expense to the owner, this notification may result in localities making more informed zoning decisions regarding a development.

6. The development of language establishing a delayed effective date for certain dams determined to have an adequate spillway capacity prior to the effective date of these regulations but that would require modifications due to changes in the regulations.

a. It is specified that the owner shall submit to the Board an Alteration Permit Application and associated documents to address spillway capacity prior to the expiration of this Regular Operation and Maintenance Certificate or within three years of the effective date of these regulations, whichever is later. As regular certificates are good for six years from time of issuance, this would mean that complete applications would be due no sooner than three years and no later than six years.

b. It is specified that the Alteration Permit Application shall contain a construction sequence with milestones for completing the necessary improvements within five years of Alteration Permit issuance. (NOTE: 8 to 11 years in total to come into compliance). In light of the costs associated with upgrading a dam to meet the new spillway design safety requirements and the time necessary to conduct the associated engineering studies and alteration activities, it was determined that a phased in effective date should be included in the regulations for dams that currently meet regulatory standards.

7. The creation of a new section expanding emergency action plan requirements for High and Significant Hazard Potential dams. A fundamental element of protecting against the loss of life that may occur upon the failure of an impounding structure is the development of an emergency action plan that may be successfully implemented. The plan would be developed and periodically tested in coordination with all entities, jurisdictions, and agencies that would be affected by a dam failure or that have

statutory responsibilities for warning, evacuation, and post-flood actions.

8. The creation of a new section establishing emergency preparedness plan requirements for each Low Hazard Potential dam. As low hazard dams do not pose the same risk to loss of life as higher hazard dams, it was determined that an abbreviated emergency preparedness plan should be required. Such a plan would allow for contacts to downstream landowners that may sustain a loss of personal property should a dam fail (e.g., farmer losing livestock or machinery).

9. The creation of a series of new sections that cites the authority for the board to establish and collect application fees for the administration of the dam safety program, administrative review, certifications, and the repair and maintenance of dams and that establishes such fees. It is understood that the Commonwealth needs sufficient staff and fiscal resources to properly administer a regulatory program. A publication by the Association of State Dam Safety Officials (Model State Dam Safety Program, Association of State Dam Safety Officials, 1998) states 10 state regulators are needed for every 250 dams. The department currently regulates almost 600 dams and has in its inventory over 1,700 dams, a significant number of which should be regulated, with only four Regional Engineer positions and one Program Manager. The staff workload is much higher than in other states. The fees, which have been purposely set low to reduce constituent impacts, would generate sufficient revenue to fund approximately one engineer on an annual basis.

10. The removal of all forms currently incorporated by reference and incorporation of required elements of the forms into the regulations. Recommended forms will still be available. This will allow for the modification and improvement of forms without going through a lengthy regulatory action. The department will still utilize a public process to make substantial changes to the forms.

11. The provision of definitions or modifications to definitions for "Agricultural purpose," "Alteration," "Construction," "Dam break inundation zone," "Department," "Drill," "Emergency Action Plan or EAP," "Emergency Action Plan Exercise," "Emergency Preparedness Plan," "Freeboard," "Height," "Spillway," "Stage I condition," "Stage II condition," "Stage III condition," "Sunny Day Dam Failure," and "Tabletop Exercise." In order to support the above-referenced amendments, the addition or alteration of definitions was necessary.

12. Reorganizes, clarifies, and expands multiple sections related to permits and repeals sections that are incorporated into the reorganized sections. In an effort to provide additional clarity to the permitting process, a number of sections related to permitting were reorganized. It is hoped

that these revised sections will provide better guidance to the regulated community as they pursue the necessary permits and seek additional information regarding the permitting processes.

13. The creation of a new section stating that dams operated primarily for agricultural purposes which are less than 25 feet in height or which create a maximum impoundment capacity smaller than 100 acre-feet are exempt from the regulations. This is to clarify the exemption contained in 4VAC50-20-30 and 4VAC50-20-50 and to set out exemption validation procedures and reporting form components.

14. Updates sections related to inspections, enforcement, and unsafe conditions to reflect changes in the Code pursuant to Chapter 30 (HB597) of the 2006 Virginia Acts of Assembly. These changes will conform the regulations to 2006 changes in the Virginia Dam Safety Act.

### Issues:

The primary advantage of the proposed regulations is the enhancement of public safety. The proposed regulations help promote the safe design, construction, alteration, maintenance, and operation of impounding structures in the Commonwealth of Virginia, and thus benefit private citizens, businesses, local governments, and the Commonwealth as a whole. The proposed regulations also track federal standards closer in an effort to improve public safety. The Ad Hoc Dam Safety Study Committee, which was formed at the request of the Virginia Soil and Water Conservation Board, observed in its April 30, 2005, report that "[m]any of the nation's dams, some originally built in the 1950s and 1960s, are in need of significant maintenance and/or redesign and upgrading. As a result of their age and unusually heavy rain events, a number of dams have failed and resulted in significant downstream damage, death or injury." Maintaining the regulations as they currently are will significantly hamper the efforts of the board to strengthen the Dam Safety Program and to promote the safety of impounding structures in the Commonwealth.

In addition, the proposed regulations provide some environmental benefit. Impounding structures often are constructed as retention devices for silt and other materials; ensuring their safe operation and maintenance prevents these pollutants from being released into downstream water bodies and environments.

Failure of dams or living downstream of dams that are in need of upgrades may also impact property and insurance values. Implementation of these regulations will reduce such dam failures.

Finally, the current action is intended to increase user-friendliness of many aspects of the Dam Safety Program. Vague and confusing references within the regulations have been clarified or removed where possible, and outdated

required forms have been removed from the regulations to permit more frequent updates in order to enhance clarity and usefulness. In addition, confusing and conflicting provisions have been amended to allow for clarity and ease of understanding.

The primary disadvantages of the proposed regulations to private citizens, local governments, and agencies of the Commonwealth are upgrading and repair costs, as all of these entity types may own impounding structures in need of rehabilitation or upgrading based on the criteria set forth by the proposed regulations. The estimated costs of implementing dam upgrades to conform with SDF requirements in the proposed regulations is approximately \$249 million. While substantial, these costs are necessary to ensure that impounding structures are constructed, operated, and maintained in a way that adequately protects the safety of downstream homes, businesses, communities, and associated infrastructure. Other items that may be considered disadvantages by the dam owners are the costs associated with dam break inundation zone mapping, application fees, and EAP preparation.

Department of Planning and Budget's Economic Impact Analysis: Summary of the Proposed Amendments to Regulation. The Virginia Soil and Water Conservation Board (Board) proposes several significant changes to these regulations. Overall, the changes are designed to improve the protection of the public and their property from the impact of potential dam failures. Proposed changes include, but are not limited to: 1) revision of the dam hazard potential classification system, 2) specification that spillway design requirements are applicable to all state regulated dams, 3) modification of the spillway design requirements to enhance public safety and reduce subjectivity, 4) allowing for the potential reduction of the spillway design flood requirement through an incremental damage assessment for all qualified dams, 5) establishing dam break inundation zone mapping requirements, 6) expanding emergency action plan requirements for High and Significant Hazard Potential dams and emergency preparedness plan requirements for Low Hazard Potential dams, 7) establishing permit application fees for the administration of the Dam Safety Program that will create a stream of revenue sufficient to support an additional dam safety engineer, 8) removing the forms that are incorporated by reference and move reporting standards into the regulations, 9) creating new definitions and modifying current definitions, 10) reorganizing, clarifying, and expanding sections related to permitting procedures, and 11) updating sections related to inspections, enforcement, and unsafe conditions.

Result of Analysis. The benefits likely exceed the costs for one or more proposed changes. There is insufficient data to accurately compare the magnitude of the benefits versus the costs for other changes.

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Estimated Economic Impact. The Virginia Dam Safety Act (§10.1-604 through §10.1-613 of the Code of Virginia) was designed to ensure public safety through requirements related to the proper and safe design, construction, operation, and maintenance of impounding structures in the Commonwealth. Section 10.1-605 of the Code of Virginia directs the Board to "promulgate regulations to ensure that impounding structures in the Commonwealth are properly and safely constructed, maintained and operated." The Department of Conservation and Recreation (DCR) points out that "As there have been no regulatory changes made to the impounding structure regulations since the late 1980's except to update the definition of regulated dams to conform it with a 2001 legislative change in definition [Chapter 92 (SB1166) of the 2001 Virginia Acts of Assembly], it was determined that this body of regulations required a substantive review and potential revisions."

For some of the Board's proposed changes, the benefits clearly outweigh the costs. For example, the Board proposes to clarify that "if an owner or the owner's engineer has determined that circumstances are impacting the integrity of the impounding structure which could result in the imminent failure of the impounding structure, temporary repairs may be initiated prior to approval from the Board. The owner shall notify the Department within 24 hours of identifying the circumstances impacting the integrity of the impounding structure." According to DCR, this clarification was provided in response to numerous dam owners expressing concerns that they did not feel the regulations permitted them from acting to prevent a dam failure in an emergency. This language may very well encourage some dam owners to act more quickly to prevent dam failures.

Also, the Board proposes to require that when dam owners are issued an operation and Maintenance certificate, they send a copy to the appropriate local government(s) with planning and zoning responsibilities. The cost of sending a copy of the certificate is minimal, while the benefits can be significant. Downstream development approved by a locality may result in the change in hazard classification of an upstream dam and for the need for the dam to upgrade its spillway design at a significant expense to the owner. Notification may result in localities making more informed zoning decisions regarding development.

Most of the Board's proposed changes increase requirements related to safety, which likely reduce the probability of dam failures and the associated loss of life and property damage. These proposed changes also increase costs for dam owners. There is no precise estimate available to determine the reduced likelihood of loss of life due to the proposed increased requirements related to safety. Thus, even if one were willing to place a dollar figure on the value of a human life, an accurate assessment of whether the benefits of the proposed increased requirements exceed the costs cannot be made. Nevertheless, the following paragraphs are potentially

useful to the reader in that some specifics of the proposed changes are elucidated, and fairly detailed cost estimates are presented.

Under the current regulations dams are categorized as Class I, II, III, or IV, where Class I dams are located where failure will cause probable loss of life or serious property damage to others, Class II dams are located where failure could cause possible loss of life or serious property damage to others, Class III dams are located where failure may cause minimal property damage to others, and Class IV dams are located where failure would cause no property damage to others. The board proposes to rename these hazard categories as follows: Class I would be High, Class Two would be Significant, and Class III and Class IV would be grouped together as Low. According to DCR, this change would conform the classification categories to those used by federal agencies and many other states.

Significant potential costs associated with the board's proposed amendments include: A) development of a dam break inundation zone map, B) development of an emergency action plan or emergency preparedness plan, C) implementing a dam upgrade to conform with SDF requirements, D) payment of permitting fees, and E) conducting inspections.

The Board proposes to require that dam owners have a dam break inundation zone map completed by a licensed professional engineer for hazard potential class determinations. The map would also be required for High and Significant Hazard dams as part of their Emergency Action Plan (EAP). Maps would be required to be submitted every 6 years as part of the re-certification process. The map would be useful for planning and risk assessment since it would provide information on what areas would be affected by potential dam breaks. According to DCR, the development of a dam break inundation zone map includes two primary elements: (1) a detailed survey with a benchmark; and (2) a hydraulic computer model run with mapping of sunny day failure, mapping of the Probable Maximum Flood (PMF) with a complete failure, and mapping of the PMF without a dam failure. DCR obtained estimates of map costs provided by engineering firms that average \$16,417 per map. DCR estimates that 465 dams would require mapping; thus the estimated total cost associated with the proposed requirement for inundation zone maps is \$7,633,905.<sup>1</sup>

The Board also proposes to require the development of an EAP for High and Significant Hazard dams. EAPs are already required in the current regulations for Class I, II, and III structures. Many EAPs do not contain the dam break inundation zone map discussed above. Beyond those mapping costs estimated above, the remaining EAP preparation costs are associated with completing the plan in the specified format and in exercising the plan at the specified intervals. Although there is no requirement for the dam owner to solicit

the services of an engineer to complete the plan, DCR estimates the owners of about 80% of the dams (or 464 dams out of 581) will use engineers, and that engineers will charge approximately \$3,125 per plan. Total costs for plan preparation would then be approximately \$1,450,000.<sup>2</sup>

Due to Board-proposed increased spillway design requirements, DCR estimates that of the 1,731 dams in the Commonwealth database, at least 166 regulated dams will require a spillway upgrade. According to the database, there are 127 dams that are currently compliant with the regulations that may require a spillway upgrade due to the regulation changes. DCR estimates that upgrade costs for these 127 dams will total \$223,397,500. Additionally, there are 39 dams that are currently noncompliant, as they already require a spillway upgrade, but the change in the regulations will require upgrading to a higher standard. DCR estimates that only 25% of the upgrade costs would be associated with upgrading to a higher standard. This results in \$25,556,875 total required upgrade costs for these dams. Thus the estimated total required spillway design upgrade costs would be \$248,954,375.<sup>3</sup>

The proposed regulations include the following new fees:

Construction Permit: High or Significant Hazard Dam	\$2,500
Construction: Low Hazard Dam	\$1,000
Regular Operation and Maintenance Certificate: High Hazard	\$1,500
Regular Operation and Maintenance Certificate: Significant Hazard	\$1,000
Regular Operation and Maintenance Certificate: Low Hazard	\$600

The proposed regulations also include other fees for Conditional Operation and Maintenance Certification and Incremental Assessment Review. Dam owners can request an Incremental Assessment Review that may reduce required upgrades if it is deemed that the dam has lower hazard potential than it has been previously assessed. DCR estimates that the following amounts will be paid in fees annually:

Construction Permit	\$10,500
Regular Operation and Maintenance Certificate Application	\$49,500
Conditional Operation and Maintenance Certificate Application	\$49,250
Incremental Damage Analysis Review	\$18,675
Estimated Total	\$127,925

The current regulations already require that Class I, Class II, and Class III dams be inspected by licensed profession engineers to ensure their structural safety; but Class IV dams are exempt. Under the proposed regulations Low Hazard dams require an inspection by an engineer once every six years. Since current Class IV dams will be Low Hazard dams under the proposed regulations, current Class IV dams will need to be inspected once every six years. According to DCR there are 30 Class IV dams, and it costs on average \$2,833 for inspection and report generation from engineering firms. Thus, the proposed reclassification of Class IV dams as Low Hazard dams will result in approximately \$84,990 in new costs every six years,<sup>4</sup> or \$14,165 annually.<sup>5</sup>

**Businesses and Entities Affected.** According to DCR, 530 private individuals and entities currently own impounding structures that are subject to the proposed regulations and that may be affected by them, at least in part. In addition, five state agencies, four public colleges and universities, 58 Virginia localities, 10 service authorities, one Watershed Improvement District, and 12 Soil and Water Conservation Districts own or maintain state regulated impounding structures subject to the requirements of the Dam Safety Act, and may be affected by provisions of the proposed regulations. Thousands of downstream property owners will likely be affected as well.

The proposed amendments will create additional demand for the services of engineers who have the expertise to work on dams, and for contractors. DCR is aware of approximately 60 engineers offering services to dam owners in the Commonwealth; these engineers represent 46 different engineering firms. Most of those firms are likely small businesses. According to DCR the number of contractors is not susceptible to calculation, as contractors often vary project to project; and few specialize in dam repairs.

**Localities Particularly Affected<sup>6</sup>.** There are fifty-eight Virginia localities which own or maintain state-regulated impounding structures (114 dams). These localities may incur additional costs associated with the operation and maintenance of their impounding structures as a result of this proposed regulation, including costs associated with inundation mapping, emergency action plan development, engineering assessments, structural improvements, and application submittal. According to DCR, no locality will bear a disproportionate cost per impounding structure.

**Number of State Regulated Impounding Structures Owned or Maintained by Localities**

Albemarle County	6	City of Lynchburg	3
Amherst County	4	City of Manassas	2
Augusta County	2	City of Martinsville	2
Brunswick County	1	City of Newport News	6

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Buckingham County	1		City of Norfolk	3
Campbell County	1		City of Norton	2
Carroll County	1		City of Portsmouth	4
Chesterfield County	2		City of Staunton	2
Fairfax County	8		City of Virginia Beach	1
Fauquier County	1		City of Waynesboro	1
Frederick County	1		City of Williamsburg	1
Gloucester County	1		Town of Appalachia	1
Henrico County	1		Town of Big Stone Gap	2
Henry County	1		Town of Brookneal	1
James City County	3		Town of Chatham	2
Louisa County	1		Town of Coeburn	1
Patrick County	7		Town of Culpeper	2
Prince Edward County	1		Town of Drakes Branch	1
Prince William County	2		Town of Keysville	1
Roanoke County	1		Town of Luray	2
Spotsylvania County	1		Town of Pulaski	2
Stafford County	5		Town of Purcellville	1
Tazewell County	1		Town of Scottsville	1
City of Bedford	1		Town of South Boston	1
City of Clifton Forge	1		Town of Strasburg	1
City of Fairfax	3		Town of Tazewell	1
City of Fredericksburg	2		Town of Warrenton	2
City of Harrisonburg	1		Town of Wise	1
City of Lexington	2		Town of Woodstock	1
			Total	114

Additionally, there are 10 service authorities (including water authorities, sewage authorities, park authorities and airport authorities) which own or maintain state-regulated impounding structures and that may serve multiple localities

(20 dams). These authorities may incur additional costs associated with the operation and maintenance of their impounding structures as a result of this proposed regulation, including costs associated with inundation mapping, emergency action plan development, engineering assessments, structural improvements, and application submittal. According to DCR, no service authority will bear a disproportionate cost per impounding structure.

Number of State Regulated Impounding Structures Owned or Maintained by

Service Authorities

Appomattox River Water Authority	1
Augusta County Service Authority	1
Fairfax County Park Authority	2
Louisa County Water Authority	1
Metro-Washington Airport Authority	2
Nelson County Service Authority	1
Rapidan Service Authority	1
Rivanna Water and Sewer Authority	6
Upper Occoquan Sewage Authority	1
Western Virginia Water Authority	4
Total	20

Additionally, many of the local Soil and Water Conservation Districts own or maintain state-regulated impounding structures (104 dams). These Soil and Water Conservation Districts may incur additional costs associated with the operation and maintenance of their impounding structures as a result of this proposed regulation, including costs associated with inundation mapping, emergency action plan development, engineering assessments, structural improvements, and application submittal. According to DCR, no Soil and Water Conservation District will bear a disproportionate cost per impounding structure.

Number of State Regulated Impounding Structures Owned or Maintained by

Soil and Water Conservation Districts

Blue Ridge	10
Culpeper	11
Hanover-Caroline	1
Headwaters	11
Lord Fairfax	2
Mountain Castles	4

Peter Francisco	17
Piedmont	14
Robert E. Lee	6
Shenandoah Valley	8
Southside	12
Thomas Jefferson	8
Total	104

Projected Impact on Employment. The proposed requirements for inundation maps, emergency action plans, dam upgrades, and inspections will increase demand for the services of engineers with relevant expertise. Consequently, employment for engineers with the relevant expertise will likely increase. Employment for their support staff may increase as well. The required dam upgrades associated with the proposed regulations will increase demand for contractors who possess the requisite expertise. Construction employment will likely moderately increase as well.

The proposed amendments will likely have some negative impact on employment for public workers in localities. If local governments must spend multiple millions of extra dollars on dams, then there will be significant spending reductions in other areas such as education public safety, and healthcare.

Effects on the Use and Value of Private Property. The proposed requirements for inundation maps, emergency action plans, dam upgrades, and inspections will increase demand for the services of engineering firms with relevant expertise. Consequently, the use and value of engineering firms with dam-relevant expertise will likely increase. The required dam upgrades associated with the proposed regulations will also increase demand for contracting firms which possess the requisite expertise. The use and value of the firms will increase as well. Demand for construction materials associated with dam improvements will also increase. The value of firms selling these materials may moderately increase.

Dam owners whose required expenditures on their dams increase significantly due to the proposed requirements will have fewer dollars to spend elsewhere. For example, localities that spend millions of additional dollars on dams will likely purchase fewer supplies and services from private firms in other categories. Also private dam owners net worth will decline somewhat with required increased expenditures on their dams.

Small Businesses: Costs and Other Effects. Some small engineering and contacting firms will benefit from the proposed regulations.

Small Businesses: Alternative Method that Minimizes Adverse Impact. There is no clear alternative that minimizes the very large costs associated with the proposed amendments while still achieving the very high level of safety sought. Costs could potentially be significantly reduced if greater risk were deemed acceptable.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with §2.2-4007 H of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007 H requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, §2.2-4007 H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB’s best estimate of these economic impacts.

<sup>1</sup> Calculation: 465 x \$16,417 = \$7,633,905

<sup>2</sup> Calculation: 464 x \$3,125 = \$1,450,000

<sup>3</sup> Calculation: \$223,397,500 + \$25,556,875 = \$248,954,375

<sup>4</sup> Calculation: 30 x \$2,833 = \$84,990

<sup>5</sup> Calculation: \$84,990 / 6 = \$14,165

<sup>6</sup> All of the information in this section was graciously provided by the Department of Conservation and Recreation.

Agency Response to Department of Planning and Budget's Economic Impact Analysis: The Department of Conservation and Recreation (DCR) has reviewed the economic impact analysis (EIA) of the Virginia Soil and Water Conservation Board’s proposed amendments to the Virginia Impounding Structure Regulations prepared by the Department of Planning and Budget (DPB) and is in concurrence with the information provided with the following qualifications:

First, DCR appreciates the recognition by DPB of the importance of these regulations in the protection of public safety.

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Second, DPB noted that "one of the significant potential costs associated with the board's proposed amendments include: ...B) development of an emergency action plan or emergency preparedness plan..." Although stated in the EIA, DCR would like to point out that emergency action plans (EAPs) for regulated dams are already an existing requirement. Any additional costs associated with engineering expenses incurred in developing EAPs will be solely due to the dam owner choosing to enlist the services of an engineer as a matter of convenience.

Third, with regard to the development of dam break inundation zone maps, DPB stated that "DCR estimates that 465 dams would require mapping; thus the estimated total cost associated with the proposed requirement for inundation zone maps is \$7,633,905." However, DCR would like to point out that the following considerations must be taken into account when reviewing these figures:

1. A number of dam owners already have partial modeling information available to complete the mapping, which should reduce preparation costs.
2. The required maps will be good for 6 years unless circumstances change below the dam, prompting revisions to the maps.
3. Updates to the vast majority of maps will routinely be much less costly in subsequent years. If no development has occurred, no updates will be necessary.

Fourth, DPB states that the "estimated total required spillway design upgrade costs would be \$248,954,375." However, DCR estimates that approximately 50 percent of the 166 dams that are projected to require spillway upgrades as a result of the proposed regulatory changes may pursue, for the first time, an "incremental damage assessment" that may reduce or eliminate the need to upgrade the dam's spillway. Under existing regulations, which have been in place since 1989, the incremental damage assessment has been available to a limited number of dam owners. This would be a significant change. Consequently, it is likely that a significant number of dams will not be found to require a spillway upgrade, thus reducing the overall estimated cost of these proposed regulatory amendments.

Fifth, DPB states, "If local governments must spend multiple millions of extra dollars on dams, then there will be significant spending reductions in other areas such as education, public safety, and health care." DCR respectfully takes exception to this statement. Dam safety is a significant component to public safety and is increasingly being recognized as such across the nation. Virginia has historically experienced a large number of storms and hurricane events, which have resulted in threats to several dams and downstream lives and property. As pointed out in a presentation to the regulatory Technical Advisory Committee, nine of the top 15 storms in recorded U.S. history have

occurred in or near Virginia as well as 3 of the top 5 most intense 12-hour storms in the United States. The aging dam inventory in the Commonwealth, along with increased proximity of development also places more of the public in potential harm's way unless these dams are properly structured and maintained. DCR also notes that by virtue of localities investing in dam upgrades, they may avoid the catastrophic impacts and costs associated with a dam failure during a future storm event. Further, DCR notes that localities may be eligible for low-interest financing from the Virginia Resources Authority to assist with repair costs, thus reducing local fiscal impacts.

Finally, DCR reiterates that the proposed amendments to Virginia's dam safety regulations will substantially improve the Commonwealth's means of protecting the public from dam failures, which can be devastating to dam owners and especially to downstream communities and property. The economic impact of such failures to property can range from thousands to billions of dollars, while no price can be placed on the lives that may be lost.

### Summary:

*This regulatory action amends the Virginia Soil and Water Conservation Board's Impounding Structure Regulations to protect the safety and welfare of the public and their property from the impact of dam failures. The key elements of this proposed regulation will:*

1. *Revise the dam hazard potential classification system from four categories (Class I, II, III, and IV) to three hazard classifications (High, Significant, and Low);*
2. *Specify that spillway design requirements are applicable to all state regulated dams regardless of the date they were built;*
3. *Modify the spillway design requirements to enhance public safety and reduce subjectivity;*
4. *Allow for the reduction of the spillway design flood requirements through incremental damage assessments for all qualifying dams;*
5. *Establish dam break inundation zone mapping requirements to identify areas that are subject to flooding during a dam failure;*
6. *Expand emergency action plan requirements for High and Significant Hazard Potential dams and emergency preparedness plan requirements for Low Hazard Potential dams;*
7. *Establish permit application fees for the administration of the Dam Safety Program;*
8. *Incorporate reporting standards into the regulations;*
9. *Reorganize, clarify, and expand sections related to permitting procedures; and*

10. Update sections related to inspections, enforcement, and unsafe conditions.

**4VAC50-20-20. General provisions.**

A. This chapter provides for the proper and safe design, construction, operation and maintenance of impounding structures to protect public safety. This chapter shall not be construed or interpreted to relieve the owner or operator of any impoundment or impounding structure of any legal duties, obligations or liabilities incident to ownership, design, construction, operation or maintenance.

B. Approval by the board of proposals for an impounding structure shall in no manner be construed or interpreted as approval to capture or store waters. For information concerning approval to capture or store waters, see Chapter 8 (§62.1-107) of Title 62.1 of the Code of Virginia, and other provisions of law as may be applicable.

C. In promulgating this chapter, the board recognizes that no impounding structure can ever be completely "fail-safe," because of incomplete understanding of or uncertainties associated with natural (earthquakes and floods) and manmade (sabotage) destructive forces; with material behavior and response to those forces; and with quality control during construction.

D. ~~Any~~ All engineering ~~analysis~~ analyses required by this chapter ~~such as~~ including but not limited to, plans, specifications, hydrology, hydraulics and inspections shall be conducted or overseen by and bear the seal of a professional engineer licensed to practice in Virginia.

E. Design, inspection and maintenance of impounding structures shall be conducted utilizing competent, experienced, engineering judgment that takes into consideration factors including but not limited to local topography and meteorological conditions.

~~EE.~~ The ~~official forms as called for by~~ in this chapter are available from the ~~director~~ department at the department's website.

**4VAC50-20-30. 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 (equivalent to one foot of depth over one acre of area).

"Agricultural purpose" means the production of an agricultural commodity as defined in §3.1-249.27 of the Code of Virginia that requires the use of impounded waters.

"Agricultural purpose dams" means dams which are less than 25 feet in height or which create a maximum impoundment smaller than 100 acre-feet, ~~and certified by the~~

~~owner on official forms as constructed, maintained or operated primarily for agricultural purposes.~~

"Alteration" means changes to an impounding structure that could alter or affect its structural integrity. Alterations include, but are not limited to, changing the height or otherwise enlarging the dam, increasing normal pool or principal spillway elevation or physical dimensions, changing the elevation or physical dimensions of the emergency spillway, conducting necessary structural repairs or structural maintenance, or removing the impounding structure.

~~"Alteration permit" means a permit required for changes~~ an alteration to an impounding structure ~~that could alter or affect its structural integrity. Alterations requiring a permit include, but are not limited to: changing the height, increasing the normal pool or principal spillway elevation, changing the elevation or physical dimensions of the emergency spillway or removing the impounding structure.~~

"Board" means the Virginia Soil and Water Conservation Board.

~~"Conditional operation and maintenance certificate~~ Operation and Maintenance Certificate" means a certificate required for impounding structures with deficiencies.

"Construction" means the construction of a new impounding structure.

"Construction permit" means a permit required for the construction of a new impounding structure.

"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 Virginia Department of Conservation and Recreation.

"Design flood" means the calculated volume of runoff and the resulting peak discharge utilized in the evaluation, design, construction, operation and maintenance of the impounding structure.

~~"Design freeboard" means the vertical distance between the maximum elevation of the design flood and the top of the impounding structure.~~

"Director" means the Director of the Department of Conservation and Recreation or his designee.

"Drill" means a type of emergency action plan exercise that tests, develops, or maintains skills in an emergency response procedure. During a drill, participants perform an in-house exercise to verify telephone numbers and other means of communication along with the owner's response. A drill is considered a necessary part of ongoing training.

"Emergency Action Plan or EAP" means a formal document that recognizes potential impounding structure emergency conditions and specifies preplanned actions to be followed to

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minimize loss of life and property damage. The EAP specifies actions the owner must take to minimize or alleviate emergency conditions at the impounding structure. It contains procedures and information to assist the owner in issuing early warning and notification messages to responsible emergency management authorities. It shall also contain dam break inundation zone maps as required to show emergency management authorities the critical areas for action in case of emergency.

"Emergency Action Plan Exercise" means an activity designed to promote emergency preparedness; test or evaluate EAPs, procedures, or facilities; train personnel in emergency management duties; and demonstrate operational capability. In response to a simulated event, exercises should consist of the performance of duties, tasks, or operations very similar to the way they would be performed in a real emergency. An exercise may include but not be limited to drills and tabletop exercises.

"Emergency Preparedness Plan" means a formal document prepared for Low Hazard dams that provides maps and procedures for notifying owners of downstream property that may be impacted by an emergency situation at an impounding structure.

"Freeboard" means the vertical distance between the maximum water surface elevation associated with the spillway design flood and the top of the impounding structure.

"Height" means the structural hydraulic height of an impounding structure. If the impounding structure spans a stream or watercourse, height means the vertical distance from the natural bed of the stream or watercourse measured at the downstream toe of the impounding structure to the top of the impounding structure. If the impounding structure does not span a stream or watercourse, height means the vertical distance from the lowest elevation of the ~~outside~~ downstream limit of the barrier to the top of the impounding structure.

"Impounding structure" means a man-made ~~device~~ structure, whether a dam across a watercourse or ~~other~~ structure outside a watercourse, used or to be used to retain or store waters or other materials. The term includes: (i) all dams that are 25 feet or greater in height and that create an impoundment capacity of 15 acre-feet or greater, and (ii) all dams that are six feet or greater in height and that create an impoundment capacity of 50 acre-feet or greater. The term "impounding structure" shall not include: (a) dams licensed by the State Corporation Commission that are subject to a safety inspection program; (b) dams owned or licensed by the United States government; (c) dams ~~constructed, maintained or~~ operated primarily for agricultural purposes which are less than 25 feet in height or which create a maximum impoundment capacity smaller than 100 acre-feet; (d) water or silt retaining dams approved pursuant to §45.1-222 or

§45.1-225.1 of the Code of Virginia; or (e) obstructions in a canal used to raise or lower water.

"Impoundment" means a body of water or other materials the storage of which is caused by any impounding structure.

~~"Inundation zone" means an area that could be inundated as a result of impounding structure failure and that would not otherwise be inundated to that elevation.~~

"Life of the impounding structure" and "life of the project" mean that period of time for which the impounding structure is designed and planned to perform effectively, including the time required to remove the structure when it is no longer capable of functioning as planned and designed.

"Maximum impounding capacity" means the volume of water or other materials in acre-feet that is capable of being impounded at the top of the impounding structure.

"Normal impounding capacity" means the volume of water or other materials in acre-feet that is capable of being impounded at the elevation of the crest of the lowest ungated outlet from the impoundment.

~~"Operation and maintenance certificate~~ Maintenance Certificate means a certificate required for the operation and maintenance of all impounding structures.

"Owner" means the owner of the land on which an impounding structure is situated, the holder of an easement permitting the construction of an impounding structure and any person or entity agreeing to maintain an impounding structure. The term "owner" ~~includes~~ may include the Commonwealth or any of its political subdivisions, including but not limited to sanitation district commissions and authorities. ~~Also included are~~ any public or private institutions, corporations, associations, firms or companies organized or existing under the laws of this Commonwealth or any other state or country, as well as any person or group of persons acting individually or as a group.

"Spillway" means a structure to provide for the controlled release of flows from the impounding structure into a downstream area.

"Stage I Condition" means a flood watch or heavy continuous rain or excessive flow of water from ice or snow melt.

"Stage II Condition" means a flood watch or emergency spillway activation or dam overtopping where a breach may be possible.

"Stage III Condition" means an emergency spillway activation or dam overtopping where imminent failure is probable.

"Sunny day dam failure" means the breaching of an impounding structure with the initial water level at the normal

reservoir level, usually at the lowest ungated principal spillway elevation or the typical operating water level.

"Tabletop Exercise" means a type of emergency action plan exercise that involves a meeting of the impounding structure owner and the state and local emergency management officials in a conference room environment. The format is usually informal with minimum stress involved. The exercise begins with the description of a simulated event and proceeds with discussions by the participants to evaluate the EAP and response procedures and to resolve concerns regarding coordination and responsibilities.

"Top of the impounding structure" means the lowest point of the nonoverflow section of the impounding structure.

"Watercourse" means a natural channel having a well-defined bed and banks and in which water normally flows when it normally does flow.

**4VAC50-20-40. Classes Hazard potential classifications of impounding structures.**

A. Impounding structures shall be classified in one of ~~four~~ three hazard classifications as defined in subsection B of this section and Table 1. ~~Size classification shall be determined either by maximum impounding capacity or height, whichever gives the larger size classification.~~

B. For the purpose of this chapter, hazards pertain to potential loss of human life or ~~property~~ property damage to the property of others downstream from the impounding structure in event of failure or faulty operation of the impounding structure or appurtenant facilities. Hazard potential classifications of dams are as follows:

1. ~~Impounding structures in the Class I hazard potential category are located where High Hazard Potential is defined where an impounding structure failure will cause probable loss of life or serious economic damage to occupied.~~ Economic damage may occur to, but not be limited to, building(s), industrial or commercial facilities, important primary public utilities, main highway(s) or railroad(s) major public roadways, railroads, personal property, and agricultural interests.

2. ~~Impounding structures in the Class II hazard potential category are located where Significant Hazard Potential is defined where an impounding structure failure could may cause possible the loss of life or appreciable economic damage.~~ Economic damage may occur to, but not be limited to occupied, building(s), industrial or commercial facilities, secondary public utilities, secondary highway(s) or railroad(s) or cause interruption of use or service of relatively important public utilities public roadways, railroads, personal property, and agricultural interests.

3. ~~Impounding structures in Class III hazard potential category are located where Low Hazard Potential is~~

~~defined where an impounding structure failure may cause minimal property damage to others. No loss of life is expected would result in no expected loss of life and would cause no more than minimal economic damage. Economic damage may occur to, but not be limited to, building(s), industrial or commercial facilities, secondary public utilities, secondary public roadways, railroads, personal property and agricultural interests.~~

4. ~~Impounding structures in Class IV hazard potential category are located where the failure of the impounding structure would cause no property damage to others. No loss of life is expected.~~

5. ~~Such size and C. The hazard potential classifications classification and size category for the given hazard classification shall be proposed by the owner and shall be subject to approval by the director board. To support the appropriate hazard classification, dam break analysis shall be conducted by the owner's engineer. Present and projected development of planned land-use in the dam break inundation zones downstream from the impounding structure shall be considered in determining the classification.~~

6. ~~D. Impounding structures shall be subject to reclassification by the board as necessary.~~

**4VAC50-20-50. Performance standards required for impounding structures.**

A. In accordance with the definitions provided by §10.1-604 of the Code of Virginia and 4VAC50-20-30, an impounding structure shall be regulated if the dam is 25 feet or greater in height and creates a maximum impounding capacity of 15 acre-feet or greater, or the dam is six feet or greater in height and creates a maximum impounding capacity of 50 acre-feet or greater and is not otherwise exempt from regulation by the Code of Virginia. Impounding structures exempted from this chapter are those that are:

1. Licensed by the State Corporation Commission that are subject to a safety inspection program;
2. Owned or licensed by the United States government;
3. Operated primarily for agricultural purposes that are less than 25 feet in height or that create a maximum impoundment capacity smaller than 100 acre-feet;
4. Water or silt-retaining dams approved pursuant to §45.1-222 or 45.1-225.1 of the Code of Virginia; or
5. Obstructions in a canal used to raise or lower water.

Impounding structures of regulated size and not exempted shall be constructed, operated and maintained such that they perform in accordance with their design and purpose throughout the life of the project. For ~~new~~ impounding structures, the spillway(s) capacity shall perform at a minimum to safely pass the appropriate spillway design flood as determined in Table 1. For the purposes of utilizing Table

# Regulations

1. Maximum Impounding Capacity and Height shall be determined in accordance with the definitions provided in 4VAC50-20-30 and Hazard Potential Classification shall be determined in accordance with 4VAC50-20-40.

TABLE 1—Impounding Structure Regulations

Class of Dam	Hazard Potential If Impounding Structure Fails	SIZE CLASSIFICATION		Spillway Design Flood (SDF) <sup>b</sup>
		Maximum Capacity (Ac-Ft) <sup>a</sup>	Height (Ft) <sup>a</sup>	
I	Probable Loss of Life; Excessive Economic Loss	Large $\geq 50,000$	$\geq 100$	PMF <sup>e</sup>
		Medium $\geq 1,000$ & $< 50,000$	$\geq 40$ & $< 100$	PMF
		Small $\geq 50$ & $< 1,000$	$\geq 25$ & $< 40$	1/2 PMF to PMF
II	Possible Loss of Life; Appreciable Economic Loss	Large $\geq 50,000$	$\geq 100$	PMF
		Medium $\geq 1,000$ & $< 50,000$	$\geq 40$ & $< 100$	1/2 PMF to PMF
		Small $\geq 50$ & $< 1,000$	$\geq 25$ & $< 40$	100 YR to 1/2 PMF
III	No Loss of Life Expected; Minimal Economic Loss	Large $\geq 50,000$	$\geq 100$	1/2 PMF to PMF
		Medium $\geq 1,000$ & $< 50,000$	$\geq 40$ & $< 100$	100 YR to 1/2 PMF
		Small $\geq 50$ & $< 1,000$	$\geq 25$ & $< 40$	50 YR <sup>d</sup> to 100 YR <sup>e</sup>
IV	No Loss of Life Expected; No Economic Loss to Others	$\geq 50$ (nonagricultural) $\geq 100$ (agricultural)	$\geq 25$ (both)	50 YR to 100 YR

TABLE 1

Impounding Structure Regulations

Hazard Potential Class of Dam	SIZE CATEGORIES <sup>B</sup>		Spillway Design Flood (SDF) <sup>C</sup>	Minimum Threshold for Incremental Damage Assessment
	Maximum Impounding Capacity (Ac-Ft)	Height (Ft)		
High	All <sup>B</sup>	All <sup>B</sup>	PMF <sup>D</sup>	.50 PMF
Significant	Large $\geq 50,000$	$\geq 100$	PMF <sup>D</sup>	.50 PMF
	Medium $\geq 1,000$ & $< 50,000$	$\geq 40$ & $< 100$	.75 PMF	100-YR <sup>E</sup>
	Small $\geq 15$ & $< 1,000$	$\geq 6$ & $< 40$	.50 PMF	100-YR <sup>E</sup>
Low	Large $\geq 50,000$	$\geq 100$	.50 PMF	100-YR <sup>E</sup>
	Medium $\geq 1,000$ & $< 50,000$	$\geq 40$ & $< 100$	100-YR <sup>E</sup>	50-YR <sup>F</sup>
	Small $\geq 15$ & $< 1,000$	$\geq 6$ & $< 40$	100-YR <sup>E</sup>	50-YR <sup>F</sup>

<sup>a</sup>The factor determining the largest size classification shall govern. <sup>B</sup>The appropriate size category is determined by the largest size associated with the maximum impounding capacity and height of the impounding structure.

<sup>b</sup><sup>C</sup>The spillway design flood (SDF) represents the largest flood that need 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. The establishment in this chapter 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 Table 1 are intended to supplement, not supplant. Reductions in the established SDF may be evaluated through the use of incremental damage assessment pursuant to 4VAC50-20-52. The SDF established for an impounding structure shall not be less than those

standards established elsewhere by state law or regulations, including but not limited to the Virginia Stormwater Management Program (VSMP) Permit Regulations (4VAC50-60).

<sup>d</sup>D. PMF: Probable ~~maximum flood~~ This means Maximum Flood is 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, NOAA. 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. Any deviation in the application of established developmental procedures must be explained and justified by the owner's engineer. The owner's engineer must develop PMF hydrographs for 6-, 12-, and 24-hour durations. The hydrograph that creates the largest peak outflow is to be used to determine capacity for nonfailure and failure analysis. Present and planned land-use conditions shall be considered in determining the runoff characteristics of the drainage area.

E. 100-Yr: 100-year flood represents the flood magnitude expected to be equaled or exceeded on the average of once in 100 years. It may also be expressed as an exceedence probability with a 1.0% chance of being equaled or exceeded in any given year. Present and planned land-use conditions shall be considered in determining the runoff characteristics of the drainage area.

<sup>e</sup>F. 50-Yr: 50-year flood. ~~This means~~ represents the flood magnitude expected to be equaled or exceeded on the average of once in 50 years. It may also be expressed as an exceedence probability with a 2.0% chance of being equaled or exceeded in any given year. Present and planned land-use conditions shall be considered in determining the runoff characteristics of the drainage area.

<sup>e</sup> 100-Yr: 100-year flood. ~~This means~~ the flood magnitude expected to be equaled or exceeded on the average of once in 100 years. It may also be expressed as an exceedence probability with a 1.0% chance of being equaled or exceeded in any given year.

Part II

Permit Requirements

**4VAC50-20-52. Incremental damage assessment.**

A. When appropriate, the spillway design flood requirement may be reduced by the board in accordance with this section.

B. Prior to qualifying for a spillway design flood reduction, certain maintenance conditions must be adequately addressed including, but not limited to, the following:

1. Operation and maintenance is determined by the director to be satisfactory and up to date;

2. The impounding structure is not in need of other alteration related to the integrity of the structure;

3. Emergency Action Plan requirements set out in 4VAC50-20-175 or Emergency Preparedness requirements set out in 4VAC50-20-177 have been satisfied;

4. Inspection report requirements have been met and are considered satisfactory by the director;

5. The applicant demonstrates in accordance with the current design procedures and references of 4VAC50-20-320 to the satisfaction of the board that the impounding structure as designed, constructed, operated and maintained does not pose an unreasonable hazard to life and property;

6. The owner satisfies all special requirements imposed by the board; and

7. Certification by the owner that these conditions will continue to be met.

C. After meeting the criteria set out in subsection B of this section, the owner's engineer may proceed with an incremental damage analysis. Once the owner's engineer has determined the required spillway design flood through application of Table 1, further analysis may be performed to evaluate the limiting flood condition for incremental damages. This assessment may be used to lower the spillway design flood. In no situation shall the allowable reduction be less than the level at which the incremental increase in water surface elevation downstream due to failure of a dam is no longer considered to present an unacceptable additional downstream threat. This engineering analysis will need to present water surface elevations at each structure that may be impacted downstream of the dam. Water depths greater than two feet and overbank flow velocities greater than three feet per second shall be used to define conditions for unacceptable additional downstream threat to persons or property.

D. The spillway design flood shall not be reduced below the minimum threshold values as determined by Table 1.

**4VAC50-20-54. Dam break inundation zone mapping.**

A. Dam break inundation zone maps shall be provided to the department to meet the requirements set out in Hazard Potential Classifications of Impounding Structures (4VAC50-20-40), Emergency Action Plan for High and Significant Potential Hazard Dams (4VAC50-20-175), and Emergency Preparedness for Low Hazard Potential Dams (4VAC50-20-177), as applicable.

B. The location of the end of the inundation mapping should be indicated where the water surface elevation of the dam break inundation zone and the water surface elevation of the spillway design flood during a nondam failure event converge to within one foot of each other. This would demonstrate a

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level where failure of the dam does not further constitute a hazard to downstream life or property. The inundation maps shall be supplemented with water surface profiles and cross-sections at critical areas showing the peak water surface elevation prior to failure and the peak water surface elevation after failure.

C. All inundation zone map(s), except those utilized in meeting the requirements of Emergency Preparedness for Low Hazard Potential Dams (4VAC50-20-177), shall be signed and sealed by a licensed professional engineer.

D. For determining the hazard potential classification, a minimum of the following shall be provided to the department:

1. A sunny day dam break analysis utilizing the volume retained at the normal or typical water surface elevation of the impounding structure;
2. A dam break analysis utilizing a probable maximum flood with a dam failure; and
3. A dam break analysis utilizing a probable maximum flood without a dam failure.

E. To meet the requirements of Emergency Preparedness set out in 4VAC50-20-177, all Low Hazard Potential impounding structures shall provide a simple map, acceptable to the department, demonstrating the general inundation that would result from a dam failure. Such maps do not require preparation by a professional licensed engineer, however, it is preferred that the maps be prepared by a licensed professional engineer.

F. To meet the Emergency Action Plan requirements set out in 4VAC50-20-175, all owners of High and Significant Hazard Potential impounding structures shall provide dam break inundation map(s) representing the impacts that would occur with both a sunny day dam failure and a spillway design flood dam failure.

1. The map(s) shall be developed at a scale sufficient to graphically display downstream inhabited areas and structures, roads, and other pertinent structures within the identified inundation area. In coordination with the local organization for emergency management, a list of downstream inundation zone property owners and occupants, including telephone numbers may be plotted on the map or may be provided with the map for reference during an emergency.

2. A note shall be included on each map to state: "Mapping of flooded areas and flood wave travel times are approximate. Timing and extent of actual inundation may differ from information presented on this map."

## **4VAC50-20-58. Local government notifications.**

For each certificate issued, the impounding structure owner shall send a copy of the certificate to the appropriate local

government(s) with planning and zoning responsibilities. A project description and the map(s) required under 4VAC50-20-54 showing the area that could be affected by the impounding structure breach shall be submitted with the certificate. The department will provide a standard form cover letter for forwarding the certificate copy and accompanying materials.

## Part II

### Permit Requirements

#### **4VAC50-20-60. Required permits.**

A. No person or entity shall construct or begin to construct an impounding structure until the board has issued a construction permit.

B. No person or entity shall alter or begin to alter an existing impounding structure in a manner which would potentially affect its structural integrity until the board has issued an alteration permit, or in the case of an emergency, authorization obtained from the director. The permit requirement may be waived if the director determines that the alteration of improvement will not substantially alter or affect the structural integrity of the impounding structure. Alteration does not mean normal operation and maintenance. If an owner or the owner's engineer has determined that circumstances are impacting the integrity of the impounding structure that could result in the imminent failure of the impounding structure, temporary repairs may be initiated prior to approval from the board. The owner shall notify the department within 24 hours of identifying the circumstances impacting the integrity of the impounding structure. Such emergency notification shall not relieve the owner of the need to obtain an alteration permit as soon as may be practicable, nor shall the owner take action beyond that necessary to address the emergency situation.

C. When the board receives owner submits an application to the board for any permit to construct or alter an impounding structure, the ~~director~~ owner shall also inform the local government of any jurisdiction which or jurisdictions that might be affected by the permit application.

D. In evaluating construction and alteration permit applications the director shall use the ~~most current~~ design criteria and standards referenced in 4VAC50-20-320 of this chapter.

#### **4VAC50-20-70. Construction permits.**

A. Prior to preparing the complete design report for a ~~construction permit~~ Construction Permit, applicants are encouraged to seek approval of the project concept from the ~~director~~ may submit a preliminary design report to the department to determine if the project concept is acceptable to the department. For this purpose the applicant should submit The preliminary design report should contain, at a minimum, a general description of subdivisions 1 through 4—12 of

subsection B of this section and subdivisions 1 and 2 of this subsection:

1. Proposed design criteria and a description of the size of the impounding structure, ground cover conditions, extent of current upstream development ~~of within~~ the watershed and the hydraulic, hydrological and structural features, geologic conditions and the geotechnical engineering assumptions used to determine the ~~foundations~~ foundation, impoundment rim stability and materials to be used.
2. Preliminary drawings of a general nature, including cross sections, plans and profiles of the impounding structure, proposed pool levels and types of spillway(s).

B. An applicant for a ~~construction permit~~ Construction Permit shall submit a design report ~~on official forms~~. A form for the design report will be available from the department (Design Report for the Construction or Alteration of Virginia Regulated Impounding Structures). The design report shall be prepared in accordance with 4VAC50-20-240 ~~and shall include the following information~~. The design report is a required element of a complete application for a Construction Permit and shall include the following information:

~~1. A description of the impounding structure and appurtenances and a proposed classification conforming with this chapter. The description shall include a statement of the purposes for which the impoundment and impounding structure are to be used.~~

1. Project information including a description of the proposed construction, name of the impounding structure, inventory number if available, name of the reservoir, and the purpose of the reservoir.

2. The proposed hazard potential classification in conformance with Table 1 of 4VAC50-20-50.

3. Location of the impounding structure including the city or county, number of feet or miles upstream or downstream of a highway and the highway number, name of the river or the stream, and the latitude and longitude.

4. Owner's name or representative if corporation, mailing address, residential and business telephone numbers, and other means of communication.

5. Owner's engineer's name, firm, professional engineer Virginia number, mailing address, and business telephone number.

6. Impounding structure data including type of material (earth, concrete, masonry or other) and the following design configurations:

- a. Top of dam (elevation);
- b. Downstream toe – lowest (elevation);
- c. Height of dam (feet);

d. Crest length – exclusive of spillway (feet);

e. Crest width (feet);

f. Upstream slope (horizontal and vertical); and

g. Downstream slope (horizontal and vertical).

7. Reservoir data including the following:

a. Maximum capacity (acre-feet);

b. Maximum pool (elevation);

c. Maximum pool surface area (acres);

d. Normal capacity (acre-feet);

e. Normal pool (elevation);

f. Normal pool surface area (acres); and

g. Freeboard – normal pool to top of dam (feet).

8. Spillway data including the type, construction material, design configuration, and invert elevation for the low level drain, the principal spillway, and the emergency spillway.

9. Watershed data including drainage area (square miles); type and extent of watershed development; time of concentration (hours); routing procedure; spillway design flood used and state source; design inflow hydrograph volume (acre-feet), peak inflow (cfs), and rainfall duration (hours); and freeboard during passage of the spillway design flood (feet).

~~2-10.~~ A description of properties located in the dam break inundation zone downstream from the site of the proposed impounding structure, including the location and number of residential structures, buildings, roads, utilities and other property that would be endangered should the impounding structure fail.

~~3. A statement from the governing body of the local political subdivision or other evidence confirming that body is aware of the proposal to build an impounding structure and of the land use classifications applicable to the inundation zone.~~ 11. Evidence that the local government or governments have been notified of the proposal by the owner to build an impounding structure.

~~4-12.~~ Maps showing the location of the proposed impounding structure that include: the county or city in which the proposed impounding structure would be located, the location of roads; and access to the site, and the outline of the impoundment. Existing aerial photographs or existing topographic maps may be used for this purpose.

~~5-13.~~ A report of the geotechnical investigations of the foundation soils, ~~or~~ bedrock, or both and of the materials to be used to construct the impounding structure.

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~~6-14.~~ Design assumptions and analyses sufficient to indicate that the impounding structure will be stable during its construction and during the life of the impounding structure under all conditions of reservoir impoundment operations, including rapid filling, flood surcharge, seismic loadings, and rapid drawdown of the impoundment.

~~7-15.~~ Evaluation of the stability of the reservoir impoundment rim area in order to safeguard against reservoir impoundment rim slides of such magnitude as to create waves capable of overtopping the impounding structure and confirmation evaluation of rim stability during seismic activity.

~~8-16.~~ Design assumptions and analyses sufficient to indicate that seepage in, around, through or under the impounding structure, foundation and abutments will be reasonably and practically controlled so that internal or external forces or results thereof will not endanger the stability and integrity of the impounding structure. The design report shall also include information on graded filter design.

~~9-17.~~ Calculations and assumptions relative to hydraulic and structural design of the spillway or spillways and energy dissipater or dissipaters. Spillway capacity shall conform to the criteria of Table 1 and 4VAC50-20-52.

~~10-18.~~ Provisions to ensure that the impounding structure and appurtenances will be protected against unacceptable deterioration or erosion due to freezing and thawing, wind, wave action, and rain or any combination thereof.

~~11-19.~~ Other pertinent design data, assumptions and analyses commensurate with the nature of the particular impounding structure and specific site conditions, including when required by ~~the director~~ this chapter, a plan and profile of the dam break inundation zones.

~~12.~~ Erosion and sediment control plans to minimize soil erosion and sedimentation during all phases of construction, operation and maintenance. Projects shall be in compliance with local erosion and sediment control ordinances.

~~13-20.~~ A description of the techniques to be used to divert stream flow during construction so as to prevent hazard to life, health and property, including a detailed plan and procedures to maintain a stable impounding structure during storm events, a drawing showing temporary diversion devices, and a description of the potential impoundment during construction. Such diversion plans shall also be in accordance with applicable environmental laws.

~~14-21.~~ A plan ~~of~~ for project construction monitoring and quality control testing to confirm that construction materials and methods performance standards meet the design requirements set forth in the specifications.

~~15.~~ A proposed schedule indicating construction sequence and time to completion.

~~16-22.~~ Plans and specifications as required by 4VAC50-20-310.

~~17.~~ An emergency action plan on official forms and evidence that a copy of such plan has been filed with the local organization for emergency management and the State Department of Emergency Management. The plan shall include a method of providing notification and warning to persons downstream, other affected persons or property owners and local authorities in the event of a flood hazard or the impending failure of the impounding structure.

~~18.~~ A proposed impoundment and impounding structure operation and maintenance plan on official forms certified by a professional engineer. This plan shall include a safety inspection schedule and shall place particular emphasis on operating and maintaining the impounding structure in keeping with the project design, so as to maintain its structural integrity and safety during both normal and abnormal conditions which may reasonably be expected to occur during its planned life.

~~C.~~ The director or the applicant may request a conference to facilitate review of the applicant's proposal.

~~D.~~ The owner shall certify in writing that the operation and maintenance plan as approved by the board will be adhered to during the life of the project except in cases of unanticipated emergency requiring departure therefrom in order to mitigate hazard to life and property. At such time, the owner's engineer and the director shall be notified.

~~E.~~ If the submission is not acceptable, the director shall inform the applicant within 60 days and shall explain what changes are required for an acceptable submission.

~~F.~~ Within 120 days of receipt of an acceptable design report the board shall act on the application.

23. Certification by the owner's engineer that the information provided pursuant to this subsection is true and correct in their professional judgment. Such certification shall include the engineer's signature, printed name, Virginia number, date, and the engineer's Virginia seal.

24. Owner's signature certifying receipt of the information provided pursuant to this subsection.

C. A plan of construction is a required element of a complete permit application for a Construction Permit and shall include:

1. A construction sequence with milestones.

2. Elements of the work plan that should be considered include, but are not limited to, foundation and abutment treatment, stream or river diversion, excavation and

material fill processes, phased fill and compaction, testing and control procedures, construction of permanent spillway and drainage devices.

3. The erosion and sediment control plan, as approved by the local government, which minimizes soil erosion and sedimentation during all phases of construction.

4. The stormwater management plan or stormwater management facility plan, as approved by the local government, if the impounding structure is a stormwater management best management practice.

D. A Temporary Emergency Action Plan is a required element of a complete application for a Construction Permit and shall include:

1. A notification list of state and local emergency response agencies;
2. Provisions for notification of potentially affected residences and structures;
3. Construction site evacuation routes; and
4. Any other special notes particular to the project.

E. Within 120 days of receipt of a complete Construction Permit Application the board shall act on the application. If the application is not acceptable, the director shall inform the applicant within 60 days of receipt and shall explain what changes are required for an acceptable application. A complete Construction Permit Application consists of the following:

1. A final design report, submitted on the department form (Design Report for the Construction or Alteration of Virginia Regulated Impounding Structures), with attachments as needed, and certified by the owner and the owner's engineer;
2. A plan of construction that meets the requirements of subsection C of this section; and
3. A Temporary Emergency Action Plan that meets the requirements of subsection D of this section.

G-F. Prior to and during construction the owner shall notify provide the director of with any proposed changes from the approved design, plans, specifications, or operation and maintenance plan of construction. Approval shall be obtained from the director prior to the construction or installation of any changes that will affect the stability integrity or impounding capacity of the impounding structure.

H-G. The construction permit Construction Permit shall be valid for the plan of construction schedule specified in the approved design report Construction Permit Application. The construction schedule may be amended by the director for good cause at the request of the applicant.

I-H. Construction must commence within two years after the permit is issued. If construction does not commence within two years after the permit is issued, the permit shall expire, except that the applicant may petition the board for extension of the two-year period and the board may extend such period for good cause with an appropriately updated plan of construction and temporary emergency action plan.

J. The director may revoke a construction permit if any of the permit terms are violated, or if construction is conducted in a manner hazardous to downstream life or property. The director may order the owner to eliminate such hazardous conditions within a period of time limited by the order. Such corrective measures shall be at the owner's expense. The applicant may petition the board to reissue the permit with such modifications as the board determines to be necessary.

K. The owner's professional engineer shall advise the director when the impounding structure may safely impound water. The director shall acknowledge this statement within 10 days after which the impoundment may be filled under the engineer's supervision. The director's acknowledgement shall act as a temporary operation and maintenance certificate until an operation and maintenance certificate has been applied for and issued in accordance with 4VAC50-20-110.

I. The board, the director, or both may take any necessary action consistent with the Dam Safety Act (§10.1-604 et seq. of the Code of Virginia) if any terms of this section or of the permit are violated, if the activities of the owner are not in accordance with the approved plans and specifications, if construction is conducted in a manner hazardous to downstream life or property, or for other cause as described in the Act.

J. Within 90 days after completion of the construction of an impounding structure, the owner shall submit:

1. A complete set of record drawings signed and sealed by a licensed professional engineer and signed by the owner;
2. A complete Record Report (Record Report for Virginia Regulated Impounding Structures) signed and sealed by a licensed professional engineer and signed by the owner that includes:
  - a. Project information including the name and inventory number of the structure, name of the reservoir, and whether the report is associated with a new or old structure;
  - b. Location of the impounding structure including the city or county, number of feet or miles upstream or downstream of a highway and the highway number, name of the river or the stream, and the latitude and longitude;
  - c. Owner's name or representative if corporation, mailing address, residential and business telephone numbers, and other means of communication;

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d. Information on the design report, including who it was prepared by, the date of design report preparation, whether it was for new construction or for an alteration, and the permit issuance date;

e. Owner's engineer's name, firm, professional engineer Virginia number, mailing address, and business telephone number;

f. Impounding structure data including type of material (earth, concrete, masonry or other) and the following configurations:

(1) Top of dam (elevation);

(2) Downstream toe – lowest (elevation);

(3) Height of dam (feet);

(4) Crest length – exclusive of spillway (feet);

(5) Crest width (feet);

(6) Upstream slope (horizontal and vertical); and

(7) Downstream slope (horizontal and vertical).

g. Reservoir data including the following:

(1) Maximum capacity (acre-feet);

(2) Maximum pool (elevation);

(3) Maximum pool surface area (acres);

(4) Normal capacity (acre-feet);

(5) Normal pool (elevation);

(6) Normal pool surface area (acres); and

(7) Freeboard – normal pool to top of dam (feet).

h. Spillway data including the type, construction material, design configuration, and invert elevation for the low level drain, the principal spillway, and the emergency spillway; a description of the low level drain and principal spillway including dimensions, trash guard information, and orientation of intake and discharge to dam if looking downstream; and a description of the emergency spillway including dimensions and orientation to dam if looking downstream;

i. Watershed data including drainage area (square miles); type and extent of watershed development; time of concentration (hours); routing procedure; spillway design flood used and state source; design inflow hydrograph volume (acre-feet), peak inflow (cfs), and rainfall duration (hours); freeboard during passage of the spillway design flood (feet); and confirmation as to whether the impounding structure has ever been overtopped;

j. Impounding structure history including the date construction was completed, who it was designed by and

the date, who it was built by and the date, who performed inspections and dates, description of repairs, and confirmation as to whether the impounding structure has ever been overtopped;

k. A narrative describing the impounding structure procedures for operation, maintenance, filling, emergency action plan implementation, and structure evaluation;

l. A narrative describing the hydraulic and hydrologic data on the spillway design flood, hydrologic records, flood experience, flood potential, reservoir regulation, and comments or recommendations regarding these attributes;

m. A narrative describing stability of the foundation and abutments, embankment materials, and a written evaluation of each;

n. A complete set of record drawings signed and sealed by a licensed professional engineer and signed by the owner;

o. Certification by the owner's engineer that the information provided pursuant to subdivision J 2 of this section is true and correct in their professional judgment. Such certification shall include the engineer's signature, printed name, Virginia number, date, and the engineer's Virginia seal; and

p. Owner's signature certifying receipt of the information provided pursuant to subdivision J 2 of this section.

3. Certification from the licensed professional engineer who has monitored construction of the impounding structure during construction that, to the best of the engineer's judgment, knowledge and belief, the impounding structure and its appurtenances were constructed in conformance with the plans, specifications, drawings and other requirements approved by the board;

4. Operation and Maintenance Certificate Application (Operation and Maintenance Certificate Application for Virginia Regulated Impounding Structures) in accordance with 4VAC50-20-105; and

5. Emergency Action Plan or Emergency Preparedness Plan in accordance with 4VAC50-20-175 or 4VAC50-20-177.

K. Upon completion of construction, the impoundment may be filled upon board issuance of an Operation and Maintenance Certificate.

## **4VAC50-20-80. Alterations permits.**

A. Application for a permit to alter an impounding structure in ways which would potentially affect its structural integrity shall be made on official forms. The application shall clearly

describe the proposed work with appropriately detailed plans and specifications.

B.A. Alterations which would potentially affect the structural integrity of an impounding structure include, but are not limited to, changing ~~its~~ the height or otherwise enlarging the dam, increasing the normal pool or principal spillway elevation or physical dimensions, changing the elevation or physical dimensions of the emergency spillway, conducting necessary repairs or structural maintenance, or removing the impounding structure.

C. ~~Where feasible an application for an alteration permit shall also include plans and specifications for a device to allow for draining the impoundment if such does not exist.~~

D. ~~If the submission is not acceptable, the director shall inform the applicant within 60 days and shall explain what changes are required for an acceptable submission.~~

E. ~~Within 120 days of receipt of an acceptable application, the board shall act on the application.~~

B. An applicant for an Alteration Permit shall submit a design report. A form for the design report will be available from the department (Design Report for the Construction or Alteration of Virginia Regulated Impounding Structures). The design report shall be prepared in accordance with 4VAC50-20-240. The design report shall include, but not be limited to, the following information:

1. Project information including a description and benefits of the proposed alteration, name of the impounding structure, inventory number if available, name of the reservoir, and the purpose of the reservoir.

2. The hazard potential classification in conformance with Table 1 in 4VAC50-20-50.

3. Location of the impounding structure including the city or county, number of feet or miles upstream or downstream of a highway and the highway number, name of the river or the stream, and the latitude and longitude.

4. Owner's name or representative if corporation, mailing address, residential and business telephone numbers, and other means of communication.

5. Owner's engineer's name, firm, professional engineer Virginia number, mailing address, and business telephone number.

6. Impounding structure data including type of material (earth, concrete, masonry or other) and the following configurations (note both existing and design configurations for each):

a. Top of dam (elevation);

b. Downstream toe – lowest (elevation);

c. Height of dam (feet);

d. Crest length – exclusive of spillway (feet);

e. Crest width (feet);

f. Upstream slope (horizontal and vertical); and

g. Downstream slope (horizontal and vertical).

7. Reservoir data including the following (note both existing and design configurations for each):

a. Maximum capacity (acre-feet);

b. Maximum pool (elevation);

c. Maximum pool surface area (acres);

d. Normal capacity (acre-feet);

e. Normal pool (elevation);

f. Normal pool surface area (acres); and

g. Freeboard – normal pool to top of dam (feet).

8. Spillway data including the type, construction material, design configuration, and invert elevation for the low level drain, the principal spillway, and the emergency spillway.

9. Watershed data including drainage area (square miles); type and extent of watershed development; time of concentration (hours); routing procedure; spillway design flood used and state source; design inflow hydrograph volume (acre-feet), peak inflow (cfs), and rainfall duration (hours); and freeboard during passage of the spillway design flood (feet).

10. Evidence that the local government has been notified of the alteration and repair plan.

11. Plans and specifications as required by 4VAC50-20-310. The plan view of the dam site should represent all significant structures and improvements that illustrate the location of all proposed work.

12. A report of the geotechnical investigations of the foundation soils, bedrock, or both in the areas affected by the proposed alterations and of the materials to be used to alter the impounding structure.

13. Design assumptions and analyses sufficient to indicate that the impounding structure will be stable during the alteration of the impounding structure under all conditions of reservoir operations.

14. Calculations and assumptions relative to design of the improved spillway or spillways, if applicable.

15. Provisions to ensure that the impounding structure and appurtenances during the alteration will be protected against unacceptable deterioration or erosion due to freezing and thawing, wind, wave action and rain or any combination thereof.

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16. Other pertinent design data, assumptions and analyses commensurate with the nature of the particular impounding structure and specific site conditions, including when required by this chapter, a plan and profile of the dam break inundation zones.

17. If applicable, a description of the techniques to be used to divert stream flow during alteration work so as to prevent hazard to life, health and property, including a detailed plan and procedures to maintain a stable impounding structure during storm events, a drawing showing temporary diversion devices, and a description of the potential impoundment during the alteration. Such diversion plans shall be in accordance with the applicable environmental laws.

18. A plan for project construction monitoring and quality control testing to confirm that materials used in the alteration work and that performance standards meet the design requirements set forth in the specifications.

19. Certification by the owner's engineer that the information provided pursuant to this subsection is true and correct in their professional judgment. Such certification shall include the engineer's signature, printed name, Virginia number, date, and the engineer's Virginia seal.

20. Owner's signature certifying receipt of the information provided pursuant to this subsection.

C. A plan of construction is a required element of complete permit application and shall include:

1. A construction sequence with milestones.

2. Elements of the work plan that should be considered include, but are not limited to, foundation and abutment treatment, excavation and material fill processes, phased fill and compaction, testing and control procedures, construction of permanent spillway and drainage devices, if applicable.

3. The erosion and sediment control plan, as approved by the local government, which minimizes soil erosion and sedimentation during all phases of construction.

D. Within 120 days of receipt of a complete Alteration Permit Application, the board shall act on the application. If the application is not acceptable, the director shall inform the applicant within 60 days of receipt and shall explain what changes are required for an acceptable application. A complete Alteration Permit Application consists of the following:

1. A final design report with attachments as needed, and certified by the owner;

2. A plan of construction that meets the requirements of subsection C of this section;

3. Any necessary interim provisions to the current Emergency Action Plan or Emergency Preparedness Plan. Interim provisions shall be submitted to the local organization for emergency management, the Virginia Department of Emergency Management, and the department; and

4. If the owner is requesting the deregulation of an impounding structure, the application shall specify whether the impounding structure is to be removed so that the impounding structure is incapable of storing water, either temporarily or permanently; or whether the impounding structure is to be altered in such a manner that either the height or storage capacity of the impounding structure causes the impounding structure to be of less than regulated size.

E. During the alteration work, the owner shall provide the director with any proposed changes from the approved design, plans, specifications, or a plan of construction. Approval shall be obtained from the director prior to the alteration or installation of any changes that will affect the integrity or impounding capacity of the impounding structure.

F. The Alteration Permit shall be valid for the construction sequence with milestones specified in the approved Alteration Permit Application.

G. Work identified in the Alteration Permit must commence within the time frame identified in the Alteration Permit. If work does not commence within the prescribed time frame, the permit shall expire, except that the applicant may petition the board for extension of the prescribed time frame and the board may extend such period for good cause with an updated construction sequence with milestones.

H. The board, the director, or both may take any necessary action consistent with the Dam Safety Act (§10.1-604 et seq. of the Code of Virginia) if any terms of this section or of the permit are violated, if the activities of the owner are not in accordance with the approved plans and specifications, if the alteration is conducted in a manner hazardous to downstream life or property, or for other cause as described in the Act.

I. Within 90 days after completion of the alteration of an impounding structure, the owner shall submit a complete Record Report. A form for the Record Report will be available from the department (Record Report for Virginia Regulated Impounding Structures). The Record Report signed and sealed by a licensed professional engineer and signed by the owner to the department indicating the modifications made to the structural features of the impounding structure. This report is not required when the Alteration Permit has been issued for the removal of an impounding structure. The Record Report shall include the following:

a. Project information including the name and inventory number of the structure, name of the reservoir, and whether the report is associated with a new or old structure;

b. Location of the impounding structure including the city or county, number of feet or miles upstream or downstream of a highway and the highway number, name of the river or the stream, and the latitude and longitude;

c. Owner's name or representative if corporation, mailing address, residential and business telephone numbers, and other means of communication;

d. Information on the design report, including who it was prepared by, the date of design report preparation, whether it was for new construction or for an alteration, and the permit issuance date;

e. Owner's engineer's name, firm, professional engineer Virginia number, mailing address, and business telephone number;

f. Impounding structure data including type of material (earth, concrete, masonry or other) and the following configurations:

- (1) Top of dam (elevation);
- (2) Downstream toe – lowest (elevation);
- (3) Height of dam (feet);
- (4) Crest length – exclusive of spillway (feet);
- (5) Crest width (feet);
- (6) Upstream slope (horizontal and vertical); and
- (7) Downstream slope (horizontal and vertical).

g. Reservoir data including the following:

- (1) Maximum capacity (acre-feet);
- (2) Maximum pool (elevation);
- (3) Maximum pool surface area (acres);
- (4) Normal capacity (acre-feet);
- (5) Normal pool (elevation);
- (6) Normal pool surface area (acres); and
- (7) Freeboard – normal pool to top of dam (feet).

h. Spillway data including the type, construction material, design configuration, and invert elevation for the low level drain, the principal spillway, and the emergency spillway; a description of the low level drain and principal spillway including dimensions, trash guard information, and orientation of intake and discharge to dam if looking downstream; and a description of the emergency spillway including dimensions and orientation to dam if looking downstream;

i. Watershed data including drainage area (square miles); type and extent of watershed development; time of concentration (hours); routing procedure; spillway design flood used and state source; design inflow hydrograph

volume (acre-feet), peak inflow (cfs), and rainfall duration (hours); and freeboard during passage of the spillway design flood (feet);

j. Impounding structure history including the date construction was completed, who it was designed by and the date, who it was built by and the date, who performed inspections and dates, description of repairs, and confirmation as to whether the impounding structure has ever been overtopped;

k. A narrative describing the impounding structure procedures for operation, maintenance, emergency action plan implementation, and structure evaluation;

l. A narrative describing the hydraulic and hydrologic data on the spillway design flood, hydrologic records, flood experience, flood potential, reservoir regulation, and comments or recommendations regarding these attributes;

m. A narrative describing stability of the foundation and abutments, embankment materials, and a written evaluation of each;

n. A complete set of record drawings signed and sealed by a licensed professional engineer and signed by the owner;

o. Certification by the owner's engineer that the information provided pursuant to subdivision I 2 of this section is true and correct in their professional judgment. Such certification shall include the engineer's signature, printed name, Virginia number, date, and the engineer's Virginia seal; and

p. Owner's signature certifying receipt of the information provided pursuant to subdivision I 2 of this section.

J. For altered impounding structures, a certification from a licensed professional engineer who has monitored the alteration of the impounding structure that, to the best of the engineer's judgment, knowledge, and belief, the impounding structure and its appurtenances were altered in conformance with the plans, specifications, drawings and other requirements approved by the board.

#### **4VAC50-20-90. Transfer of permits.**

A. Prior to the transfer of ownership of a permitted impounding structure the permittee shall notify the director in writing and the new owner shall file a transfer application on official forms notification with the department. A form for the transfer notification will be available from the department (Transfer of Impounding Structure Notification form Past Owner to New Owner). The new owner shall amend the existing permit application as necessary and shall certify to the director that he is aware of and will comply with all of the requirements and conditions of the permit.

B. The Transfer Notification shall include the following required information:

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1. Project information including the name and inventory number of the structure, name of the reservoir, and impoundment hazard classification;

2. Location of the impounding structure including the city or county, number of feet or miles upstream or downstream of a highway and the highway number, name of the river or the stream, and the latitude and longitude;

3. Type of certificates and permits to be transferred including effective date and expiration date of all certificates and permits;

4. Past owner's name, mailing address, and residential and business telephone numbers;

5. New owner's name, mailing address, and residential and business telephone numbers;

6. Request to transfer certification statement signed and dated by the past owner;

7. Certification of compliance with permit or certificate with all said terms and conditions signed and dated by the new owner; and

8. Contact information updates for Emergency Action Plan or Emergency Preparedness Plan provided by the new owner. Such updates shall include the name, mailing address, and residential and business telephone numbers for the dam owner, dam operator, rainfall and staff gage observer, and alternate observer.

## Part III

### Certificate Requirements

#### **4VAC50-20-100. Operation and maintenance certificates. (Repealed.)**

~~A. A Class I Operation and Maintenance Certificate is required for a Class I Hazard potential impounding structure. The certificate shall be for a term of six years. It shall be updated based upon the filing of a new reinspection report certified by a professional engineer every two years.~~

~~B. A Class II Operation and Maintenance Certificate is required for a Class II Hazard potential impounding structure. The certificate shall be for a term of six years. It shall be updated based upon the filing of a new reinspection report certified by a professional engineer every three years.~~

~~C. A Class III Operation and Maintenance Certificate is required for a Class III Hazard potential impounding structure. The certificate shall be for a term of six years.~~

~~D. The owner of a Class I, II or III impounding structure shall provide the director an annual owner's inspection report on official forms in years when no professional reinspection is required and may be done by the owner or his representative.~~

~~E. If an Operation and Maintenance Certificate is not updated as required, the board shall take appropriate enforcement action.~~

~~F. The owner of a Class I, II or III impounding structure shall apply for the renewal of the six year operation and maintenance certificate 90 days prior to its expiration in accordance with 4VAC50-20-120 of this chapter.~~

~~G. A Class IV impounding structure will not require an operation and maintenance certificate. An inventory report is to be prepared as provided in 4VAC50-20-120 B and filed by the owner on a six year interval, and an owners inspection report filed annually.~~

~~H. The owner of any impounding structure, regardless of its hazard classification, shall notify the board immediately of any change in either cultural features downstream from the impounding structure or of any change in the use of the area downstream that would present hazard to life or property in the event of failure.~~

#### **4VAC50-20-105. Regular Operation and Maintenance Certificates.**

A. A Regular Operation and Maintenance Certificate is required for an impounding structure. Such six-year certificates shall include the following based on hazard classification:

1. High Hazard Potential Regular Operation and Maintenance Certificate;

2. Significant Hazard Potential Regular Operation and Maintenance Certificate; or

3. Low Hazard Potential Regular Operation and Maintenance Certificate.

B. The owner of an impounding structure shall apply for the renewal of the six-year Regular Operation and Maintenance Certificate 90 days prior to its expiration. If a Regular Operation and Maintenance Certificate is not renewed as required, the board shall take appropriate enforcement action.

C. Any owner of an impounding structure that does not have a Regular Operation and Maintenance Certificate or any owner renewing a Regular Operation and Maintenance Certificate shall file an Operation and Maintenance Certificate Application. A form for the application will be available from the department (Operation and Maintenance Certificate Application for Virginia Regulated Impounding Structures). Such application shall be signed by the owner and signed and sealed by a licensed professional engineer. The following information shall be submitted on or with the application:

1. The application shall include the following required information:

a. The name of structure and inventory number;

- b. The proposed hazard potential classification;
  - c. Owner's name or representative if corporation, mailing address, residential and business telephone numbers, and other means of communication;
  - d. An operating plan and schedule including a narrative on the operation of control gates and spillways and the impoundment drain;
  - e. For earthen embankment dams, a maintenance plan and schedule for the embankment, principal spillway, emergency spillway, low-level outlet, impoundment area, downstream channel, and staff gages;
  - f. For concrete dams, a maintenance plan and schedule for the upstream face, downstream face, crest of dam, galleries, tunnels, abutments, spillways, gates and outlets, and staff gages;
  - g. An inspection schedule for operator inspection, maintenance inspection, technical safety inspection, and overtopping situations;
  - h. A schedule including the rainfall amounts, emergency spillway flow levels or storm event that initiates the Emergency Action or Preparedness Plan and the frequency of observations;
  - i. A statement as to whether or not the current hazard potential classification for the dam is appropriate and whether or not additional work is needed to make an appropriate hazard potential designation;
  - j. For newly constructed or recently altered impounding structures, a certification from a licensed professional engineer who has monitored the construction or alteration of the impounding structure that, to the best of the engineer's judgment, knowledge, and belief, the impounding structure and its appurtenances were constructed or altered in conformance with the plans, specifications, drawings and other requirements approved by the board;
  - k. Certification by the owner's engineer that the Operation and Maintenance Certificate Application information provided pursuant to subdivision 1 of this subsection is true and correct in their professional judgment. Such certification shall include the engineer's signature, printed name, Virginia number, date, and the engineer's Virginia seal; and
  - l. Owner's signature certifying the Operation and Maintenance Certificate Application information provided pursuant to subdivision 1 of this subsection and that the operation and maintenance plan and schedule shall be conducted in accordance with this chapter.
2. An Inspection Report (Annual Inspection Report for Virginia Regulated Impounding Structures) in accordance with subsection E of this section;

3. An Emergency Action Plan in accordance with 4VAC50-20-175 or an Emergency Preparedness Plan in accordance with 4VAC50-20-177 and evidence that the required copies of such plan have been submitted to the local organization for emergency management and the Virginia Department of Emergency Management; and

4. Any additional analysis determined necessary by the director, the board or the owner's engineer to address public safety concerns. Such additional analysis may include, but not be limited to, seismic stability, earthen spillway integrity, adequate freeboard allowance, stability assessment of the impoundment's foundation, potential liquefaction of the embankment, overturning or sliding of a concrete structure and other structural stress issues.

D. If the Operation and Maintenance Certificate Application submittal is found to be not complete, the director shall inform the applicant within 30 days and shall explain what changes are required for an acceptable submission. Within 60 days of receipt of a complete application the board shall act upon the application. Upon finding that the impounding structure as currently operating is in compliance with this chapter, the board shall issue a Regular Operation and Maintenance Certificate. Should the board find that the impounding structure as currently operating is not in compliance with this chapter, the board may deny the permit application or issue a Conditional Operation and Maintenance Certificate in accordance with 4VAC50-20-150.

E. Inspections shall be performed on an impounding structure annually.

1. Inspection Reports (Annual Inspection Report for Virginia Regulated Impounding Structures) signed and sealed by a licensed professional engineer shall be submitted to the department in accordance with the following schedule:

- a. For a High Hazard Potential impounding structure, every two years,
- b. For a Significant Hazard Potential impounding structure, every three years,
- c. For a Low Hazard Potential impounding structure, every six years.

In years when an Inspection Report signed and sealed by a licensed professional engineer is not required, an owner shall submit the Annual Inspection Report for Virginia Regulated Impounding Structures.

2. The Inspection Report shall include the following required information:

- a. Project information including the name and inventory number of structure, name of the reservoir, and purpose of the reservoir;

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b. City or county where the impounding structure is located;

c. Owner's name or representative if corporation, mailing address, residential and business telephone numbers, and other means of communication;

d. Owner's engineer's name, firm, professional engineer Virginia number, mailing address, and business telephone number;

e. Inspection observation of the impounding structure including the following:

(1) Earthen embankment information including any embankment alterations; erosion; settlement, misalignments or cracks; seepage and seepage flow rate and location;

(2) Upstream slope information including notes on woody vegetation removed, rodent burrows discovered, and remedial work performed;

(3) Intake structure information including notes on deterioration of concrete structures, exposure of rebar reinforcement, need to repair or replace trash rack, any problems with debris in the reservoir, and whether the drawdown valve operated;

(4) Abutment contacts including notes on seepage and seepage flow rate and location;

(5) Earthen emergency spillway including notes on obstructions to flow and plans to correct, rodent burrows discovered, and deterioration in the approach or discharge channel;

(6) Concrete emergency spillway including notes on the deterioration of the concrete, exposure of rebar reinforcement, any leakage below concrete spillway, and obstructions to flow and plans to correct;

(7) Downstream slope information including notes on woody vegetation removed, rodent burrows discovered, whether seepage drains are working, and any seepage or wet areas;

(8) Outlet pipe information including notes on any water flowing outside of discharge pipe through the dam and a description of any reflection or damage to the pipe;

(9) Stilling basin information including notes on the deterioration of the concrete, exposure of rebar reinforcement, deterioration of the earthen basin slopes, repairs made, and any obstruction to flow;

(10) Gates information including notes on gate malfunctions or repairs, corrosion or damage, and whether any gates were operated and if so how often and to what extreme;

(11) Reservoir information including notes on new developments upstream of the dam, slides or erosion of lake banks, and general comments to include silt, algae, or other influence factors;

(12) Instruments information including any reading of instruments and any installation of new instruments; and

(13) General information including notes on new development in the downstream floodplain that would impact hazard classification, the maximum stormwater discharge or peak elevation during the previous year, whether general maintenance was performed and when, and actions that need to be completed before the next inspection.

f. Evaluation rating of the dam and appurtenances (excellent, good, or poor), general comments, and recommendations;

g. Certification by the owner and date of inspection; and

h. Certification and seal by the owner's engineer and date of inspection, as applicable.

F. The owner of an impounding structure shall notify the department immediately of any change in the use of the area downstream that would impose hazard to life or property in the event of failure.

## **4VAC50-20-110. Operation and maintenance certificate for newly constructed impounding structures. (Repealed.)**

A. Within 180 days after completion of the construction of an impounding structure, the owner shall submit:

1. A complete set of as built drawings certified by a professional engineer and an as built report on official forms.

2. A copy of a certificate from the professional engineer who has inspected the impounding structure during construction certifying that, to the best of his judgment, knowledge and belief, the impounding structure and its appurtenances were constructed in conformance with the plans, specifications, drawings and other requirements approved by the board.

3. A copy of the operation and maintenance plan and emergency action plan submitted with the design report including any changes required by the director.

B. If the director finds that the operation and maintenance plan or emergency action plan is deficient, he shall return it to the owner within 60 days with suggestions for revision.

C. Within 60 days of receipt of the items listed in subsection A above, if the board finds that adequate provision has been made for the safe operation and maintenance of the impounding structure, the board shall issue an operation and maintenance certificate.

**4VAC50-20-120. Operation and maintenance certificates for existing impounding structures. (Repealed.)**

~~A. Any owner of an impounding structure other than a Class IV impounding structure which has already filed an inventory report that does not have an operation and maintenance certificate or any owner renewing an operation and maintenance certificate shall file an application with the board.~~

~~B. The application for an operation and maintenance certificate shall be on official forms and shall include:~~

~~1. A reinspection report for Class I and II impounding structures. The reinspection report shall include an update of conditions of the impounding structure based on a previous safety inspection as required by the board, a previous reinspection report or an as built report.~~

~~2. An inventory report for Class III impounding structures. The inventory report shall include:~~

~~a. The name and location of the impounding structure and the name of the owner.~~

~~b. The description and dimensions of the impounding structure, the spillways, the reservoir and the drainage area.~~

~~c. The history of the impounding structure which shall include the design, construction, repairs, inspections and whether the structure has been overtopped.~~

~~d. Observations of the condition of the impounding structure, reservoir, and upstream and downstream areas.~~

~~e. Any changes in the impounding structure, reservoir, and upstream and downstream areas.~~

~~f. Recommendations for remedial work.~~

~~3. An impoundment and impounding structure operation and maintenance plan certified by a professional engineer. This plan shall place particular emphasis on operating and maintaining the impounding structure in keeping with the project design in such manner as to maintain its structural integrity and safety during both normal and abnormal conditions which may reasonably be expected to occur during its planned life. The safety inspection report required by the board should be sufficient to serve as the basis for the operation and maintenance plan for a Class I and Class II impounding structure. For a Class III impounding structure, the operation and maintenance plan shall be based on the data provided in the inventory report.~~

~~4. An emergency action plan and evidence that a copy of such plan has been filed with the local organization for emergency management and the State Department of Emergency Management. The plan shall include a method of providing notification and warning to persons downstream, other affected persons or property owners and~~

~~local authorities in the event of a flood hazard or the impending failure of the impounding structure.~~

~~C. The owner shall certify in writing that the operation and maintenance plan approved by the board will be adhered to during the life of the project except in cases of emergency requiring departure therefrom in order to mitigate hazard to life and property, at which time the owner's engineer and the director shall be notified.~~

~~D. If the director finds that the operation and maintenance plan or emergency action plan is deficient, he shall return it to the owner within 60 days with suggestions for revision.~~

~~E. Within 60 days of receipt of an acceptable application if the board finds that adequate provision has been made for the safe operation and maintenance of the impounding structure, the board shall issue an operation and maintenance certificate.~~

**4VAC50-20-125. Delayed effective date for Spillway Design Flood requirements for impounding structures.**

A. If an impounding structure has been determined to have an adequate spillway capacity prior to the effective date of these regulations and is currently operating under a Regular Operation and Maintenance Certificate, but will now require spillway modifications due to changes in these regulations, the owner shall submit to the board an Alteration Permit Application in accordance with 4VAC50-20-80 to address spillway capacity at the time of the expiration of their Regular Operation and Maintenance Certificate or within three years of the effective date of these regulations, whichever is later. The Alteration Permit Application shall contain a construction sequence with milestones for completing the necessary improvements within five years of Alteration Permit issuance. The board may approve an extension of the prescribed time frame for good cause. Should the owner be able to demonstrate that no spillway capacity change is necessary, the impounding structure may be found to be in compliance with this chapter.

B. In accordance with 4VAC50-20-105, the owner shall submit the Operation and Maintenance Certificate Application (Operation and Maintenance Certificate Application for Virginia Regulated Impounding Structures), the Emergency Action Plan or Emergency Preparedness Plan, and the Inspection Report (Annual Inspection Report for Virginia Regulated Impounding Structures) 90 days prior to the expiration of the Regular Operation and Maintenance Certificate.

C. If circumstances warrant more immediate repairs to the impounding structure, the board may direct alterations to the spillway to be completed sooner.

D. During this delay period, owners are required to address other deficiencies that may exist that are not related to the spillway design flood.

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## **4VAC50-20-130. Existing impounding structures constructed prior to July 1, 1982. (Repealed.)**

~~A. Many existing impoundment structures were designed and constructed prior to the enactment of the Dam Safety Act, and may not satisfy current criteria for new construction. The board may issue an operation and maintenance certificate for such structures provided that:~~

- ~~1. Operation and maintenance is determined by the director to be satisfactory and up to date;~~
- ~~2. Annual owner's inspection reports have been filed with and are considered satisfactory by the director;~~
- ~~3. The applicant proves in accordance with the current design procedures and references of 4VAC50-20-320 to the satisfaction of the board that the impounding structure as designed, constructed, operated and maintained does not pose an unreasonable hazard to life and property; and~~
- ~~4. The owner satisfies all special requirements imposed by the board.~~

~~B. When appropriate with existing impounding structures only, the spillway design flood requirement may be reduced by the board to the spillway discharge at which dam failure will not significantly increase the downstream hazard existing just prior to dam failure provided that the conditions of 4VAC50-20-130 A have been met.~~

## **4VAC50-20-140. Existing impounding structures constructed after July 1, 1982. (Repealed.)**

~~The board may issue an operation and maintenance certificate for an impounding structure having a construction permit issued after July 1, 1982, and shall not require upgrading to meet new more stringent criteria unless the board determines that the new criteria must be applied to prevent an unreasonable hazard to life or property.~~

## **4VAC50-20-150. Conditional operation and maintenance certificate.**

A. During the review of any ~~operation~~ Operation and maintenance application Maintenance Certificate Application (Operation and Maintenance Certificate Application for Virginia Regulated Impounding Structures) completed in accordance with 4VAC50-20-105 should the director determine that the impounding structure has nonimminent deficiencies of a nonimminent danger category, the director may recommend that the board issue a ~~conditional operation~~ Conditional Operation and ~~maintenance~~ Maintenance Certificate.

B. The ~~conditional operation~~ Conditional Operation and ~~maintenance certificate~~ Maintenance Certificate for Class I, II and III High, Significant, and Low Hazard Potential impounding structures shall be for a maximum term of two years. This certificate will allow the owner to continue normal operation and maintenance of the impounding

structure, and shall require that the owner correct the deficiencies on a schedule determined by the ~~director~~ board.

C. A ~~conditional certificate~~ Conditional Certificate may be ~~renewed~~ extended in accordance with the procedures of ~~4VAC50-20-120~~ 4VAC50-20-155 provided that ~~annual owner inspection reports~~ Inspection Reports (Annual Inspection Report for Virginia Regulated Impounding Structures) are on file, and the board determines that the owner is proceeding with the necessary corrective actions.

D. Once the deficiencies are corrected, the board shall issue an ~~operation~~ Regular Operation and ~~maintenance certificate~~ Maintenance Certificate based upon ~~any required revisions to the original application~~ the impounding structure's meeting the requirements of 4VAC50-20-105.

## **4VAC50-20-155. Extension of Operation and Maintenance Certificates.**

The board may extend an Operation and Maintenance Certificate for impounding structures provided that the owner submits a written request justifying an extension, the amount of time needed to comply with the requirements set out in the current Operation and Maintenance Certificate, and any required fees. The owner must have demonstrated substantial and continual progress towards meeting the requirements.

## **4VAC50-20-160. Additional operation and maintenance requirements.**

A. The owner of an impounding structure shall not, through action or inaction, cause or allow such structure to impound water following receipt of a written report from the owner's engineer that the impounding structure will not safely impound water.

B. In accordance with §10.1-609.2 of the Code of Virginia, dam owners shall not permit the growth of trees and other woody vegetation and shall remove any such vegetation from the slopes and crest of embankments and the emergency spillway area, and within a distance of 25 feet from the toe of the embankment and abutments of the dam.

## **4VAC50-20-165. Agricultural Exemption.**

A. Impounding structures operated primarily for agricultural purposes that are less than 25 feet in height or that create a maximum impoundment capacity smaller than 100 acre-feet are exempt from the Impounding Structure Regulations.

B. An owner covered by an agricultural exemption pursuant to §10.1-604 of the Code of Virginia and 4VAC50-20-30 may validate such exemption by submitting an Agricultural Exemption Report (Agricultural Exemption Report for Impounding Structures). The Agricultural Exemption Report shall include the following information:

1. Project information including the name and inventory number of the structure and name of the reservoir;

2. Location of the impounding structure including the city or county, number of feet or miles upstream or downstream of a highway and the highway number, name of the river or the stream, and the latitude and longitude;

3. Owner's name or representative if corporation, mailing address, residential and business telephone numbers, and other means of communication;

4. The impounding structure height in feet and the maximum impounding capacity in acre-feet;

5. A list of the agricultural functions for which the impoundment supplies water;

6. The date of validation; and

7. The owner's signature validating that the impoundment is operated primarily for agricultural purposes and is exempt from the regulations.

C. The Agricultural Exemption Report may be verified by the department through a possible site visit.

#### **4VAC50-20-170. Transfer of certificates.**

A. Prior to the transfer of ownership of an impounding structure the certificate holder shall notify the director in writing and the new owner shall file a transfer ~~application on official forms~~ notification with the department. A form for the transfer notification will be available from the department (Transfer of Impounding Structure Notification from Past Owner to New Owner). The new owner may elect to continue the ~~current~~ existing operation and maintenance certificate for the remaining term or he may apply for a new certificate in accordance with 4VAC50-20-120 4VAC50-20-105. If the owner elects to continue the existing certificate, he shall ~~amend the existing certificate application as necessary~~ and shall certify to the director that he is aware of and will comply with all of the requirements and conditions of the certificate.

B. The Transfer Notification shall include the following required information:

1. Project information including the name and inventory number of the structure, name of the reservoir, and impoundment hazard classification;

2. Location of the impounding structure including the city or county, number of feet or miles upstream or downstream of a highway and the highway number, name of the river or the stream, and the latitude and longitude;

3. Type of certificates and permits to be transferred including effective date and expiration date of all certificates and permits;

4. Past owner's name, mailing address, and residential and business telephone numbers;

5. New owner's name, mailing address, and residential and business telephone numbers;

6. Request to transfer certification statement signed and dated by the past owner;

7. Certification of compliance with permit or certificate with all said terms and conditions signed and dated by the new owner; and

8. Contact information updates for Emergency Action Plan or Emergency Preparedness Plan provided by the new owner. Such updates shall include the name, mailing address, and residential and business telephone numbers for the dam owner, dam operator, rainfall and staff gage observer, and alternate observer.

#### **Part IV**

#### **Procedures**

#### **4VAC50-20-175. Emergency Action Plan (EAP) for High and Significant Hazard Potential Dams.**

A. In order to protect life during potential emergency conditions at a dam, and to ensure effective, timely action is taken should a dam emergency occur, an EAP shall be required for each High and Significant Hazard Potential impounding structure. The EAP shall be coordinated with the Department of Emergency Management in accordance with §44-146.18 of the Code of Virginia. The EAP required by these regulations shall be incorporated into local and interjurisdictional emergency plans pursuant to §44-146.19 of the Code of Virginia.

B. It is the dam owner's responsibility to develop, maintain, exercise, and implement a site-specific EAP.

C. An EAP shall be submitted every six years. The EAP shall be submitted with the owner's submittal of their Regular Operation and Maintenance Certificate application (Operation and Maintenance Certificate Application for Virginia Regulated Impounding Structures).

D. The owner shall update the EAP immediately upon becoming aware of necessary changes to keep the EAP workable. Should a dam be reclassified, an EAP in accordance with this section shall be submitted.

E. A drill shall be conducted annually for each high or significant hazard impounding structure. To the extent practicable, the drill should include a face-to-face meeting with the local emergency management agencies responsible for any necessary evacuations to review the EAP and ensure the local emergency management agencies understand the actions required during an emergency. A table-top exercise shall be conducted once every three years. Owners shall certify to the department annually that a drill, a table-top exercise, or both has been completed, provide a critique of the exercise or exercises and any revisions or updates to the EAP or a statement that no revisions or updates are needed.

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F. Dam owners shall test existing monitoring, sensing, and warning equipment at remote or unattended dams at least twice per year and maintain a record of such tests.

G. An EAP shall contain the following seven basic elements unless otherwise specified in this subsection.

1. Notification chart. A notification chart shall be included for all classes of dams that shows who is to be notified, by whom, and in what priority. The notification chart shall include contact information providing 24-hour telephone coverage for all responsible parties.

2. Emergency Detection, Evaluation, and Classification. The EAP shall include a discussion of the procedures for timely and reliable detection, evaluation, and classification of emergency situations considered to be relevant to the project setting and impounding features. Each relevant emergency situation is to be documented to provide an appropriate course of action based on the urgency of the situation. Where appropriate, situations should address dam breaks that are imminent or in progress, a situation where the potential for dam failure is rapidly developing, and a situation where the threat is slowly developing.

3. Responsibilities. The EAP shall specify responsibilities for EAP-related tasks. The EAP shall also clearly designate the responsible party for making the decision that an emergency condition no longer exists at the dam. The EAP shall include procedures and the responsible parties for notifying to the extent possible any known local occupants, owners, or lessees of downstream properties potentially impacted by the dam's failure.

4. Preparedness. The EAP shall include a section that describes preparedness actions to be taken both before and following development of emergency conditions.

5. Dam Break Inundation Maps. The EAP shall include dam break inundation maps developed in accordance with 4VAC50-20-54.

6. Appendices. The appendices shall contain information that supports and supplements the material used in the development and maintenance of the EAP such as analyses of dam break floods; plans for training, exercising, updating, and posting the EAP; and other site-specific concerns.

7. Certification. The EAP shall include a section that is signed by all parties with assigned responsibilities in the EAP pursuant to this subdivision 3 of this subsection, where they indicate their receipt of the EAP. The preparer's name, title, and contact information shall be printed in this section. The preparer's signature shall also be included in the certification section. The local organization for emergency management shall provide the owner and the department with any deficiencies they may note.

H. The development of the EAP shall be coordinated with all entities, jurisdictions, and agencies that would be affected by a dam failure or that have statutory responsibilities for warning, evacuation, and postflood actions. Consultation with state and local emergency management officials at appropriate levels of management responsible for warning and evacuation of the public shall occur to ensure that there is awareness of their individual and group responsibilities. The owner shall also coordinate with the local organization for emergency management to identify properties that upon failure of the impounding structure would result in economic impacts.

I. The EAP, or any updates to an existing EAP, shall be submitted to the department, the local organization for emergency management, and the Virginia Department of Emergency Management. Two copies shall be provided to the department.

J. The following format shall be used as necessary to address the requirements of this section.

Title Page/Cover Sheet

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I. Certifications

II. Notification Flowchart

III. Statement of Purpose

IV. Project Description

V. Emergency Detection, Evaluation, and Classification

VI. General Responsibilities Under the EAP

A. Dam Owner Responsibilities

B. Responsibility for Notification

C. Responsibility for Evacuation

D. Responsibility for Termination and Follow-Up

E. EAP Coordinator Responsibility

VII. Preparedness

VIII. Inundation Maps

IX Appendices

A. Investigation and Analyses of Dam break Floods

B. Plans for Training, Exercising, Updating, and Posting the EAP

C. Site-Specific Concerns

**4VAC50-20-177. Emergency Preparedness Plan for Low Hazard Dams.**

A. Low Hazard Dams shall provide information for emergency preparedness to the department, the local organization for emergency management and the Virginia

Department of Emergency Management. A form for the submission will be available from the department (Emergency Preparedness Plan for Low Hazard Virginia Regulated Impounding Structures). The information shall include, but not be limited, to the following:

1. Name of the impounding structure, inventory number, city or county, latitude, and longitude;

2. Owner's name, mailing address, residential and business telephone numbers, and other means of communication. Contact information shall provide for 24-hour telephone contact capability;

3. Dam operator's name, mailing address, residential and business telephone numbers, and other means of communication. Contact information shall provide for 24-hour telephone contact capability;

4. Rainfall and staff gage observer's name, mailing address, residential and business telephone numbers, and other means of communication. Contact information shall provide for 24-hour telephone contact capability;

5. Contact information for alternate operator and alternate rainfall and staff gage observer, if applicable;

6. Contact information for the local dispatch center nearest dam including address and 24-hour telephone number;

7. City or county emergency services coordinator's name, mailing address, residential and business telephone numbers, and other means of communication;

8. A procedure and the responsible parties for notifying to the extent possible any known local occupants, owners, or lessees of downstream properties potentially impacted by the dam's failure;

9. A discussion of the procedures for timely and reliable detection, evaluation, and classification of emergency situations considered to be relevant to the project setting and impounding features. Each relevant emergency situation is to be documented to provide an appropriate course of action based on the urgency of the situation;

10. A simple dam break inundation map acceptable to the director, demonstrating the general inundation that would result from a dam failure. Such maps required pursuant to this section do not require preparation by a professional licensed engineer; however, maps prepared by a licensed professional engineer are preferred;

11. Identification of public roads downstream noting the highway number and distance below the dam. If roads exist, contact information for the resident Virginia Department of Transportation engineer or city or county engineer including address and 24-hour telephone numbers;

12. Amount of rainfall that will initiate a Stage II Condition in inches per six hours, inches per 12 hours, and inches per 24 hours and a Stage III Condition in inches per six hours, inches per 12 hours, and inches per 24 hours;

13. Amount of flow in the emergency spillway that will initiate a Stage II Condition in feet (depth of flow) and a Stage III Condition in feet (depth of flow);

14. Staff gage location and description; the frequency of observations by the rainfall or staff gage observer under a Stage I Condition, and Stage II Condition, and a Stage III Condition; and a clear description of an access route and means of travel during flood conditions to the dam;

15. Evacuation procedures including notification, monitoring, evacuation, and reporting processes and responsibilities;

16. Evidence that the required copies of such plan have been submitted to the local organization for emergency management and the Virginia Department of Emergency Management; and

17. Certification of the plan by the owner.

## Part IV

### Procedures

#### **4VAC50-20-180. Inspections.**

A. The director may make inspections during construction, alteration or operation and maintenance as deemed necessary to ensure that the impounding structure is being constructed, altered or operated and maintained in compliance with the permit or certificate issued by the board. The director shall provide the owner a copy of the findings of these inspections. ~~This~~ The department's inspection does not relieve the owner from the responsibility of providing adequate inspection during construction, alteration, or operation and maintenance. During the maintenance, construction, or alteration of any dam or reservoir, the director shall require the owner to perform, at the owner's expense, such work or tests as necessary to obtain information sufficient to enable the director to determine whether conformity with the plans and specifications approved by the certificate is being secured.

B. Periodic inspections during construction or alteration shall be conducted under the ~~supervision~~ direction of a licensed professional engineer who shall ~~propose the frequency and nature of the inspections subject to approval by the director~~ provide for full-time monitoring, review of contractor submittals, and appropriate confirmatory testing of all facets of construction affecting the safety of the impounding structure in accordance with the construction or alteration permit issued by the board.

C. ~~Periodic~~ Required inspections during operation and maintenance shall be conducted under the supervision of a licensed professional engineer at an interval not greater than

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~~that required to update the operation and maintenance certificate. At a minimum, an annual owner's inspection shall be conducted when a professional inspection is not required intervals designated under 4VAC50-20-105.~~

D. Every owner shall provide for an inspection by a licensed professional engineer after overtopping of the impounding structure or after flows cause damage to the emergency spillway. A copy of the findings of each inspection with the engineer's recommendations shall be filed with the board within a reasonable period of time not to exceed 30 days subsequent to completion of the inspection.

#### **4VAC50-20-200. Enforcement.**

~~Any owner refusing to obey any order of the board or the director pursuant to this chapter may be compelled to obey and comply with such provisions by injunction or other appropriate remedy obtained in a court proceeding. Such proceeding shall be instituted by the board or in the case of an emergency, by the director in the court which granted approval to the owner to impound waters or, if such approval has not been granted, the proceeding shall be instituted in any appropriate court. The provisions of this chapter may be enforced by the board, the director, or both in any manner consistent with the provisions of the Dam Safety Act (§10.1-604 et seq. of the Code of Virginia).~~

#### **4VAC50-20-210. Consulting boards committee.**

A. When the board needs to satisfy questions of safety regarding plans and specifications, construction, alteration, or operation and maintenance, or when requested by the owner, the board may appoint a consulting board committee to report to it with respect to those questions of the impounding structure's safety ~~of an impounding structure~~. Such a board committee shall consist of two or more consultants, none of whom have been associated with the impounding structure.

B. The costs and expenses incurred by the consulting board committee, if appointed at the request of an owner, shall be paid by the owner.

C. The costs and expenses incurred by the consulting board committee, if initiated by the board, shall be paid by the board.

#### **4VAC50-20-220. Unsafe conditions.**

~~A. No owner shall have the right to maintain an unsafe impounding structure which unreasonably threatens the life or property of another person. The owner of any impounding structure found to have deficiencies which could threaten life or property if uncorrected shall take the corrective actions needed to remove such deficiencies within a reasonable period of time. Designation of an impounding structure as unsafe shall be made in accordance with §10.1-607.1 of the Code of Virginia.~~

B. Imminent danger.

1. If an owner or the owner's engineer has determined that circumstances are impacting the integrity of the impounding structure that could result in the imminent failure of the impounding structure, temporary repairs may be initiated prior to approval from the board. The owner shall notify the department within 24 hours of identifying the circumstances impacting the integrity of the impounding structure. Such emergency notification shall not relieve the owner of the need to obtain an alteration permit as soon as may be practicable, nor shall the owner take action beyond that necessary to address the emergency situation.

2. When the director finds that an impounding structure is unsafe and constitutes an imminent danger to life or property, he shall immediately notify the State Virginia Department of Emergency Management and confer with the owner who shall activate the Emergency Action Plan or Emergency Preparedness Plan if appropriate to do so. The owner of an impounding structure found to constitute an imminent danger to life or property shall take immediate corrective action to remove the imminent danger as required by §10.1-608 of the Code of Virginia.

C. Nonimminent danger. The owner of an impounding structure who has been issued ~~a report by the board containing~~ findings and recommendations, by the board, for the correction of deficiencies ~~which that may~~ threaten life or property if not corrected, shall undertake to implement the recommendations for correction of deficiencies according to a schedule of implementation contained in that report as required by §10.1-609 of the Code of Virginia.

#### **4VAC50-20-230. Complaints.**

A. Upon receipt of a complaint alleging that the person or property of the complainant is endangered by the construction, alteration, maintenance or operation of an impounding structure, the director shall cause an inspection of the structure, unless the data, records and inspection reports on file with the board are found adequate to determine if the complaint is valid.

B. If the director finds that an unsafe condition exists, the director shall proceed under the provisions of §§10.1-608 and 10.1-609 of the Code of Virginia to render the extant condition safe.

## Part V

### Design Requirements

#### **4VAC50-20-240. Design of structures.**

A. The owner shall complete all necessary investigations prior to submitting the design report (Design Report for the Construction or Alteration of Virginia Regulated Impounding Structures). The design report shall contain those components outlined in 4VAC50-20-70 for construction activities or those outlined in 4VAC50-20-80 for alteration activities. The scope

and degree of precision required is a matter of engineering judgment based on the complexities of the site and the hazard potential classification of the proposed structure.

B. Surveys shall be made with sufficient accuracy to locate the proposed construction site and to define the total volume of storage in the impoundment. Locations of center lines and other horizontal and vertical controls shall be shown on a map of the site. The area downstream and upstream from the proposed impounding structure shall be investigated in order to delineate the areas and extent of potential damage in case of failure or backwater due to flooding.

C. The drainage area shall be determined. Present, ~~projected and potential future~~ and planned land-use conditions shall be considered in determining the runoff characteristics of the drainage area. The most severe of these conditions shall be included in the design calculations which shall be submitted as part of the design report.

D. The geotechnical engineering investigation shall consist of borings, test pits and other subsurface explorations necessary to adequately define the existing conditions. The investigations shall be performed so as to appropriately define the soil, rock and ground water conditions.

E. All construction materials shall be adequately researched and selected so as to ensure that their ~~properties meet as constructed behavior will reasonably conform to~~ design criteria. If on-site materials are to be utilized, they shall be located and determined to be adequate in quantity and quality.

**4VAC50-20-250. Design flood. (Repealed.)**

~~The minimum design flood to be utilized in impounding structure evaluation, design, construction, operation and maintenance shall be commensurate with the size and hazard potential of the particular impounding structure as determined in 4VAC50-20-50 and Table 1. Competent, experienced, professional engineering judgment shall be used in applying those design and evaluation procedures referenced in 4VAC50-20-320 of this chapter.~~

**4VAC50-20-260. Emergency spillway Spillway design.**

A. Every impounding structure shall have a spillway system with adequate capacity to discharge the design flood without endangering the safety of the impounding structure.

~~B. An emergency spillway shall be required.~~

~~B.~~ Vegetated earth or an unlined emergency spillway may be approved when the applicant demonstrates that it will pass the spillway design flood without jeopardizing the safety of the impounding structure. In no case shall dam owners permit the growth of trees and other woody vegetation in the emergency spillway area.

~~D.~~ Lined emergency spillways shall include design criteria calculations, plans and specifications for open channel, drop, ogee and chute suitable energy dissipators and for spillways

that include crest control structures, chutes, walls, panel lining, sills, blocks, and miscellaneous details. All joints shall be reasonably water-tight and placed on a foundation capable of sustaining applied loads without undue deformation. Provision shall be made for handling ~~leakage from the channel or~~ under seepage and uplift pressures from the foundation which might adversely affect the structural integrity and structural stability of the impounding structure.

**4VAC50-20-270. Principal spillways and outlet works.**

A. It will be assumed that principal spillways and regulating outlets provided for special functions will operate to normal design discharge capabilities during the spillway design flood, provided appropriate analyses show:

1. That control gates and structures are suitably designed to operate reliably under maximum heads for durations likely to be involved and risks of blockage by debris are minimal;
2. That access roads and passages to gate regulating controls would be safely passable by operating personnel under spillway design flood conditions; and
3. That there are no ~~other~~ substantial reasons for concluding that outlets would not operate safely to ~~fill~~ full design capacity during the spillway design flood.

B. If there are reasons to doubt that any of the above basic requirements might not be adequately met under spillway design flood conditions, the "dependable" discharge capabilities of regulating outlets shall be assumed to be less than 100% of design ~~capabilities~~ capacities, generally as outlined in the following subsections C through G of this section.

C. Any limitations in safe operating heads, maximum velocities to be permitted through structures or approach channels, or other design limitations shall be observed in establishing "dependable" discharge rating curves to be used in routing the spillway design flood hydrograph through the reservoir.

D. If intakes to regulating outlets are likely to be exposed to ~~dangerous~~ significant quantities of floating ~~drift~~ debris, sediment depositions or ice hazards prior to or during major floods, the dependable discharge capability during the spillway design flood shall be assumed to be zero.

E. If access roads or structural passages to operating towers or controls are likely to be flooded or otherwise unusable during the spillway design flood, the dependable discharge capability of regulating outlets will be assumed to be zero for ~~those period~~ the periods of time during which such conditions might exist.

F. Any deficiencies in discharge performance likely to result from delays in the operation of gates before attendants could be reasonably expected to reach the control ~~for in~~ must be taken into account when estimating "dependable" discharge

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capabilities ~~to be assumed~~ assumptions in routing the spillway design flood through ~~reservoir~~ the impoundment. Reports on design studies shall indicate the allowances made for possible delays in initiating gate operations. Normally, for projects located in small basins, where critical spillway design flood inflows may occur within several hours after intense precipitation, outflows through any regulating outlets that must be opened after the flood begins shall be assumed to be zero for an appropriate period of time subsequent to the beginning of intense rainfall.

G. All gates, valves, conduits and concrete channel outlets shall be designed and constructed to prevent significant erosion or damage to the impounding structure or to the downstream outlet or channel.

#### **4VAC50-20-280. Drain requirements.**

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 as determined by the owner's licensed professional engineer, subject to approval by the director.

#### **4VAC50-20-290. Life of the impounding structure.**

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

#### **4VAC50-20-300. Additional design requirements.**

A. Flood routings shall start at or above the elevation of the crest of the lowest ungated outlet. Freeboard determination and justification must be addressed by the owner's engineer.

B. All elements of the impounding structure ~~and impoundments~~ shall conform to sound engineering practice. Safety factors, design standards and design references that are used shall be included with the design report.

C. Inspection devices may be required by the director for use by inspectors, owners or the director in conducting inspections in the interest of structural integrity during and after completion of construction and during the life of the impounding structure.

#### **4VAC50-20-310. Plans and specifications.**

The plans and specifications for a proposed impounding structure required in 4VAC50-20-70 for construction activities and in 4VAC50-20-80 for alteration activities shall consist of a detailed engineering design report ~~that includes~~ (Design Report for the Construction or Alteration of Virginia Regulated Impounding Structures) and engineering drawings and specifications, with the following as a minimum:

1. The name of the project; the name of the owner; classification of the impounding structure as set forth in this chapter; designated access to the project 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, plans, profiles, logs of test borings, laboratory and in situ test data, drawings of principal and emergency spillways, impounding structures, outlet works, drain system and appurtenances, and other ~~additional drawings~~ project components in sufficient detail to indicate clearly the extent and complexity of the work to be performed.

3. Contract drawings should include, but not be limited to, foundation and abutment treatment, stream or river diversion, excavation and material fill processes, phased fill and compaction and drainage devices.

4. The erosion and sediment control plan, as approved by the local government, which minimizes soil erosion and sedimentation during all phases of construction or alteration.

- ~~3. The technical provisions~~ 5. Technical specifications, as may be required to describe the materials, performance, and 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.~~

#### **4VAC50-20-320. Acceptable design procedures and references.**

To ensure consistency of approach, within the major engineering disciplines of hydrology, hydraulics, soils and foundations, structures, and general civil design, criteria and approaches from multiple sources shall not be mixed for developing the design of a given feature or facility without approval of the director. In all cases the owner's engineer shall identify the source of the criteria.

The following are acceptable as design procedures and references:

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

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

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

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

5. The design procedures, manuals and criteria used by the United States Federal Agency Regulatory Commission

5-6. 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.

**4VAC50-20-330. Other applicable dam safety references.**

Manuals, guidance, and criteria used by the Federal Emergency Management Agency, including the following:

1. Federal Guidelines for Dam Safety: Emergency Action Planning for Dam Owners, U.S. Department of Homeland Security, Federal Emergency Management Agency, October 1998, Reprinted January 2004; FEMA 64 or as revised.

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

Part VI

Fees

**4VAC50-20-340. Authority to establish fees.**

Under §10.1-613.5 of the Code of Virginia, the board is authorized to establish and collect application fees for the administration of the dam safety program, administrative review, certifications, and the repair and maintenance of dams. The fees will be deposited into the Dam Safety, Flood Prevention and Protection Assistance Fund.

**4VAC50-20-350. Fee submittal procedures.**

A. (Upon the effective date of these regulations,) fees for all application submittals required pursuant to 4VAC50-20-370 through 4VAC50-20-390 are due prior to issuance of a certificate or permit. No application for an Operation and Maintenance Certificate or a Construction Permit will be acted upon by the board without full payment of the required fee per §10.1-613.5 of the Code of Virginia.

B. Fees shall be paid by check, draft or postal money order payable to the Treasurer of Virginia, or submitted electronically (if available), and must be in U.S. currency, except that agencies and institutions of the Commonwealth of Virginia may submit Interagency Transfers for the amount of the fee. All fees shall be sent to the following address (or submitted electronically, if available): Virginia Department of Conservation and Recreation, Dam Safety Receipts Control, P.O. Box 10150, Richmond, Virginia 23240.

C. All fee payments shall be accompanied by the following information:

1. Applicant name, address and daytime phone number.
2. The name of the dam, and the dam location.

3. The type of application or report submitted.

4. Whether the submittal is for a new permit or certificate issuance or permit or certificate reissuance.

5. The amount of fee submitted.

6. Dam identification number, if applicable.

D. No permit fees remitted to the department shall be subject to refund except as credits provided for in 4VAC50-20-390 D.

**4VAC50-20-360. Fee exemptions.**

Impounding structures owned by Virginia Soil and Water Conservation Districts shall be exempt from all fees associated with Part VI in accordance with §10.1-613.5 of the Code of Virginia. There will be no fee assessed for the decommissioning of an impounding structure.

**4VAC50-20-370. Construction Permit application fees.**

A. Any application form submitted pursuant to 4VAC50-20-70 for permitting a proposed impounding structure construction after the effective date of these regulations shall be accompanied by a payment as determined in subsection B of this section.

B. Fees shall be as follows:

1. \$2,500 for High or Significant Hazard Potential impounding structures
2. \$1,000 for Low Hazard Potential impounding structures

**4VAC50-20-380. Regular Operation and Maintenance Certificate application fees.**

A. Any application for a six-year Regular Operation and Maintenance Certificate after the effective date of these regulations, except as otherwise exempted, shall be accompanied by a payment as determined in subsection B of this section.

B. Fees for High, Significant, or Low Hazard Potential impounding structures shall be as follows:

1. \$1,500 for High Hazard Potential
2. \$1,000 for Significant Hazard Potential
3. \$600 for Low Hazard Potential

**4VAC50-20-390. Conditional Operation and Maintenance Certificate application fee.**

A. Fees for a Conditional Operation and Maintenance Certificate or for the extension of a Conditional Operation and Maintenance Certificate for High or Significant Hazard Potential impounding structures shall be as follows:

1. For a 2-year Certificate: \$1,000
2. For a 1.5-year Certificate: \$750

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3. For a 1-year Certificate: \$500

4. For a 6-month Certificate: \$250

B. Fees for a Conditional Operation and Maintenance Certificate or for the extension of a Conditional Operation and Maintenance Certificate for Low Hazard Potential impounding structures shall be as follows:

1. For a 2-year Certificate: \$500

2. For a 1.5-year Certificate: \$375

3. For a 1-year Certificate: \$250

4. For a 6-month Certificate: \$125

C. Fees for a Conditional Operation and Maintenance Certificate or for the extension of a Conditional Operation and Maintenance Certificate for any impounding structure that requires a modification in spillway capacity due to changes in the regulations and that is eligible for a delayed effective date pursuant to 4VAC50-20-125 shall be as follows:

1. For a 2-year Certificate: \$200

2. For a 1.5-year Certificate: \$150

3. For a 1-year Certificate: \$100

4. For a 6-month Certificate: \$50

D. The board may allow a partial credit towards the Regular Operation and Maintenance Certificate fee if the owner of the impounding structure has completed, to the director's satisfaction, the conditions of the Conditional Certificate prior to its expiration. Credits shall only be provided to the nearest 6-month interval.

## **4VAC50-20-400. Incremental Damage Analysis review fees.**

The fee for the review of an incremental damage analysis submitted pursuant to 4VAC50-20-52 shall be \$225. Review of an analysis determined to be incomplete or in error upon the department's prior review shall cost an additional \$45 per subsequent submittal. Should the department determine that outside expertise to assist with the review is necessary, the applicant shall be responsible for the cost of such outside expertise. Such costs shall be agreed upon in advance by the applicant.

## **FORMS**

~~Dam Owner's Annual Inspection Form, DCR 199-098 (rev. 12/01).~~

~~Operation and Maintenance Application Class I, II and III Impounding Structures, DCR 199-099 (rev. 12/01).~~

~~As Built Report for Class I, II and III Impounding Structures, DCR 199-100 (rev. 12/01).~~

~~Design Report for the Construction/Alteration of Impounding Structures, DCR 199-101 (rev. 12/01).~~

~~Emergency Action Plan for Class I, Class II and Class III Impounding Structures, DCR 199-103 (rev. 12/01).~~

~~Inventory Report for Class III and Class IV Impounding Structures, DCR 199-104 (rev. 12/01).~~

~~Reinspection Report for Class I and II Impounding Structures, DCR 199-105 (rev. 12/01).~~

~~Agricultural Certification for Impounding Structures, DCR 199-106 (rev. 12/01).~~

~~Transfer Application for Impounding Structures, DCR 199-107 (rev. 12/01).~~

VA.R. Doc. No. R06-130; Filed August 1, 2007, 12:03 p.m.

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

### **CRIMINAL JUSTICE SERVICES BOARD**

#### **Final Regulation**

**REGISTRAR'S NOTICE:** The Department of Criminal Justice Services has claimed an exemption from 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 Department of Criminal Justice Services will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** **6VAC20-120. Regulations Relating to Criminal History Record Information Use and Security (amending 6VAC20-120-40).**

**Statutory Authority:** §9.1-102 and Article 3 (§9.1-126 et seq.) of Chapter 1 of Title 9.1 of the Code of Virginia.

**Effective Date:** September 19, 2007.

**Agency Contact:** Judith Kirkendall, Criminal History Records Auditor, Department of Criminal Justice Services, 202 North 9th Street, Richmond, VA 23219, telephone 804-786-8003, FAX 804-786-0410, or email [judith.kirkendall@dcjs.virginia.gov](mailto:judith.kirkendall@dcjs.virginia.gov).

#### **Summary:**

*The amendment adds a subsection in order to comply with a legislative change made this year. This change provides that no criminal justice agency is required to collect, maintain, or update criminal history record information, as defined in §9.1-101 of the Code of Virginia, when such information is already available and readily accessible*

from another criminal justice agency unless required by §§15.2-1722, 16.1-299, and 19.2-390 of the Code of Virginia.

#### **6VAC20-120-40. Collection.**

A. Responsibility. Responsibility for collecting and updating criminal history record information rests with:

1. State officials and criminal justice agencies having the power to arrest, detain, or hold convicted persons in correctional facilities;
2. Sheriffs of cities or counties;
3. Police officials of cities, counties and towns;
4. Other local law-enforcement officers or conservators of the peace who have the power to arrest for a felony (see §19.2-390 of the Code of Virginia);
5. Clerks of court and court agencies or officers of the court; and
6. Other criminal justice agencies or agencies having criminal justice responsibilities which generate criminal history record information.

B. Reportable offenses. The above officials and their representatives are required to submit to the Central Criminal Records Exchange, on forms provided by the Central Criminal Records Exchange, a report on every arrest they complete for:

1. Treason;
2. Felonies or offenses punishable as a misdemeanor under Title 54.1 of the Code of Virginia;
3. Class 1 and 2 misdemeanors under Title 18.2 except an arrest for a violation of Article 2 (§18.2-266 et seq.) of Chapter 7 of Title 18.2; violation of Article 2 (§18.2-415 et seq. of Chapter 9 of Title 18.2), or §18.2-119; or violation of any similar ordinance of a county, city or town.

In addition to those offenses enumerated above, the Central Criminal Records Exchange may receive, classify and file any other fingerprints and records of arrest or confinement submitted to it by any law-enforcement agency or correctional institution.

The chief of police, sheriff, or criminal justice agency head is responsible for establishing a system to ensure that arrest forms are completed and submitted in a timely and accurate fashion.

#### C. Timelines of submission.

1. Arrests. Arrest reports for all offenses noted above, except as provided in this section, and a fingerprint card for the arrested individual shall be forwarded to the Central Criminal Records Exchange in accordance with the time limits specified by the Department of State Police. A copy

of the Central Criminal Records Exchange arrest form shall also be sent to the local court (a copy of the form is provided for the courts) at the same time.

The link between the arrest report and the fingerprint card shall be established according to Central Criminal Records Exchange requirements. Arrests that occur simultaneously for multiple offenses need only be accompanied by one fingerprint card.

2. Nonconvictions. For arrests except as noted in subdivision 3a below, the clerk of each circuit and district court shall notify the Central Criminal Records Exchange of the final action on a case. This notification must always be made no more than 30 days from the date the order is entered by the presiding judge.

#### 3. Convictions.

- a. For persons arrested and released on summonses under §19.2-74 of the Code of Virginia, the chief law-enforcement officer or his designee, who may be the arresting officer, shall furnish fingerprint cards and a completed copy of the Central Criminal Records Exchange form to the Central Criminal Records Exchange. The form shall be completed immediately upon conviction unless an appeal is noted. In the case of an appeal, officials responsible for reporting the disposition of charges shall report the conviction within 30 days after final action of the case.

- b. For arrests except as noted in subdivision 3 a above, the clerk of each circuit and district court shall notify the Central Criminal Records Exchange of the final action on a case. This notification must always be made no more than 30 days after occurrence of the disposition.

4. Final disposition. State correctional officials shall submit to the Central Criminal Records Exchange the release status of an inmate of the state correctional system within 20 days of the release.

D. Updating and accuracy. Arresting officers and court clerks noted above are responsible for notifying the Central Criminal Records Exchange in a timely fashion, and always within 30 days, of changes or errors and necessary corrections in arrests, convictions, or other dispositions, concerning arrests and dispositions that the criminal justice agency originated. In the case of correctional status or release information, correctional officials are responsible for notifying the Central Criminal Records Exchange within the same time limits of updates or changes in correctional status information. Forms for updating and correcting information are provided by the Central Criminal Records Exchange.

Each criminal justice agency is required to supply timely corrections of criminal history record information the agency has provided to a criminal justice or noncriminal justice

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agency for a period of two years after the date of dissemination.

E. Locally maintained and nonreportable offenses. Criminal history record information generated by a criminal justice agency and maintained in a locally used and maintained file, including criminal history record information on offenses not required to be reported to the Central Criminal Records Exchange but maintained in local files, as well as criminal history record information maintained by the Central Criminal Records Exchange, shall adhere to the standards of collection, timeliness, updating and accuracy as required by these regulations. Arrests shall be noted and convictions or adjudications recorded within 30 days of court action or the elapse of time to appeal.

F. Except as provided in §§15.2-1722, 16.1-299, and 19.2-390 of the Code of Virginia, nothing contained in this article shall be construed as requiring any criminal justice agency to collect, maintain, or update criminal history record information, as defined in §9.1-101, when such information is already available and readily accessible from another criminal justice agency.

VA.R. Doc. No. R07-868; Filed July 31, 2007, 9:48 a.m.

## STATE BOARD OF JUVENILE JUSTICE

### Emergency Regulation

Title of Regulation: **6VAC35-20. Regulations Governing the Monitoring, Approval, and Certification of Juvenile Justice Programs (amending 6VAC35-20-37).**

Statutory Authority: §§16.1-233 and 66-10 of the Code of Virginia.

Effective Dates: August 1, 2007, through July 31, 2008.

Agency Contact: Deron Phipps, Regulatory Coordinator, Department of Juvenile Justice, P.O. Box 1110, Richmond, VA 23218-1110, telephone (804) 786-6407, FAX (804) 371-0773, or email [deron.phipps@djj.virginia.gov](mailto:deron.phipps@djj.virginia.gov).

Preamble:

*This regulation is necessary due to legislation enacted during the 2006 General Assembly session (Chapter 168 of the 2006 Virginia Acts of Assembly (SB 190)). A second enactment clause in Chapter 168 requires the Board of Juvenile Justice to promulgate regulations to implement the provisions of the legislation within 280 days of enactment.*

*The amendments allow the director to issue a summary order of suspension of the license or certificate of any group home or residential facility when conditions or practices exist in the home or facility that pose an immediate and substantial threat to the health, safety, and welfare of the juveniles who are residents.*

*The amendment establishes that the summary order of suspension will take effect upon its issuance. The amendment provides the process for serving notice and the timeframes for requesting and conducting an appeal.*

### **6VAC35-20-37. Director's authority to take immediate administrative action.**

A. Nothing in this regulation shall be construed to limit the director's authority to take immediate administrative action in accordance with law whenever (i) evidence is found of any life, health, or safety violation or (ii) a program is not in substantial ~~non~~compliance with board-approved standards, policies, or local plan for Virginia Juvenile Community Crime Control Act programs. Such administrative action may include, but is not limited to (a) withholding funds; (b) removing juveniles from the program; or (c) placing the program on administrative probation for up to six months pending certification action by the board. In taking such action, the department shall notify both the program, the administrative entity that the program reports to, and the board, in writing, of the reason for the administrative action, and the action the program must take to correct the situation.

B. Pursuant to the provisions set forth in §66-24 of the Virginia Code and in addition to any other legally authorized disciplinary actions, the director may issue a summary order of suspension of the license or certificate of any group home or residential facility so regulated by the department, in conjunction with any proceeding for revocation, denial, or other action, when conditions or practices exist in the home or facility that pose an immediate and substantial threat to the health, safety, and welfare of the juveniles who are residents and the director believes the operation of the home or facility should be suspended during the pendency of such proceeding.

1. The summary order of suspension shall take effect upon its issuance.

a. The summary order of suspension shall be served on the licensee or certificate holder or its designee as soon as practicable by personal service and certified mail, return receipt requested, to the address of record of the licensee or certificate holder.

2. The licensee or certificate holder shall be afforded the opportunity for a hearing before the director or his designee.

a. The summary order of suspension shall state the time, date, and location of a hearing to determine if the suspension is appropriate.

b. The hearing shall be held no later than three business days after the issuance of the summary order of suspension and shall be convened by the director or his designee.

3. A final order of summary suspension must be in writing. The final order of summary suspension shall be served on the licensee or certificate holder or its designee as soon as practicable by personal service and certified mail, return receipt requested, to the address of record of the licensee or certificate holder.

4. A final order of summary suspension shall include notice that the licensee or certificate holder may appeal the director's decision to the appropriate circuit court no later than 10 days following issuance of the order.

VA.R. Doc. No. R07-639; Filed Aug 1, 2007, 11:30 a.m.



**TITLE 8. EDUCATION**

**STATE BOARD OF EDUCATION**

**Final Regulation**

Titles of Regulations: **8VAC20-21. Licensure Regulations for School Personnel (repealing 8VAC20-21-10 through 8VAC20-21-730).**

**8VAC20-22. Licensure Regulations for School Personnel (adding 8VAC20-22-10 through 8VAC20-22-760).**

Statutory Authority: §§22.1-298.1 and 22.1-299 of the Code of Virginia.

Effective Date: September 21, 2007.

Agency Contact: Dr. Margaret N. Roberts, Office of Policy & Communications, Department of Education, P.O. Box 2120, 101 N. 14th St., 25th Floor, Richmond, VA, 23219 telephone 804-225-2540, FAX 804-225-2524, or email margaret.roberts@doe.virginia.gov.

Summary:

*This regulation makes substantive changes in the requirements for licensure of school personnel. In a concurrent action, the Board of Education is repealing the text of the current regulations (8VAC20-21) and promulgating new regulations (8VAC20-22). The following areas contain substantive changes and new requirements: (i) conditions for licensure (including, but not limited to, a revision of the exemption experience criteria for testing requirements and requiring all teachers on provisionally issued licenses to meet testing requirements for licensure within one year of the contractual date of employment); (ii) types of licenses; (iii) designations of career paths to teaching; (iv) added endorsements by examination; (v) conditions for licensure by reciprocity; (vi) names of a few endorsements and requirements for some teaching areas; (vii) endorsement areas by adding the mathematics specialist and an add-on for early childhood for three-and four-year-olds, (viii) the administration and supervision*

*endorsement; (ix) professional studies requirements; and (x) revocation, cancellation, suspension, denial, and reinstatement of teaching licenses.*

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.

CHAPTER 22

LICENSURE REGULATIONS FOR SCHOOL PERSONNEL

Part I

Definitions

**8VAC20-22-10. Definitions.**

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

"Accredited institution" means an institution of higher education accredited by a regional accrediting agency recognized by the United States Department of Education.

"Alternate route to licensure" means a nontraditional route to licensure available to individuals who meet the criteria specified in 8VAC20-22-90.

"Approved program" means a professional education program recognized as meeting state standards for the content and operation of such programs so graduates of the program will be eligible for state licensure. The Board of Education has the authority to approve programs in Virginia.

"Cancellation" means the [~~annulment, voiding, or invalidation~~ withdrawal] of a teaching license following [the] voluntary [~~surrender~~ return] of the license by the license holder.

"Certified provider" means a provider certified by the Department of Education to provide preparation and training for applicants seeking the Provisional License specified in 8VAC20-22-90.

"Collegiate Professional License" means a five-year, renewable license available to an individual who has satisfied all requirements for licensure, including the professional teacher's assessments prescribed by the Board of Education.

"Content area coursework" means courses at the undergraduate level (i.e., two-year or four-year institution) or at the graduate level that will not duplicate previous courses taken in the humanities, history and social sciences, the sciences, mathematics, health and physical education, and the fine arts. These courses are usually available through the college or department of arts or sciences.

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"Denial" means the refusal to grant a teaching license to a new applicant or to an applicant who is reapplying after the expiration of a license.

"Division Superintendent License" means a five-year, renewable license available to an individual who has completed an earned master's degree from an accredited institution of higher education and meets the requirements specified in 8VAC20-22-600. The individual's name must be listed on the Board of Education's list of eligible division superintendents.

"Experiential learning" means a process of applying for an initial license through the alternate route as prescribed by the Board of Education and meeting the criteria specified in 8VAC20-22-90 E to be eligible to request experiential learning credits in lieu of the coursework for the endorsement (teaching) content area.

"International Educator License" means a three-year cultural exchange opportunity for Virginia students and international teachers. The International Educator License is a professional teaching license issued for no more than three years to an exchange educator with citizenship in a nation other than the United States of America, and employed as an educator in a Virginia public or accredited nonpublic school, to teach for up to three consecutive years.

"Licensure by reciprocity" means a process used to issue a license to an individual coming into Virginia from another state when that individual meets certain conditions specified in the Board of Education regulations.

"Local Eligibility License" means a license [ ~~established by the Virginia General Assembly~~ ] issued [ pursuant to §22.1-299.3 of the Code of Virginia ] ~~to an individual by a local school board based on specified criteria set forth by [ the Code of Virginia that section ]~~. The Local Eligibility License shall not be issued in the federal core teaching areas or special education. The license is valid for three years and is not transferable to another school division. The Local Eligibility License is a nonrenewable credential and is not reciprocal with other states.

"Mentor" means a classroom teacher hired by the local school division who has achieved continuing contract status or other instructional personnel including retired teachers who [ ~~meets~~ meet ] local mentor selection criteria. The mentor should work in the same building as the beginning teacher or be instructional personnel who is assigned solely as a mentor. A mentor should be assigned a limited number of teachers at any time. Instructional personnel who are not assigned solely as mentors should not be assigned to more than four teachers at any time. Mentors guide teachers in the program through demonstrations, observations, and consultations.

"Postgraduate Professional License" means a five-year, renewable license available to an individual who has qualified for the Collegiate Professional License and who holds an

appropriate earned graduate degree from [ ~~an~~ a regionally ] accredited institution.

"Professional teacher's assessment" means those tests or other requirements mandated for licensure as prescribed by the Board of Education.

"Provisional License" means a nonrenewable license valid for a period not to exceed three years issued to an individual who has allowable deficiencies for full licensure as set forth in these regulations. The individual must have a minimum of an undergraduate degree from [ ~~an~~ a regionally ] accredited college or university (with the exception of those individuals seeking the Technical Professional License). The Provisional License, with the exception of those individuals seeking licensure through a career switcher program [ who will be issued a one-year Provisional License, ] will be issued for three years [ ~~if all testing requirements prescribed by the Board of Education have been completed. If the individual has not met testing requirements prescribed by the Board of Education, the license will be issued for one year from the contractual date of employment. Upon meeting the testing requirements in the first year of the license, the license may be extended for two years. Individuals must complete the requirements for the regular, five year license within the validity period of the license~~ ]. [ Individuals must complete all requirements for a renewable license within the validity period of the license. ]

"Pupil Personnel Services License" means a five-year, renewable license available to an individual who has earned an appropriate graduate degree from [ ~~an~~ a regionally ] accredited institution with an endorsement for guidance counselor, school psychologist, school social worker, [ ~~special education, speech language disorder preK-12 special education speech language pathologist preK-12~~ ], or vocational evaluator. This license does not require teaching experience.

"Renewable license" means a license issued by the Board of Education for five years to an individual who meets the requirements specified in the Board of Education regulations.

"Revocation" means the [ ~~annulment by recalling, repealing, or rescinding~~ withdrawal ] of a teaching license.

"Suspension" means the temporary withdrawal of a teaching license.

"Technical Professional License" means a five-year, renewable license available to an individual who has graduated from an accredited high school (or possesses a General Education Development Certificate); has exhibited academic proficiency, technical competency, and occupational experience; and meets the requirements specified in 8VAC20-22-50.

Part II

Administering the Regulations

**8VAC20-22-20. Administering the regulations.**

A. In administering this chapter, modifications may be made in exceptional cases by the Superintendent of Public Instruction. Proposed modifications shall be made in writing to the Superintendent of Public Instruction, Commonwealth of Virginia, Virginia Department of Education, P.O. Box 2120, Richmond, Virginia 23218-2120.

B. In administering these regulations, competencies required for endorsement areas are outlined in the Regulations Governing the Review and Approval of Education Programs in Virginia (8VAC20-542). This document should be referenced for detailed information regarding coursework content for endorsements. Individuals must complete the semester hours required for endorsement areas or the equivalent that must be documented and [ receive approval approved ] by the Department of Education.

Part III

Licensure

**8VAC20-22-30. Purpose and responsibility for licensure.**

The primary purpose for licensing teachers and other school personnel is to maintain standards of professional competence. The responsibility for licensure is set forth in §22.1-298.1 of the Code of Virginia, which states that the Board of Education shall prescribe by regulation the requirements for licensure of teachers.

**8VAC20-22-40. Conditions for licensure.**

A. Applicants for licensure must:

1. Be at least 18 years of age;
2. Pay the appropriate fees as determined by the Board of Education and complete the application process;
3. Have earned a baccalaureate degree (with the exception of the Technical Professional License) from a regionally accredited institution of higher education and meet requirements for the license sought. Persons seeking initial licensure who graduate from Virginia institutions of higher education shall only be licensed as instructional personnel by the Board of Education if the endorsement areas offered at such institutions have been assessed by a national accrediting agency or by a state approval process with final approval by the Board of Education; and
4. Possess good moral character (free of conditions outlined in Part VII (8VAC20-22-690 et seq.) of this chapter.

B. All candidates who hold at least a baccalaureate degree [ from a regionally accredited college or university ] and who seek an initial Virginia teaching license must obtain passing

scores on professional teacher's assessments prescribed by the Board of Education. With the exception of the career switcher program that requires assessments as prerequisites, individuals must complete the professional teacher's assessments within [ one year of the contractual date of employment, the three-year validity of the initial provisional license.] Candidates seeking a Technical Professional License [ , the International License, School Manager License, ] or the Pupil Personnel Services License are not required to take the professional teacher's assessments. Individuals who hold a valid out-of-state license (full credential with no deficiencies) and who have completed a minimum of three years of full-time, successful teaching experience in a public or accredited nonpublic school (kindergarten through grade 12) in a state other than Virginia are exempted from the professional teacher's assessment requirements.

C. All individuals seeking an initial endorsement in early/primary education preK-3, elementary education preK-6, special education-general curriculum, special education-hearing disorders, special education-visual impairments and individuals seeking an endorsement as a reading specialist must obtain passing scores on a reading instructional assessment prescribed by the Board of Education.

D. Licensure by reciprocity is set forth in 8VAC20-22-100. A school leader's assessment prescribed by the Board of Education must be met for all individuals who are seeking an initial endorsement authorizing them to serve as principals and assistant principals in the public schools. Individuals seeking an initial administration and supervision endorsement who are interested in serving as central office instructional personnel are not required to take and pass the school leaders assessment prescribed by the Board of Education.

[ E. ] Individuals seeking initial licensure must demonstrate proficiency in the use of educational technology for instruction, complete study in child abuse recognition and intervention in accordance with curriculum guidelines developed by the Board of Education in consultation with the Department of Social Services, and receive professional development in instructional methods tailored to promote student academic progress and effective preparation for the Standards of Learning end-of-course and end-of-grade assessments.

**8VAC20-22-50. Types of licenses; dating licenses.**

The following types of licenses are available:

1. Provisional License. The Provisional License is a nonrenewable license valid for a period not to exceed three years issued to an individual who has allowable deficiencies for full licensure as set forth in these regulations. The individual must have a minimum of an undergraduate degree from [ ~~an~~ a regionally ] accredited college or university (with the exception of those

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individuals seeking the Technical Professional License). The Provisional License, with the exception of those individuals seeking licensure through a career switcher program, will be issued for three years [ ~~if all testing requirements prescribed by the Board of Education have been completed. If the individual has not met testing requirements prescribed by the Board of Education, the license will be issued for one year from the contractual date of employment. Upon meeting the testing requirements in the first year of the license, the license may be extended for two years.~~ ] Individuals must complete the requirements for the regular, five-year license within the validity period of the [ ~~provisional license Provisional License~~ ].

2. Collegiate Professional License. The Collegiate Professional License is a five-year, renewable license available to an individual who has satisfied all requirements for licensure, including an earned undergraduate degree from a regionally accredited college or university and the professional teacher's assessments prescribed by the Board of Education.

3. Postgraduate Professional License. The Postgraduate Professional License is a five-year, renewable license available to an individual who has qualified for the Collegiate Professional License and who holds an appropriate earned graduate degree from [ ~~an~~ a regionally ] accredited college or university.

4. Technical Professional License. The Technical Professional License is a five-year, renewable license available to a person who has graduated from an accredited high school (or possesses a General Education Development Certificate); has exhibited academic proficiency, skills in literacy and communication, technical competency, and occupational experience; and has completed nine semester hours of specialized professional studies credit from [ ~~an~~ a regionally ] accredited college or university. The nine semester hours of professional studies coursework must include human growth and development (three semester hours), curriculum and instructional procedures (three semester hours), and applications of instructional technology or classroom [ and behavior ] management (three semester hours). The Technical Professional License is issued at the recommendation of an employing educational agency in the areas of career and technical education, educational technology, and military science. Individuals seeking military science must have the appropriate credentials issued by the United States military. In addition to demonstrating competency in the endorsement area sought, the individual must:

a. Hold a license issued by the appropriate Virginia board for those program areas requiring a license and a minimum of two years of satisfactory experience at the journeyman level or an equivalent;

b. Have completed a registered apprenticeship program and two years of satisfactory experience at the journeyman level or an equivalent level in the trade; or

c. Have four years of work experience at the management or supervisory level or equivalent or have a combination of four years of training and work experience at the management or supervisory level or equivalent.

Individuals holding the Technical Professional License who seek the Collegiate Professional or Postgraduate Professional License must meet the professional teacher's assessments requirement.

5. School Manager License. The school manager license is [ a five-year, renewable license ] intended to provide for the differentiation of administrative responsibilities in a school setting. A school manager is licensed to administer noninstructional responsibilities in an educational setting. For example, a school manager is restricted from evaluating teachers, supervising instruction, developing and evaluating curriculum, and serving as a school's student disciplinarian. The license is available to a candidate who holds a baccalaureate degree from a regionally accredited college or university; has three years [ of ] successful managerial experience; and is recommended for the license by a Virginia school division superintendent.

6. Pupil Personnel Services License. The Pupil Personnel Services License is a five-year, renewable license available to an individual who has earned an appropriate graduate degree from [ ~~an~~ a regionally ] accredited college or university with an endorsement for guidance counselor, school psychologist, school social worker, [ ~~special education, speech language disorders preK-12 disorders~~ special education speech-language pathologist preK-12 ], or vocational evaluator. This license does not require teaching experience.

7. Division Superintendent License. The Division Superintendent License is a five-year, renewable license available to an individual who has completed an earned master's degree from [ ~~an~~ a regionally ] accredited college or university and meets the requirements specified in 8VAC20-22-600. The individual's name must be listed on the Board of Education's list of eligible division superintendents.

8. International Educator License. The International Educator License provides a three-year cultural exchange opportunity for Virginia students and international teachers. The International Educator License is a professional, teaching license issued for no more than three years to an exchange educator with citizenship in a nation other than the United States of America, and employed as an educator in a Virginia public or accredited nonpublic school, to teach for up to three consecutive years. [ This

license does not require professional teacher's assessments; however, the individual will be subject to assessment requirements if the individual seeks a five-year renewable license. ] To be issued the International Educator License an individual must:

- a. Be employed by a Virginia public or accredited nonpublic school;
- b. Hold non-U.S. citizenship and be a nonpermanent resident;
- c. Serve as an exchange teacher for a time period not to exceed three consecutive years; and
- d. Meet the following requirements as verified by a state-approved, federally-designated Exchange Visitor Program (22 CFR Part 62):

(1) Be proficient in written and spoken English;

(2) Demonstrate competence in the appropriate academic subject area(s);

(3) Hold the U.S. equivalent of a baccalaureate degree or higher as determined by an approved credential agency; and

(4) Hold U.S. or foreign educator credentials and completed at least one year of successful teaching experience that:

(a) Enables the educator to fulfill a similar assignment in his home country; or

(b) Is comparable to those requirements for Virginia teachers.

9. Local Eligibility License. The Local Eligibility License, established by the Virginia General Assembly, is a valid, three-year nonrenewable license issued by a local school board to an individual who has met specified criteria set forth in §22.1-299.3 of the Code of Virginia. The Local Eligibility License shall not be issued in the federal core teaching areas or special education. The license is not transferable to another division. The Local Eligibility License is a nonrenewable credential and is not reciprocal with other states.

All licenses will be effective from July 1 in the school year in which the application is made [ ~~except for the Provisional License when an individual needs to meet assessment requirements prescribed by the Board of Education. The Provisional License, with the exception of individuals in a career switcher program, will be dated one year from the contractual date of employment in a Virginia public or accredited nonpublic school if the individual has not met testing requirements prescribed by the Board of Education. ] A Virginia employing education division or agency is required to notify employees in writing at the time of employment of the need to meet appropriate~~

assessment requirements for licensure [ ~~within a year from the contractual date of employment~~ ].

## **8VAC20-22-60. Designations on licenses for career paths to teaching.**

A. Designations on licenses will reflect stages in the professional development of teachers and promote continuing growth and career paths as educators. Criteria and implementation of procedures will be set forth by the Virginia Department of Education.

B. Teaching licenses may be issued with one of the following designations [ and the designation will be processed as an add-on endorsement ]. These designations will not apply to the Division Superintendent License [ , School Manager License, International License, ] or the Pupil Personnel Services License.

1. Career Teacher: This teacher designation will be issued on a renewable teaching license for individuals who have gained continuing contract status in Virginia.

2. Mentor Teacher: This voluntary teacher designation will be issued on a renewable teaching license for individuals who have achieved the career teacher designation, received a recommendation for the designation from an employing Virginia school division superintendent or designee or accredited nonpublic school head, served at least three years as a mentor teacher in Virginia, documented responsibilities as a mentor, and completed a local or state mentor teacher training program in accordance with the Board of Education requirements for mentor teachers.

3. Teacher as Leader: This voluntary teacher designation will be issued on a renewable teaching license for individuals who have achieved the career teacher designation; completed at least five years of successful, full-time teaching experience in a Virginia public school or accredited nonpublic school; received the recommendation from an employing Virginia school division superintendent or designee or accredited nonpublic school head; and completed one of the following:

a. National board certification or a nationally recognized certification program approved by the Board of Education and [ ~~demonstrated skills and abilities as a school leader as verified by a Virginia school division superintendent or designee or accredited nonpublic school head;~~ a recommendation from an employing Virginia school division superintendent or designee or accredited nonpublic school head and documentation in an approved Department of Education format verifying the individual's demonstrated skills and abilities as a school leader and direct contributions to school effectiveness and student achievement; ] or

b. A recommendation from an employing Virginia school division superintendent or designee or accredited

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nonpublic school head and documentation in an approved Department of Education format verifying the individual's demonstrated skills and abilities as a school leader and direct contributions to school effectiveness and student achievement.

## **8VAC20-22-70. Additional endorsements.**

A. An individual who holds a teaching license may add an additional endorsement to the license by passing a rigorous academic subject test prescribed by the Board of Education. This testing option does not apply to individuals who are seeking an early/primary preK-3 or elementary education preK-6 endorsement or who hold a technical professional license, vocational evaluator license, pupil personnel services license, [ school manager license, ] or division superintendent license.

B. One or more endorsements may be added to a license provided specific endorsement requirements have been met. Written requests may be made by the licensed professional and should be directed to the Virginia employing educational agency or college or university. If the request is not acted upon by the local educational agency or college or university within 30 days or is disputed, the license holder may make a written request for an additional endorsement directly to the Office of Professional Licensure, Virginia Department of Education. Written requests should be submitted by January 15 to be in effect by July 1 of the same year.

## **8VAC20-22-80. Deletion of an endorsement.**

An endorsement may be deleted from a license at the request of the licensed professional. Written requests are made by the licensed professional and should be directed to the employing educational agency. If the request is not acted upon by the local educational agency within 30 days, or is disputed, the license holder may make a written request for the deletion of an endorsement directly to the Office of Professional Licensure, Virginia Department of Education. Written requests should be submitted by January 15 to be in effect on July 1 of that year. Individuals who wish to add an endorsement that has been deleted must meet requirements for that endorsement at the time it is requested.

## **8VAC20-22-90. Alternate routes to licensure.**

A. Career switcher alternate route to licensure for career professions. An alternate route is available to career switchers who seek teaching endorsements preK through grade 12 with the exception of special education.

1. An individual seeking a Provisional License through the career switcher program must meet the following prerequisite requirements:

a. An application process;

b. A baccalaureate degree from a regionally accredited college or university;

c. The completion of requirements for an endorsement in a teaching area or the equivalent through verifiable experience or academic study;

d. At least five years of full-time work experience or its equivalent; and

e. Virginia qualifying scores on the professional teacher's assessments as prescribed by the Board of Education.

2. The Provisional License is awarded at the end of Level I preparation. All components of the career switcher alternate route for career professions must be completed by the candidate.

3. The Level I requirements must be completed during the course of a single year and may be offered through a variety of delivery systems, including distance learning programs. If an employing agency recommends extending the Provisional License for a second year, the candidate will enter Level III of the program. Career switcher programs must be certified by the Virginia Department of Education.

a. Level I preparation. Intensive Level I preparation includes a minimum of 180 clock hours of instruction, including field experience. This phase includes, but is not limited to, curriculum and instruction, including technology, reading, and other specific course content relating to the Standards of Learning, differentiation of instruction, classroom/behavior management, instructional design based on assessment data, and human growth and development.

b. Level II preparation during first year of employment.

(1) Candidate seeks employment in Virginia with the one-year Provisional License.

(2) Continued Level II preparation during the first year of employment with a minimum of five seminars that expand the intensive preparation requirements listed in subdivision 3 a of this subsection. The five seminars will include a minimum of 20 cumulative instructional hours. A variety of instructional delivery techniques will be utilized to implement the seminars.

(3) One year of successful, full-time teaching experience in a Virginia public or accredited nonpublic school under a one-year Provisional License. A trained mentor must be assigned to assist the candidate during the first year of employment. Responsibilities of the mentor include, but are not limited to, the following:

(a) Collaborate with the beginning teacher in the development and implementation of an individualized professional development plan;

(b) Observe, assess, coach, and provide opportunities for constructive feedback, including strategies for self-reflection;

(c) Share resources and materials;

(d) Share best instructional, assessment, and organizational practices; classroom [ and behavior ] management strategies; and techniques for promoting effective communication; and

(e) Provide general support and direction regarding school policies and procedures.

(4) Upon completion of Levels I and II of the career switcher alternate route to licensure program and submission of a recommendation from the Virginia educational employing agency, the candidate will be eligible to apply for a five-year, renewable license. Renewal requirements for the regular license will be subject to current regulations of the Board of Education.

c. Level III preparation, if required.

(1) Post preparation, if required, will be conducted by the Virginia employing educational agency to address the areas where improvement is needed as identified in the candidate's professional improvement plan; and

(2) Upon completion of Levels I, II, and III of the career switcher alternate route to licensure program and submission of a recommendation from the Virginia educational employing agency, the candidate will be eligible to receive a five-year renewable license.

4. Verification of program completion will be documented by the certified program provider and the division superintendent or designee.

5. Certified providers implementing a career switcher program may charge a fee for participation in the program.

B. An alternate route is available to individuals employed by an educational agency who seek teaching endorsements preK through grade 12. [ If the individual has not met testing requirements prescribed by the Board of Education, the Provisional License will be issued for one year from the contractual date of employment. Upon meeting the testing requirements in the first year of the license, the license may be extended for two years. ] Individuals must complete the requirements for the regular, five-year license within the validity period of the [ provisional ] license.

1. An individual seeking a license through this alternate route must have met the following requirements:

a. Are entering the teaching field through the alternate route to licensure upon the recommendation of the Virginia employing educational agency;

b. Hold a baccalaureate degree from a regionally accredited college or university with the exception of individuals seeking the Technical Professional License;

c. Have met requirements for the endorsement area; and

d. Need to complete an allowable portion of professional studies and licensure requirements.

2. The professional studies requirements for the appropriate level of endorsement sought must be completed. A Virginia educational agency may submit to the Superintendent of Public Instruction for approval an alternate program to meet the professional studies requirements. The alternate program must include training (seminar, internship, coursework, etc.) in human growth and development, curriculum and instructional procedures (including technology), instructional design based on assessment data, classroom [ and behavior ] management, [ foundations of education ] and reading.

3. One year of successful, full-time teaching experience in the appropriate teaching area in a Virginia public or accredited nonpublic school must be completed. A fully licensed experienced teacher must be available in the school building to assist the beginning teacher employed through the alternate route.

C. Alternate route in special education. The Provisional License is a [ three-year ] nonrenewable teaching license issued to an individual employed as a special education teacher in a public school or a nonpublic special education school in Virginia who does not hold the appropriate special education endorsement. This alternate route to special education is not applicable to individuals employed as speech pathologists. [ The Provisional License will be initially issued for three years if all testing requirements prescribed by the Board of Education have been completed. If the individual has not met testing requirements prescribed by the Board of Education, the license will be issued for one year from the contractual date of employment; upon meeting the testing requirements in the first year of the license, the license may be extended for two years. Individuals must complete the requirements for the regular, five year license within the validity period of the license. ] To be issued the Provisional License through this alternate route, an individual must:

1. Be employed by a Virginia public or nonpublic school as a special educator and have the recommendation of the employing educational agency;

2. Hold a baccalaureate degree from [ an a regionally ] accredited college or university;

3. Have an assigned mentor endorsed in special education; and

4. Have a planned program of study in the assigned endorsement area, make progress toward meeting the endorsement requirements each of the three years of the license, and have completed coursework in the competencies of foundations for educating students with disabilities and an understanding and application of the legal aspects and regulatory requirements associated with identification, education, and evaluation of students with

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disabilities. A survey course integrating these competencies would satisfy this requirement. The Provisional License through this alternate route shall not be issued without the completion of these prerequisites.

D. Alternate programs at institutions of higher education or Virginia school divisions. Alternate programs developed by institutions of higher education (i) recognize the unique strengths of prospective teachers from nontraditional backgrounds and (ii) prepare these individuals to meet the same standards that are established for others who are granted a license through an alternate route.

E. Experiential learning. Individuals applying for an initial license through the alternate route as prescribed by the Board of Education must meet the following criteria to be eligible to request experiential learning credits in lieu of the coursework for the endorsement (teaching) content area:

1. Hold a baccalaureate degree from a regionally accredited college or university;
2. Have at least five years of documented full-time work experience that may include specialized training related to the endorsement sought; and
3. Have met the qualifying score on the content knowledge assessment prescribed by the Board of Education.

The criteria do not apply to teachers of special education and elementary education (preK-3 and preK-6) [ ~~however, in administering this chapter, modifications may be made in exceptional cases by the Superintendent of Public Instruction or designee~~ ].

## **8VAC20-22-100. Conditions for licensure for out-of-state candidates by reciprocity.**

A. An individual coming into Virginia from any state may qualify for a Virginia teaching license with comparable endorsement areas if the individual has completed a state-approved teacher preparation program through a regionally accredited four-year college or university, or if the individual holds a valid out-of-state teaching license [ ( ) full credential without deficiencies ( ) ] that must be in force at the time the application for a Virginia license is made. An individual seeking licensure must establish a file in the Department of Education by submitting a complete application packet, which includes official student transcripts. Professional teacher's assessments prescribed by the Board of Education must be satisfied.

B. An individual coming into Virginia will qualify for a Virginia teaching license with comparable endorsement areas if the individual holds national certification from the National Board for Professional Teaching Standards (NBPTS) or a nationally recognized certification program approved by the Board of Education.

C. Licensure by reciprocity is provided for individuals who have obtained a valid out-of-state license (full credential without deficiencies) that is in force at the time the application for a Virginia license is received by the Department of Education. The individual must establish a file in the Department of Education by submitting a complete application packet, which shall include official student transcripts. [ ~~An assessment of basic skills as provided in §22.1-298.1 of the Code of Virginia and service requirements shall not be imposed for these licensed individuals; however, other licensure assessments as prescribed by the Board of Education shall be required~~ Unless exempted by the criteria in subsection D of this section, licensure assessments prescribed by the Board of Education shall be required. ]

D. Individuals who hold a valid out-of-state license (full credential without deficiencies) and who have completed a minimum of three years of full-time, successful teaching experience in a public or accredited nonpublic school (kindergarten through grade 12) in a state other than Virginia are exempted from the professional teacher's assessment requirements.

## **8VAC20-22-110. Requirements for renewing a license.**

A. The Division Superintendent, Postgraduate Professional, Collegiate Professional, Technical Professional, [ ~~and~~ ] Pupil Personnel Services [ ~~Licenses~~, and School Manager Licenses ] may be renewed upon the completion of 180 professional development points within a five-year validity period based on an individualized professional development plan that includes ongoing, sustained, and high-quality professional development.

B. Virginia public school divisions and public education agencies must report annually to the Department of Education that instructional personnel have completed high quality professional development each year as set forth by the Virginia Department of Education.

C. Professional development points may be accrued by the completion of professional development activities to improve and increase instructional personnel's knowledge of the academic subjects the teachers teach or the area assigned from one or more of the following eight options.

1. College credit. Acceptable coursework offers content that provides new information and is offered on-campus, off-campus, or through extension by any regionally accredited two- or four-year college or university. College coursework must develop further experiences in subject content taught, teaching strategies, uses of technologies, leadership, and other essential elements in teaching to high standards and increasing student learning. At least 90 points for each five-year renewal shall be in the content area(s) currently being taught if the license holder does not hold a graduate degree. Instructional personnel must complete coursework to improve and increase the

knowledge of the academic subjects or endorsement areas in which they are assigned.

2. Professional conference. A professional conference is a workshop, institute, or seminar of four or more hours that contributes to ongoing, sustained, and high-quality professional development.

3. Curriculum development. Curriculum development is a group activity in which the license holder contributes to the improvement of the curriculum of a school, a school division, or an education institution in the teaching area assigned. This includes the alignment of curriculum frameworks, instructional materials, and assessments to provide a system with clear expectations of what is to be taught and learned.

4. Publication of article. The article must contribute to the education profession or to the body of knowledge of the license holder's teaching area or instructional position. Grant reports that present the results of educational research are acceptable provided the license holder had an active role in planning, analyzing, interpreting, demonstrating, disseminating, or evaluating the study or innovation. The article must be published in a recognized professional journal.

5. Publication of book. Books must be published for purchase and must contribute to the education profession or to the body of knowledge of the license holder's teaching area or instructional position. The published book must increase the field of content knowledge, planning and assessment for evaluating and providing students with feedback that encourages student progress and measures student achievement, instruction, safety and learning environment, communication and community relations working with students, parents, and members of the community to promote broad support for student learning. Points will not be awarded for books self-published.

6. Mentorship. Mentoring is the process by which an experienced professional, who has received mentorship training, provides assistance to one or more persons for the purpose of improving their performance. Assistance may involve role modeling, direct instruction, demonstration, observation with feedback, developing of plans, and consultation to promote instructional excellence and increased student achievement. Mentoring may include the supervision of a field experience of a preservice student teacher or an intern in an approved teacher/principal preparation program, as well as mentoring as part of the induction process for a beginning teacher or a first-year administrator. Individuals serving in this role and submitting documentation for license renewal based on the mentorship option shall receive training as a mentor prior to the assignment and at least once during the five-year renewal cycle.

7. Educational project. Educational projects must be planned, focused projects based on high standards of teaching and learning. Projects must result in a written report or other tangible product. Projects must contribute to the education profession or to the body of knowledge of the license holder's teaching area or instructional position. A project could include participation in new professional responsibilities, such as leading a school improvement initiative.

8. Professional development activity. Professional development activities must focus on student learning and achievement, schoolwide educational improvement, leadership, subject content, teaching strategies, and use of technologies and other essential elements in teaching to high standards. Activities must be planned, rigorous, systematic, and promote continuous inquiry and reflection. Local employing educational agencies are encouraged to design professional development activities that are conducted in school settings and linked to student learning and achievement.

D. A minimum of 90 points (three semester hours in a content area) at the undergraduate (two-year or four-year institution) or graduate level in the license holder's endorsement areas shall be required of license holders without a master's degree and may be satisfied at the undergraduate (two-year or four-year institution) or graduate level. Special education coursework designed to assist classroom teachers and other school personnel in working with students with disabilities, a course in gifted education, a course in educational technology, or a course in English as a second language may be completed to satisfy the content course requirement for one cycle of the renewal process. Professional development activities designed to support the Virginia Standards of Learning, Standards of Accreditation, and Assessments may be accepted in lieu of the content course for one renewal cycle. The substance of the activities must clearly support these initiatives and address one or more of the following areas: (i) new content knowledge to implement the Virginia Standards of Learning; (ii) curriculum development initiative designed to translate the standards from standards to classroom objectives; (iii) teaching beginning reading skills including phonemic awareness and the structure of language (phonics); (iv) staff development activities in assessment to assist classroom teachers in the utilization of test results to improve classroom instruction; and (v) professional development designed to implement the technology standards in the schools. Technical Professional License holders without baccalaureate degrees may satisfy the requirement through career and technical education workshops, career and technical education institutes, or through undergraduate coursework at two-year or four-year institutions.

E. Content area courses are courses at the undergraduate level (two-year or four-year institution) or at the graduate

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level that will not duplicate previous courses taken in the humanities, history and social sciences, the sciences, mathematics, health and physical education, and the fine arts. These courses are usually available through the college or department of arts and sciences. License holders with elementary education, middle education, special education, or reading endorsements must satisfy the 90-point requirement through reading coursework or content coursework in one of the areas listed above. Courses available through [ ~~the~~ a regionally ] accredited college's or institution's department of education may be used to satisfy the content requirement for those license holders with endorsements in health and physical education, career and technical education, and library science education.

F. With prior approval of the division superintendent, the 90 points in a content area also may be satisfied through coursework taken to obtain a new teaching endorsement or coursework taken because of a particular need of a particular teacher.

G. The remaining 90 points may be accrued by activities drawn from one or more of the eight renewal options. Renewal work is designed to provide licensed personnel with opportunities for professional development relative to the grade levels or teaching fields to which they are assigned or for which they seek an added endorsement. Such professional development encompasses (i) responsible remediation of any area of an individual's knowledge or skills that [ ~~fails~~ fail ] to meet the standards of competency and (ii) responsible efforts to increase the individual's knowledge of new developments in his field and to respond to new curricular demands within the person's area of professional competence.

H. The proposed work toward renewal in certain options must be approved in advance by the chief executive officer or designee of the employing educational agency. Persons who are not employed by an educational agency may renew or reinstate their license by submitting to the Office of Professional Licensure, Department of Education, their individualized renewal record and verification of points, including official student transcripts of coursework taken at an accredited two-year or four-year college or university.

I. Accrual of professional development points shall be determined by criteria set forth by the Virginia Department of Education.

J. Persons seeking license renewal as teachers must demonstrate proficiency in the use of educational technology for instruction.

K. Virginia school divisions and nonpublic schools will recommend renewal of licenses using the renewal point system. The renewal recommendation must include verification of demonstrated proficiency in the use of educational technology for instruction.

L. Training in instructional methods tailored to promote academic progress and effective preparation for the Standards of Learning tests and end-of-grade assessments is required for licensure renewal.

M. [ ~~Persons~~ If they have not already met the requirement, persons ] seeking licensure renewal as teachers [ ~~for the first time after such date~~ ] must complete study in child abuse recognition and intervention in accordance with curriculum guidelines developed by the Board of Education in consultation with the Department of Social Services that are relevant to the specific teacher licensure routes.

## Part IV

Licensure Regulations Governing Early/Primary Education, Elementary Education, and Middle Education Endorsements

### **8VAC20-22-120. Early/primary education, elementary education, and middle education endorsements.**

Individuals seeking licensure with endorsements in early/primary education, elementary education, and middle education may meet requirements through the completion of an approved program or, if employed by a Virginia public or nonpublic school, through the alternate route to licensure. Components of the licensure program include a degree from [ ~~an~~ a regionally ] accredited college or university in the liberal arts and sciences (or equivalent), professional teacher's assessments requirement prescribed by the Board of Education, specific endorsement requirements, and professional studies requirements.

### **8VAC20-22-130. Professional studies requirements.**

Professional studies requirements for early/primary education, elementary education, and middle education: 18 semester hours. These requirements may be taught in integrated coursework or modules.

1. Human growth and development (birth through adolescence): 3 semester hours. Skills in this area shall contribute to an understanding of the physical, social, emotional, [ speech and language, ] and intellectual development of children and the ability to use this understanding in guiding learning experiences [ and relating meaningfully to students ]. The interaction of children with individual differences – economic, social, racial, ethnic, religious, physical, and mental – should be incorporated to include skills contributing to an understanding of developmental disabilities and developmental issues related to but not limited to attention deficit disorders, gifted education including the use of multiple criteria to identify gifted students, substance abuse, child abuse, and family disruptions.

2. Curriculum and instructional procedures: 3 semester hours.

a. Early/primary education preK-3 or elementary education preK-6 curriculum and instructional procedures: 3 semester hours. Skills in this area shall contribute to an understanding of the principles of learning; the application of skills in discipline-specific methodology; communication processes; selection and use of materials, including media and computers; [ ~~and~~ ] selection, development and use of appropriate curricula, methodologies, and materials that support and enhance student learning and reflect the research on unique, age-appropriate, and culturally relevant curriculum and pedagogy; ] evaluation of pupil performance [ ; and the relationships among assessment, instruction, and monitoring student progress to include student performance measures in grading practices, the ability to construct and interpret valid assessments using a variety of formats in order to measure student attainment of essential skills in a standards-based environment, and the ability to analyze assessment data to make decisions about how to improve instruction and student performance ]. The teaching methods, including for [ limited English proficient students, ] gifted and talented students and those students with disabling conditions, must be appropriate for the level of endorsement (preK-3 or preK-6) and be tailored to promote student academic progress and effective preparation for the Standards of Learning assessments. Study in methods of improving communication between schools and families, ways of increasing family involvement in student learning at home and in school, [ ~~and~~ ] the Standards of Learning [ , and Foundation Blocks for Early Learning ] shall be included. [ Early childhood educators must understand the role of families in child development and in relation to teaching educational skills. They must demonstrate knowledge and relation to teaching educational skills. They must demonstrate knowledge and skills in communicating with families regarding the social and instructional needs of children. Early childhood educators must understand the role of the informal and play-mediated settings for promoting students' skills and development and must demonstrate knowledge and skill in interacting in such situations to promote specific learning outcomes as reflected in Virginia's Foundation Blocks for Early Learning. ] Demonstrated proficiency in the use of educational technology for instruction shall be included. Persons seeking initial licensure as teachers and persons seeking licensure renewal as teachers for the first time shall complete study in child abuse recognition and intervention in accordance with curriculum guidelines developed by the Board of Education in consultation with the Department of Social Services that are relevant to the specific teacher licensure routes. Pre-student teaching experiences (field experiences) should be evident within these skills.

b. Middle education 6-8 curriculum and instructional procedures: 3 semester hours. Skills in this area shall contribute to an understanding of the principles of learning; the application of skills in discipline-specific methodology; communication processes, selection and use of materials, including media and computers; [ ~~and~~ ] evaluation of pupil performance [ ; and the relationships among assessment, instruction, and monitoring student progress to include student performance measures in grading practices, the ability to construct and interpret valid assessments using a variety of formats in order to measure student attainment of essential skills in a standards-based environment, and the ability to analyze assessment data to make decisions about how to improve instruction and student performance ]. The teaching methods, including for [ limited English proficient students, ] gifted and talented students [ , ] and students with disabling conditions, must be appropriate for the middle education endorsement and be tailored to promote student academic progress and effective preparation for the Standards of Learning assessments. Study in methods of improving communication between schools and families, ways of increasing family involvement in student learning at home and in school, and the Standards of Learning shall be included. Demonstrated proficiency in the use of educational technology for instruction shall be included. Persons seeking initial licensure as teachers and persons seeking licensure renewal as teachers for the first time shall complete study in child abuse recognition and intervention in accordance with curriculum guidelines developed by the Board of Education in consultation with the Department of Social Services that are relevant to the specific teacher licensure routes. Pre-student teaching experiences (field experiences) should be evident within these skills.

~~[ 3. Instructional design based on assessment data: 3 semester hours. Skills in this area shall contribute to an understanding of the relationship among assessment, instruction, and monitoring student progress to include student performance measures in grading practices, the ability to construct and interpret valid assessments using a variety of formats in order to measure student attainment of essential skills in a standards-based environment, and the ability to analyze assessment data to make decisions about how to improve instruction and student performance. ]~~

[ 4. 3. ] Classroom [ and behavior ] management: 3 semester hours. Skills in this area shall contribute to an understanding and application of classroom [ and behavior ] management techniques [ , classroom community building, ] and individual interventions, including techniques that promote emotional well-being and teach and maintain behavioral conduct and skills consistent with norms, standards, and rules of the

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educational environment. This area shall address diverse approaches based upon behavioral, cognitive, affective, social and ecological theory and practice. [ Approaches should support professionally appropriate practices that promote positive redirection of behavior, development of social skills, and of self discipline. The link between classroom management and students' ages must be understood and demonstrated in techniques used in the classroom.

4. Foundations of education: 3 semester hours. Skills in this area shall be designed to develop an understanding of the historical, philosophical, and sociological foundations underlying the role, development and organization of public education in the United States. Attention must be given to the legal status of teachers and students, including federal and state laws and regulations, school as an organization/culture, and contemporary issues in education. The historical, philosophical, and sociological foundations of the instructional design based on assessment data (the relationships among assessment, instruction, and monitoring student progress to include student performance measures in grading practices, the ability to construct and interpret valid assessments using a variety of formats in order to measure student attainment of essential skills in a standards-based environment, and the ability to analyze assessment data to make decisions about how to improve instruction and student performance) must be addressed. ]

5. Reading: 6 semester hours.

a. Early/primary preK-3 and elementary education preK-6 – language acquisition and reading: 6 semester hours.

Skills listed for these endorsement areas represent the minimum competencies that a beginning teacher must be able to demonstrate. These skills are not intended to limit the scope of a beginning teacher's program. Additional knowledge and skills that add to a beginning teacher's competencies to deliver instruction and improve student achievement should be included as part of a quality learning experience.

Skills in this area shall be designed to impart a thorough understanding of the complex nature of language acquisition and reading, to include phonemic awareness, concept of print, phonics, fluency, vocabulary development, and comprehension strategies. Additional skills shall include proficiency, in writing strategies, as well as the ability to foster appreciation of a variety of literature and independent reading.

[ Knowledge of typical language development, components and sequence of literacy development, and the connection between language development and literacy must be evident in coursework. Knowledge and skills in

specific methods by which adults elicit and foster the components of language development must be included. ]

b. Middle education – language acquisition: 3 semester hours and reading in the content areas: 3 semester hours. Skills in this area shall be designed to impart an understanding of comprehension skills in all content areas, including a repertoire of questioning strategies, summarizing and retelling skills, and strategies in literal, interpretive, critical, and evaluative comprehension, as well as the ability to foster appreciation of a variety of literature and independent reading.

6. Supervised classroom experience. The student teaching experience should provide for the prospective teacher to be in classrooms full time for a minimum of [ ~~500~~ 300 ] clock hours (including pre- and post-clinical experiences) with at least [ ~~300~~ 150 ] clock hours spent supervised in direct teaching activities (providing direct instruction) at the level of endorsement. One year of successful full-time teaching experience in the endorsement area in a public or accredited nonpublic school may be accepted in lieu of the supervised teaching experience. A fully licensed, experienced teacher must be available in the school building to assist a beginning teacher employed through the alternate route.

## **[ 8VAC20-22-140. Early childhood for three- and four-year-olds (add-on endorsement).**

Endorsement requirements. The candidate must have:

1. A Virginia teaching license with an endorsement in elementary education (such as preK-3 or preK-6);

2. Completed 9 semester hours of graduate-level coursework in early childhood education; and

3. Completed a supervised practicum of at least 45 instructional hours in a preschool setting (three- and four-year olds) in a public school, an accredited nonpublic school, or another program approved by the Virginia Board of Education. One year of successful, full-time teaching experience in an public or accredited nonpublic school may be accepted in lieu of the practicum.

4. The add-on endorsement to an elementary endorsement (that includes preK) is not required to teach preK (three- and four-year olds), but the endorsement recognizes the candidate's additional preparation in early childhood. ]

## **[ 8VAC20-22-140. 8VAC20-22-150. ] Early/primary education preK-3.**

Endorsement requirements.

1. The candidate must have graduated from an approved teacher preparation program in early/primary education preK-3; or

2. The candidate for the early/primary education preK-3 endorsement must have a degree from [ ~~an~~ a regionally ] accredited college or university in the liberal arts and sciences (or equivalent) and completed coursework that covers the early/primary education preK-3 competencies and fulfills the following 48 semester-hour requirements:

- a. English (must include composition, oral communication, and literature): 12 semester hours;
- b. Mathematics: 9 semester hours;
- c. Science (including a laboratory course): 9 semester hours (in at least two science disciplines);
- d. History (must include American history and world history): 6 semester hours;
- e. Social science (must include geography and economics): 6 semester hours; and
- f. Arts and humanities: 6 semester hours.

[ ~~8VAC20-22-150.~~ ~~8VAC20-22-160.~~ ] **Elementary education preK-6.**

Endorsement requirements.

1. The candidate shall have graduated from an approved teacher preparation program in elementary education preK-6; or

2. The candidate for the elementary education preK-6 endorsement must have a bachelor's degree or higher from a regionally accredited college or university majoring in the liberal arts and sciences (or equivalent) and fulfill the following 57 semester-hour requirements:

- a. English (must include composition, oral communication, and literature): 12 semester hours;
- b. Mathematics: 12 semester hours;
- c. Science (including a laboratory course): 12 semester hours in at least two science disciplines;
- d. History (must include American history and world history): 9 semester hours;
- e. Social science (must include geography and economics): 6 semester hours; and
- f. Arts and humanities: 6 semester hours.

[ ~~8VAC20-22-160.~~ ~~8VAC20-22-170.~~ ] **Middle education 6-8.**

Endorsement requirements.

1. The candidate must have graduated from an approved teacher preparation discipline-specific program in middle education 6-8 with at least one area of academic preparation from the areas of English, mathematics, science, and history and social sciences; or

2. An applicant seeking the middle education 6-8 endorsement must have earned a degree from [ ~~an~~ a regionally ] accredited college or university in the liberal arts and sciences (or equivalent); and completed a minimum of 21 semester hours in at least one area of academic preparation (concentration) that will be listed on the license; and completed minimum requirements for those areas (English, mathematics, science, and history and social sciences) in which the individual is not seeking an area of academic preparation. The applicant will be restricted to teaching only in the area(s) of concentration listed on the teaching license.

- a. English. English concentration (must include coursework in language, e.g., history, structure, grammar, literature, advanced composition, and interpersonal communication or speech): 21 semester hours.
- b. Mathematics. Mathematics concentration (must include coursework in algebra, geometry, probability and statistics, and applications of mathematics): 21 semester hours.

c. Science. Science concentration (must include courses in each of the following: biology, chemistry, physics, and Earth and space science; a laboratory course is required in two of the four areas): 21 semester hours.

d. History and social sciences. History and social sciences concentration (must include a course in American history, world history, economics, American government (including state and local government), and geography): 21 semester hours.

Part V

Licensure Regulations Governing PreK-12 Endorsements, Special Education, Secondary Grades 6-12 Endorsements, and Adult Education

[ ~~8VAC20-22-170.~~ ~~8VAC20-22-180.~~ ] **PreK-12 endorsements, special education, secondary grades 6-12 endorsements, and adult education.**

Individuals seeking licensure with preK-12 endorsements, special education, secondary grades 6-12 endorsements, or adult education may meet requirements through the completion of an approved program or, if employed by a Virginia public or nonpublic school, through the alternate route to licensure. Components of the licensure program include a degree from [ ~~an~~ a regionally ] accredited college or university in the liberal arts and sciences (or equivalent), professional teacher's assessment requirements prescribed by the Board of Education, specific endorsement requirements, and professional studies requirements.

[ ~~8VAC20-22-180.~~ ~~8VAC20-22-190.~~ ] **Professional studies requirements.**

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Professional studies requirements for adult education, preK-12 endorsements, special education, and secondary grades 6-12 endorsements: 15 semester hours. These requirements may be taught in integrated coursework or modules.

1. Human growth and development (birth through adolescence): 3 semester hours. Skills in this area shall contribute to an understanding of the physical, social, emotional, [speech and language,] and intellectual development of children and the ability to use this understanding in guiding learning experiences. The interaction of children with individual differences – economic, social, racial, ethnic, religious, physical, and mental – should be incorporated to include skills contributing to an understanding of developmental disabilities and developmental issues related to but not limited to attention deficit disorders, gifted education including the use of multiple criteria to identify gifted students, substance abuse, child abuse, and family disruptions.

2. Curriculum and instructional procedures: 3 semester hours. Skills in this area shall contribute to an understanding of the principles of learning; the application of skills in discipline-specific methodology; communication processes; selection and use of materials, including media and computers; [ and ] evaluation of pupil performance [ ; and the relationships among assessment, instruction, and monitoring student progress to include student performance measures in grading practices, the ability to construct and interpret valid assessments using a variety of formats in order to measure student attainment of essential skills in a standards-based environment, and the ability to analyze assessment data to make decisions about how to improve instruction and student performance. ] Teaching methods appropriate for [ limited English proficient students; ] exceptional students, including gifted and talented and those with disabling conditions [ ; ] and appropriate for the level of endorsement sought shall be included. Teaching methods shall be tailored to promote student academic progress and effective preparation for the Standards of Learning assessments. Methods of improving communication between schools and families and ways of increasing family involvement in student learning at home and in school and the Standards of Learning shall be included. Demonstrated proficiency in the use of educational technology for instruction shall be included. Persons seeking initial licensure as teachers and persons seeking licensure renewal as teachers for the first time shall complete study in child abuse recognition and intervention in accordance with curriculum guidelines developed by the Board of Education in consultation with the Department of Social Services that are relevant to the specific teacher licensure routes. Curriculum and instructional procedures for secondary grades 6-12 endorsements must include

middle and secondary education. Pre-student teaching experiences (field experiences) should be evident within these skills. For preK-12, field experiences must be at the elementary, middle, and secondary levels.

~~[ 3. Instructional design based on assessment data: 3 semester hours. Skills in this area shall contribute to an understanding of the relationship among assessment, instruction, and monitoring student progress to include student performance measures in grading practices, the ability to construct and interpret valid assessments using a variety of formats in order to measure student attainment of essential skills in a standards based environment, and the ability to analyze assessment data to make decisions about how to improve instruction and student performance. ]~~

[ 4. 3. ] Classroom [ and behavior ] management: 3 semester hours. Skills in this area shall contribute to an understanding and application of classroom [ and behavior ] management techniques and individual interventions, including techniques that promote emotional well-being and teach and maintain behavioral conduct and skills consistent with norms, standards, and rules of the educational environment. This area shall address diverse approaches based upon behavioral, cognitive, affective, social and ecological theory and practice.

[ 4. Foundations of education: 3 semester hours. Skills in this area shall be designed to develop an understanding of the historical, philosophical, and sociological foundations underlying the role, development and organization of public education in the United States. Attention must be given to the legal status of teachers and students, including federal and state laws and regulations, school as an organization/culture, and contemporary issues in education. The historical, philosophical, and sociological foundations of the instructional design based on assessment data (the relationships among assessment, instruction, and monitoring student progress to include student performance measures in grading practices, the ability to construct and interpret valid assessments using a variety of formats in order to measure student attainment of essential skills in a standards-based environment, and the ability to analyze assessment data to make decisions about how to improve instruction and student performance) must be addressed. ]

## 5. Reading.

a. Adult education, preK-12, and secondary grades 6-12 – reading in the content area: 3 semester hours. Skills in this area shall be designed to impart an understanding of comprehension skills in all content areas, including a repertoire of questioning strategies, summarizing and retelling skills, and strategies in literal, interpretive, critical, and evaluative comprehension, as well as the

ability to foster appreciation of a variety of literature and independent reading.

b. Special education – Language acquisition and reading: 6 semester hours.

Skills listed for these endorsement areas represent the minimum competencies that a beginning teacher must be able to demonstrate. These skills are not intended to limit the scope of a beginning teacher’s program. Additional knowledge and skills that add to a beginning teacher’s competencies to deliver instruction and improve student achievement should be included as part of a quality learning experience.

Skills in this area shall be designed to impart a thorough understanding of the complex nature of language acquisition and reading, to include phonemic awareness, concept of print, phonics, fluency, vocabulary development, and comprehension strategies. Additional skills shall include proficiency, in writing strategies, as well as the ability to foster appreciation of a variety of literature and independent reading.

6. Supervised classroom experience. The student teaching experience should provide for the prospective teacher to be in classrooms full time for a minimum of [ ~~500~~ 300 ] clock hours (including pre- and post-clinical experiences) with at least [ ~~300~~ 150 ] clock hours spent supervised in direct teaching activities (providing direct instruction) in the endorsement area sought. If a preK-12 endorsement is sought, teaching activities must be at the elementary and middle or secondary levels. Individuals seeking the endorsement in library media must complete the supervised experience in a school library media setting. Individuals seeking an endorsement in an area of special education must complete the supervised classroom experience requirement in the area of special education for which the endorsement is sought. One year of successful full-time teaching experience in the endorsement area in a public or accredited nonpublic school may be accepted in lieu of the supervised teaching experience. A fully licensed, experienced teacher must be available in the school building to assist a beginning teacher employed through the alternate route.

[ ~~8VAC20-22-190, 8VAC20-22-200.~~ ] **Adult education.**

Endorsement requirements. The candidate must have:

1. A baccalaureate degree from [ ~~an~~ a regionally ] accredited college or university or hold a Collegiate Professional License; and
2. A minimum of 15 semester hours in adult education that must include the following competencies and one semester of supervised successful full-time (or an equivalent number of hours of part-time experience) teaching of adults:

a. Understanding of the nature or psychology of the adult learner or adult development;

b. Understanding of the knowledge, skills, and processes needed for the selection, evaluation, and instructional applications of the methods and materials for adult basic skills including:

- (1) Curriculum development in adult basic education or GED instruction;
- (2) Beginning reading for adults;
- (3) Beginning mathematics for adults;
- (4) Reading comprehension for adult education;
- (5) Foundations of adult education; and
- (6) Other adult basic skills instruction.

Individuals not holding a Collegiate Professional License or a Postgraduate Professional License must meet the professional teacher's assessment requirements prescribed by the Board of Education.

[ ~~8VAC20-22-200, 8VAC20-22-210.~~ ] **Adult English as a second language (add-on endorsement).**

Endorsement requirements. The candidate must have:

1. Graduated from an approved teacher preparation program in adult English as a second language; or
2. A baccalaureate degree and an endorsement in a teaching area and completed 21 semester hours of coursework distributed in the following areas:
  - a. Methods for teaching English as a second language to adults: 3 semester hours;
  - b. English linguistics: 3 semester hours;
  - c. Cross-cultural education: 3 semester hours;
  - d. Modern foreign language: 3 semester hours; and
  - e. Electives from the following areas: 6 semester hours
    - (1) Cross-cultural communication;
    - (2) Second language acquisition;
    - (3) General linguistics;
    - (4) Teaching reading to adults;
    - (5) Adult English as a second language instruction;
    - (6) Adult English as a second language curriculum development.

[ ~~8VAC20-22-210, 8VAC20-22-220.~~ ] **Career and technical education – agricultural education.**

A. Endorsement requirements. The candidate must have:

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1. Graduated from an approved teacher preparation program in agricultural education; or

2. Completed a major in agricultural education or 39 semester hours of coursework in agriculture, including at least three semester hours in each of the following:

a. Plant science;

b. Animal science;

c. Agricultural mechanics;

d. Agricultural economics and management;

e. Forestry/wildlife management; and

f. Horticulture.

B. Technical Professional License. An endorsement in horticulture or agricultural machinery may be granted to individuals who have:

1. Been recommended by an employing Virginia educational agency;

2. Completed four years of occupational experience in the area sought; and

3. Completed professional studies requirements (human growth and development: 3 semester hours; curriculum and instructional procedures in career and technical education: 3 semester hours; and applications of instructional technology or classroom [ and behavior ] management: 3 semester hours).

**[ ~~8VAC20-22-220, 8VAC20-22-230.~~ ] Career and technical education – business and information technology.**

A. Endorsement requirements. The candidate must have:

1. Graduated from an approved teacher preparation program in business and information technology; or

2. Completed 39 hours of coursework in business and information technology, including:

a. Accounting: 6 semester hours;

b. Economics: 3 semester hours;

c. Business law, business principles, management, marketing, or finance: 9 semester hours;

d. Communications: 3 semester hours;

e. Information systems and technology to include computer software applications (word processing, spreadsheet, database, and presentation) information technology fundamentals, database management, programming, and networking: 12 semester hours;

f. Input technologies to include touch keyboarding (required), speech recognition, handwriting recognition, Personal Digital Assistants (PDAs) and other held-held

devices, touch screen or mouse, scanning, and other emerging input technologies: 3 semester hours; and

g. Supervised business experience: 3 semester hours.

B. Technical Professional License. An endorsement in a specialized business and information technology area, such as networking, administration, communications systems, programming, database management, Internet application development, medical office procedures, legal office procedures, network administration and other emerging highly specialized areas may be granted to individuals who have:

1. Been recommended by an employing Virginia educational agency;

2. Completed two years of occupational experience in the endorsement area sought;

3. Completed a business program equivalent to a two-year associate degree in the area sought; and

4. Completed professional studies requirements (human growth and development: 3 semester hours; curriculum and instructional procedures in career and technical education: 3 semester hours; and applications of instructional technology or classroom [ and behavior ] management: 3 semester hours).

**[ ~~8VAC20-22-230, 8VAC20-22-240.~~ ] Career and technical education – family and consumer sciences.**

A. Endorsement requirements. The candidate must have:

1. Graduated from an approved teacher preparation program in family and consumer sciences; or

2. Completed 39 semester hours of coursework distributed in the following areas:

a. Development of individual and family: 9 semester hours;

b. Management, family finance, and consumer economics: 6 semester hours;

c. Food and nutrition: 6 semester hours;

d. Housing, home furnishing, and equipment: 6 semester hours;

e. Clothing and textiles: 3 semester hours;

f. Health: 3 semester hours;

g. Occupational program management: 3 semester hours; and

h. Documented work experience related to family and consumer sciences: 3 semester hours.

B. Technical Professional License. An endorsement in a specialized family and consumer sciences area, such as child care occupations, consumer services, family and human

services, fashion design occupations, food occupations, hospitality occupations, interior design occupations, and home furnishings occupations, and home and institutional services, may be granted to individuals who have:

1. Been recommended by an employing Virginia educational agency;
2. A license or are certified as a professional practitioner in the area in which one is to be teaching, if applicable, or demonstrate competency in the specialized area of family and consumer sciences;
3. In the area of occupational experience, evidence of at least two years or 4,000 clock hours of satisfactory occupational experience within the past five years in the teaching specialty for which they are seeking endorsement.
4. Completed professional studies requirements (human growth and development: 3 semester hours; curriculum and instructional procedures in career and technical education: 3 semester hours; and applications of instructional technology or classroom [ and behavior ] management: 3 semester hours).

**[ 8VAC20-22-240, 8VAC20-22-250. ] Career and technical education – health and medical sciences.**

A. Endorsement requirements. The candidate must have:

1. Graduated from an approved program of study for the preparation of health care professionals;
2. A license or be certified as a professional practitioner in the area in which one is to be teaching; and
3. Completed two years of occupational experience in an area related to the area to be taught.

B. Technical Professional License. An endorsement in a specialized health occupations area may be granted to individuals who have:

1. Been recommended by an employing Virginia educational agency;
2. A license or be certified as a professional practitioner in the area in which one is to be teaching;
3. Completed two years of occupational experience in the area sought;
4. Completed a health occupations' certificate or associate degree program; and
5. Completed professional studies requirements (human growth and development: 3 semester hours; curriculum and instructional procedures in career and technical education: 3 semester hours; and applications of instructional technology or classroom [ and behavior ] management: 3 semester hours.

**[ 8VAC20-22-250, 8VAC20-22-260. ] Career and technical education – industrial cooperative training (add-on endorsement).**

Endorsement requirements.

1. The candidate must have graduated from an approved teacher preparation program in industrial cooperative training (ICT); or
2. The candidate must have:
  - a. A Virginia Collegiate Professional or Postgraduate Professional License;
  - b. Completed two years or more of successful, full-time teaching experience;
  - c. Completed 15 semester hours in trade and industrial education coursework distributed in the following areas:
    - (1) Administration and coordination of ICT or equivalent cooperative education course;
    - (2) Methods and development of competency-based related instructional materials for ICT and implementation of a competency-based (CBE) curriculum;
    - (3) Vocational student organizations; and
    - (4) Development and utilization of directly related occupational materials; and
  - d. In the area of occupational experience, evidence of a minimum of two years or 4,000 hours of acceptable employment in a trade, technical, or industrial education subject area.

**[ 8VAC20-22-260, 8VAC20-22-270. ] Career and technical education – marketing education.**

A. Endorsement requirements. The candidate must have:

1. Graduated from an approved teacher preparation program in marketing education; or
2. Completed the following educational and occupational requirements:
  - a. A major in marketing or 30 semester hours of coursework distributed in the following areas: marketing process and management, economics, merchandising and operations, advertising/sales promotion, personal selling, marketing math, communication theory and techniques, business ethics, human resources/training and development, international business/marketing, and marketing technology; and
  - b. Supervised marketing internship: 3 semester hours or one year of successful work experience in the field of marketing.

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B. Technical Professional License. An endorsement in a specialized marketing area, such as apparel and accessories, financial services, hotel/motel operations, international marketing, real estate, or restaurant, may be granted to individuals who have:

1. Been recommended by an employing Virginia educational agency;
2. A license or are certified as a professional practitioner in the area in which one is to be teaching;
3. Completed a registered apprenticeship program and two years of satisfactory experience at the journeyman level or an equivalent level in the trade;
4. Completed four years of work experience at the management or supervisory level or equivalent or have a combination of four years of training and work experience at the management or supervisory level or equivalent; and
5. Completed professional studies requirements (human growth and development: 3 semester hours; curriculum and instructional procedures in career and technical education: 3 semester hours; and applications of instructional technology or classroom [ and behavior ] management: 3 semester hours)

**[ ~~8VAC20-22-270.~~ 8VAC20-22-280. ] Career and technical education – technology education.**

Endorsement requirements. The candidate must have:

1. Graduated from an approved teacher preparation program in technology education;
2. Completed a major in technology education or 39 semester hours in technology education distributed in the following areas:
  - a. Technology and culture (experiences shall include the historical development of technology and its present and future impact on the individual, society and the environment): 6 semester hours;
  - b. Technological foundations (experiences shall include technical design and illustration, energy and power, electronics, and materials science): 12 semester hours;
  - c. Technological processes (experiences shall include technical design, material processing, manufacturing, construction, and graphic communication): 12 semester hours; and
  - d. Technological systems (experiences shall include communication, production, and transportation systems): 9 semester hours; or
3. Earned a baccalaureate degree from [ ~~an~~ a regionally ] accredited college or university with a major in one of the following fields of study: architecture, design, engineering, industrial technology, or physics; and completed 12

semester hours of technology education content coursework, including at least 3 semester hours in each of the following areas: technology and culture, technological foundations, technological processes, and technological systems.

**[ ~~8VAC20-22-280.~~ 8VAC20-22-290. ] Career and technical education – trade and industrial education.**

A. Endorsement requirements.

1. The candidate must have graduated from an approved teacher preparation program in the trade and industrial education program subject area for which the candidate is seeking endorsement; or
2. A candidate who has graduated from an approved teacher preparation program that is not in the trade and industrial education program subject area for which the candidate is seeking endorsement must have:
  - a. A current state licensure or industry certification based upon the prescribed standard or examination, if applicable; and
  - b. Evidence of at least two years or 4,000 clock hours of satisfactory occupational experience within the past five years in the teaching specialty for which they are seeking endorsement. A candidate whose occupational experience has not been within the last five years must participate in a supervised technical update related to the teaching specialty or area of endorsement or complete a supervised internship of work experience of not less than six weeks related to the area of endorsement or teaching specialty.

B. Technical Professional License. An endorsement in a specialized trade and industrial education area will be granted to individuals who have:

1. Been recommended by an employing Virginia educational agency;
2. A license or are certified as a professional practitioner in the area in which one is to be teaching, if applicable, or can demonstrate competency in the area of trade and industrial education one is to be teaching;
3. Evidence of at least two years or 4,000 clock hours of satisfactory occupational experience within the past five years in the teaching specialty for which they are seeking endorsement. Candidates whose occupational experience has not been within the last five years must participate in a supervised technical update related to the teaching specialty or area of endorsement or complete a supervised internship of work experience of not less than six weeks related to the area of endorsement or teaching specialty; and
4. Completed professional studies requirements (human growth and development: 3 semester hours; curriculum and

instructional procedures in career and technical education: 3 semester hours; and applications of instructional technology or classroom [ and behavior ] management: 3 semester hours).

C. Add-on endorsement requirements. A candidate must:

1. Hold a Collegiate Professional or Postgraduate Professional License with a teaching endorsement;

2. Demonstrate competency in the trade or technology to be taught;

3. Hold licensure for the trade or industrial area for which endorsement is sought based upon the prescribed standard or examination;

4. Have completed two years or 4,000 clock hours of satisfactory, full-time employment experience at the journeyman level or an equivalent level in the occupation within the last five years. Candidates whose occupational experience has not been within the last five years must participate in a supervised technical update related to the teaching specialty or area of endorsement or complete a supervised internship of work experience of not less than six weeks related to the area of endorsement or teaching specialty; and

5. Have completed 3 semester hours in curriculum and instructional procedures specific to vocational industrial education.

**[ 8VAC20-22-290, 8VAC20-22-300. ] Career and technical education – vocational special needs (add-on endorsement).**

Endorsement requirements:

1. The candidate must have graduated from an approved teacher preparation program in vocational special needs; or

2. The candidate must have:

a. A baccalaureate degree with an endorsement in one area of career and technical education or special education preK-12;

b. Twelve semester hours distributed in the following areas:

(1) Overview of vocational special needs programs and services: 3 semester hours;

(2) Instructional methods, curriculum and resources: 3 semester hours;

(3) Career/life planning, transitioning, occupational information, and delivery of cooperative education programs: 3 semester hours; and

(4) Purposes and practices and characteristics of special populations: 3 semester hours; and

c. Evidence of at least two years or 4,000 clock hours of satisfactory occupational experience in business or industry, or both, or complete a work experience internship under the supervision of an institution of higher education.

**[ 8VAC20-22-300, 8VAC20-22-310. ] Computer science.**

A. Endorsement requirements. The candidate must have:

1. Graduated from an approved teacher preparation program in computer science; or

2. Completed 36 semester hours of coursework to include each of the following areas:

a. Mathematics;

b. Statistics;

c. Data structures and algorithm analysis;

d. Introduction to computer systems;

e. Application of computer technology; and

f. Programming.

B. Add-on endorsement requirements in computer science. The candidate must have:

1. A baccalaureate degree and an endorsement in a teaching area; and

2. Completed 18 semester hours of coursework to include each of the following areas:

a. Data structures and algorithm analysis;

b. Programming;

c. Introduction to computer systems;

d. Application of computer technology; and

e. Computer science.

**[ 8VAC20-22-310, 8VAC20-22-320. ] Dance arts preK-12.**

A. Endorsement requirements. The candidate must have:

1. Graduated from an approved teacher preparation program in dance arts; or

2. Completed a major in dance arts or 24 semester hours with course distribution in the following areas:

a. Development of movement language: semester hours.

(1) A course in each area – ballet, folk, jazz, and modern dance: 6 semester hours; and

(2) Area of concentration in one area – ballet, folk, jazz, or modern dance beyond the entry level: 3 semester hours;

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b. Composition, improvisation, and dance arts production (may include stage lighting, stage costuming, or stage makeup): 3 semester hours;

c. Scientific foundations, including human anatomy, kinesiology, and injury prevention and care for dance arts: 9 semester hours; and

d. Cultural understanding, including cultural context and dance history: 3 semester hours.

B. Add-on endorsement requirements in dance arts. The candidate must have:

1. A baccalaureate degree and an endorsement in a teaching area; and

2. Completed 15 semester hours of coursework in the following areas:

a. Development of movement language: 9 semester hours.

(1) A course in each area – ballet, folk, jazz, and modern: 6 semester hours; and

(2) Area of concentration in one area – ballet, folk, jazz, or modern beyond the entry level: 3 semester hours;

b. Composition, improvisation, and dance arts production (may include stage lighting, stage costuming, or stage makeup): 3 semester hours; and

c. Cultural understanding, including cultural context and dance history: 3 semester hours.

**[ 8VAC20-22-320, 8VAC20-22-330. ] Driver education (add-on endorsement).**

Endorsement requirements. The candidate must have:

1. Completed an approved teacher preparation program in driver education; or

2. Completed 6 semester hours of coursework distributed in the following areas:

a. Driver Task Analysis: 3 semester hours; and

b. Principles and methodologies of classroom and in-car instruction, including a minimum of 14 hours of actual behind-the-wheel supervised teaching experience and 2 hours of basic evasive maneuvers: 3 semester hours.

**[ 8VAC20-22-330, 8VAC20-22-340. ] English.**

Endorsement requirements. The candidate must have:

1. Graduated from an approved teacher preparation program in English; or

2. Completed a major in English or a minimum of 36 semester hours of coursework distributed in the following areas:

a. Literature: 12 semester hours. Courses must include:

(1) Survey of British literature;

(2) Survey of American literature;

(3) World literature; and

(4) Literary theory/criticism.

b. Language: 6 semester hours. Experiences shall include:

(1) The development and nature of the English language, including some attention to comparative English grammar; and

(2) A grammar course integrating grammar and writing.

c. Composition: 6 semester hours. Experiences shall include:

(1) The teaching of writing, based on current knowledge and most effective practices, including the use of technology for this purpose; and

(2) An advanced composition course – expository and informational writing.

d. Oral language: 3 semester hours. Experiences shall include the teaching of oral language in groups, as well as attention to oral language as used in both formal and informal presentations.

e. Electives from the areas listed above: 9 semester hours.

**[ 8VAC20-22-340, 8VAC20-22-350. ] English as a second language preK-12.**

Endorsement requirements. The candidate must have:

1. Graduated from an approved teacher preparation program in English as a second language; or

2. Completed 24 semester hours of coursework distributed in the following areas:

a. Teaching of reading (the courses must include the five areas of reading instruction: phonemic awareness, phonics, fluency, vocabulary and text comprehension as well as the similarities and differences between reading in a first language and reading in a second language; one course must address reading instruction to English language learners): 6 semester hours;

b. English linguistics (including phonology, morphology, syntax of English): 3 semester hours;

c. Cross-cultural education: 3 semester hours;

d. Modern foreign languages (if an applicant's primary language is other than English, all 6 hours must be in English): 6 semester hours;

e. Electives in second language acquisition, general linguistics, applied linguistics, psycholinguistics,

sociolinguistics, ESL assessment, or ESL curriculum development: 3 semester hours; and

f. Methods of teaching English as a second language at the elementary and secondary levels: 3 semester hours.

**[ ~~8VAC20-22-350.~~ 8VAC20-22-360. ] Foreign language preK-12.**

A. The specific language of the endorsement will be noted on the license.

B. Foreign language preK-12 – languages other than Latin. Endorsement requirements:

1. The candidate must have (i) graduated from an approved teacher preparation program in a foreign language; or (ii) completed 30 semester hours above the intermediate level in the foreign language. (Endorsement in a second language may be obtained with 24 semester hours of coursework above the intermediate level.) The program shall include (i) courses in advanced grammar and composition, conversation, culture and civilization, and literature and (ii) a minimum of 3 semester hours of methods of teaching foreign languages at the elementary and secondary levels.

2. Native speakers or candidates who have learned a foreign language without formal academic credit in [ ~~an~~ a regionally ] accredited college or university must complete the following requirements:

a. Achieved a minimum score of 600 on the Test of English as a Foreign Language, if English is not the native language. Native speakers of English are exempt from this test;

b. Achieved a qualifying score on a foreign language assessment in the appropriate language as prescribed by the Board of Education; and

c. Earned a minimum of 3 semester hours of methods of teaching foreign languages at the elementary and secondary levels from [ ~~an~~ a regionally ] accredited college or university in the United States.

C. Foreign language preK-12 – Latin. Endorsement requirements. The candidate must have:

1. Graduated from an approved teacher preparation program in Latin; or

2. Completed 24 semester hours of Latin above the intermediate level. Up to six hours of Roman history, Roman life, mythology, or archaeology may be included in the total hours and 3 semester hours of methods of teaching Latin at the elementary and secondary levels are required.

D. Foreign language preK-12 – American Sign Language. Endorsement requirements:

1. The candidate must have (i) graduated from an approved teacher preparation program in a foreign language – American Sign Language or (ii) completed a major in American Sign Language or 24 semester hours above the intermediate level in American Sign Language. The program shall include (i) courses in advanced grammar and syntax, conversation, and culture and (ii) a minimum of 3 semester hours of methods of teaching foreign languages at the elementary and secondary levels.

2. Native users or candidates who have learned American Sign Language without formal academic credit in [ ~~an~~ a regionally ] accredited college or university must complete the following requirements:

a. Competency in American Sign Language demonstrated by written documentation of one of the following:

(1) Hold a current, valid qualified or professional certification by the American Sign Language Teachers Association; or

(2) Hold a current, valid Virginia Quality Assurance Screening Level III Interpreting certification or higher issued by the Virginia Department for the Deaf and Hard-of-Hearing; or

(3) Hold a current, valid Registry of Interpreters for Deaf certification in at least one of the following: Certificate of Interpretation (CI), Certificate of Deaf Interpretation (CDI), Reverse Skills Certification (RSC), or Comprehensive Skills Certificate (CSC); or

(4) Hold a current, valid National Association for the Deaf Level IV certification or higher; or

(5) Complete requirements of an assessment demonstrating proficiency in American Sign Language prescribed by the Board of Education.

b. Earned a minimum of 3 semester hours of methods of teaching foreign languages at the elementary and secondary levels from [ ~~an~~ a regionally ] accredited college or university in the United States.

**[ ~~8VAC20-22-360.~~ 8VAC20-22-370. ] Gifted education (add-on endorsement).**

Endorsement requirements. The candidate must have:

1. Completed an approved teacher preparation program in gifted education; or

2. Completed the following:

a. Graduated with a baccalaureate degree with an endorsement in a teaching area;

b. Completed 12 hours of graduate-level coursework in gifted education; and

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c. Completed a practicum of at least 45 instructional hours. This practicum shall include a minimum of 45 instructional hours of successful teaching experiences with gifted students in a heterogeneously grouped (mixed ability) classroom or a homogeneously grouped (single ability) classroom. One year of successful, full-time teaching experience in a public or accredited nonpublic school may be accepted in lieu of the practicum. A mentor holding a valid license with an endorsement in gifted education must be assigned to the teacher.

**[ ~~8VAC20-22-370, 8VAC20-22-380.~~ ] Health and physical education preK-12.**

Endorsement requirements. The candidate must have:

1. Graduated from an approved teacher preparation program in health, and physical education; or

2. Completed a major in health and physical education or 45 semester hours of coursework distributed in the following areas:

a. Personal health and safety: 6 semester hours;

b. Human anatomy, physiology, and kinesiology: [ ~~9-12~~ ] semester hours;

c. General health and physical education theory, including planning, administration, and assessment principles: 6 semester hours;

d. Physical education methodology courses, including team, individual, adaptive, cooperative activities, rhythms and dance: 9 semester hours;

e. Health methods course: 3 semester hours; and

f. Health and physical education electives: [ ~~3-6~~ 9 ] semester hours.

**[ ~~8VAC20-22-380, 8VAC20-22-390.~~ ] History and social sciences.**

A. Endorsement requirements. The candidate must have:

1. Graduated from an approved teacher preparation program in history and social sciences; or

2. Completed [ ~~42~~ 51 ] semester hours of coursework distributed in the following areas:

a. History: a major in history or 18 semester hours in history (must include coursework in American history, Virginia history, and world history);

b. Political science: [ ~~12~~ a major in political science or 18 ] semester hours in political science to include coursework in American government (state and local government);

c. Geography: [ ~~6~~ 9 ] semester hours; and

d. Economics: 6 semester hours.

B. Add-on endorsement requirements in history, political science, geography, and economics. The candidate must have:

1. An endorsement in history, political science, geography, or economics; and

2. Completed 21 semester hours of coursework in the additional social science area (history, political science, geography, or economics) sought.

**[ ~~8VAC20-22-390, 8VAC20-22-400.~~ ] Journalism (add-on endorsement).**

Endorsement requirements. The candidate must have:

1. A baccalaureate degree and an endorsement in a teaching area; and

2. A minimum of 15 semester hours in journalism.

**[ ~~8VAC20-22-400, 8VAC20-22-410.~~ ] Keyboarding (add-on endorsement).**

Endorsement requirements. The candidate must have:

1. An endorsement in a teaching area; and

2. Completion of 6 semester hours in keyboarding. Three of the hours must be from formal keyboarding instruction (or documented demonstrated mastery of the touch keyboarding skill), and three hours must include document formatting skills/word processing/computer applications).

**[ ~~8VAC20-22-410, 8VAC20-22-420.~~ ] Library media preK-12.**

Endorsement requirements. The candidate must have:

1. Graduated from an approved preparation program in library media; or

2. Completed 24 semester hours distributed in each of the following areas:

a. Selection and utilization of library-media materials and equipment, including the various technologies of up-to-date libraries (computers, instructional software, and the Internet in the teaching/learning process);

b. Production of media and instructional materials;

c. Organization, administration, and evaluation of a library-media center, including ethical issues;

d. Theory and management of reference and bibliography;

e. Selection of print-media materials for children and adolescents;

f. Organization and technical processing of materials; and

g. The role of the library-media specialist as a resource person for students and professional staff in curriculum design and the integration of library-media services in instruction; and

3. Participated in a clinical experience to give the applicant an opportunity to apply the skills, understandings, and competencies required for the endorsement. One year of successful, full-time experience as a school librarian in a public or accredited nonpublic school may be accepted to meet this requirement.

**[ 8VAC20-22-420, 8VAC20-22-430. ] Mathematics.**

Endorsement requirements. The candidate must have:

1. Graduated from an approved teacher preparation program in mathematics; or
2. Completed a major in mathematics or 36 semester hours of coursework distributed in each of the following areas:
  - a. Algebra – Experience shall include linear (matrices, vectors, and linear transformations) and abstract algebra (ring, group, and field theory). A college or university may integrate the competencies within specified coursework and document the completion of these competencies;
  - b. Geometry – Experience shall include Euclidean and non-Euclidean geometries;
  - c. Analytic geometry;
  - d. Probability and statistics;
  - e. Discrete mathematics – Experience shall include the study of mathematical properties of finite sets and systems and linear programming;
  - f. Computer science – Experience shall include computer programming; and
  - g. Calculus – Experience shall include multivariable calculus.

**[ 8VAC20-22-430, 8VAC20-22-440. ] Mathematics – Algebra I (add-on endorsement).**

Endorsement requirements. The candidate must have:

1. Completed an approved teacher preparation program in Algebra I; or
2. Completed the following requirements. The candidate must have:
  - a. A baccalaureate degree from [ ~~an~~ a regionally ] accredited college or university and an endorsement in a teaching area; and
  - b. Completed 24 semester hours that include coursework in each of the following areas:
    - (1) Elementary functions and introductory college algebra;
    - (2) Trigonometry;
    - (3) Linear algebra;

- (4) Calculus;
- (5) Euclidean geometry;
- (6) Probability and statistics;
- (7) Discrete mathematics; and
- (8) Computer science.

**[ 8VAC20-22-440, 8VAC20-22-450. ] Music education – instrumental preK-12.**

Endorsement requirements. The candidate must have:

1. Graduated from an approved teacher preparation program in music education – instrumental; or
2. Completed 42 semester hours of coursework in the following areas:
  - a. Basic music knowledge (experiences shall be related to music theory, music history, and literature): 18 semester hours.
  - b. Musical performance (experiences shall consist of developing competency in a primary performance medium (band or orchestral instrument), and in a secondary performance medium (band, orchestral, or keyboard instrument), and in teaching, rehearsing, and conducting ensembles): 18 semester hours.
  - c. Electives (with coursework selected from either of the two areas above): 6 semester hours.

**[ 8VAC20-22-450, 8VAC20-22-460. ] Music education – vocal/choral preK-12.**

Endorsement requirements. The candidate must have:

1. Graduated from an approved teacher preparation program in music education – vocal/choral; or
2. Completed 42 semester hours of coursework distributed in the following areas:
  - a. Basic music knowledge (experiences shall be related to music theory, music history, and literature): 18 semester hours.
  - b. Musical performance (experiences shall consist of developing competency in a primary and secondary medium, selected from voice or keyboard; and in teaching, rehearsing, and conducting ensembles): 18 semester hours.
  - c. Electives (with coursework selected from either of the two areas above): 6 semester hours.

**[ 8VAC20-22-460, 8VAC20-22-470. ] Science – biology.**

Endorsement requirements. The candidate must have:

1. Graduated from an approved teacher preparation program in biology;

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2. Completed a major in biology or 32 semester hours in biology, including genetics/molecular biology, botany, zoology, anatomy/physiology, ecology and other preparation consistent with the competencies for the endorsement; or

3. Earned an endorsement in another science discipline and at least 18 credits in biology, including preparation in each of the following areas: genetics/molecular biology, botany, zoology, anatomy/physiology, and ecology.

**[ ~~8VAC20-22-470, 8VAC20-22-480.~~ ] Science – chemistry.**

Endorsement requirements. The candidate must have:

1. Graduated from an approved teacher preparation program in chemistry;

2. Completed a major in chemistry or 32 semester hours in chemistry, including inorganic chemistry, organic chemistry, physical chemistry, and analytical chemistry and other preparation consistent with the competencies required for the endorsement; or

3. Earned an endorsement in another science discipline and at least 18 credits in chemistry, including preparation in each of the following areas: inorganic chemistry, organic chemistry, physical chemistry, and analytical chemistry.

**[ ~~8VAC20-22-480, 8VAC20-22-490.~~ ] Science – Earth science.**

Endorsement requirements. The candidate must have:

1. Graduated from an approved teacher preparation program in Earth science;

2. Completed a major in geology or environmental science with at least one course in each of the following: oceanography, meteorology, and astronomy, [ and a course in geology for environmental science majors, ] or 32 semester hours in Earth sciences, including geology (18 semester hours), oceanography, meteorology, and astronomy and other preparation consistent with the competencies required for the endorsement; or

3. Earned an endorsement in another science discipline and at least 18 credits in Earth sciences, including preparation in each of the following areas: geology, oceanography, meteorology, and astronomy.

**[ ~~8VAC20-22-490, 8VAC20-22-500.~~ ] Science – physics.**

Endorsement requirements. The candidate must have:

1. Graduated from an approved teacher preparation program in physics;

2. Completed a major in physics or 32 semester hours in physics, including mechanics, electricity and magnetism, and optics and other preparation consistent with the competencies required for the endorsement; or

3. Earned an endorsement in another science discipline and at least 18 credits in physics, including preparation in each of the following areas: mechanics, electricity and magnetism, and optics.

**[ ~~8VAC20-22-500, 8VAC20-22-510.~~ ] Special education early childhood (birth-age 5).**

Endorsement requirements. The candidate must have:

1. Graduated from an approved teacher preparation program in early childhood special education; or

2. Completed a major in early childhood special education or 27 semester hours in early childhood special education, including at least one course in each of the following: foundations and legal aspects of special education, assessment techniques for young children with disabling and at-risk conditions, instructional programming, speech/language development and intervention, medical aspects, behavior management, consultation, child growth and development, and family-centered intervention.

**[ ~~8VAC20-22-510, 8VAC20-22-520.~~ ] Special education hearing impairments preK-12.**

Endorsement requirements. The candidate must have:

1. Graduated from an approved teacher preparation program in special education hearing impairments; or

2. Completed a major in special education hearing impairments or 27 semester hours in education of the hearing impaired, including at least one course in foundations/legal aspects of special education, characteristics of individuals with hearing impairments, psycho-educational assessment, instructional programming, speech-language development, behavior management, audiology, speech and hearing science, and communication modalities.

**[ ~~8VAC20-22-520, 8VAC20-22-530.~~ ] Special education – adapted curriculum K-12.**

Endorsement requirements: The candidate must:

1. Have graduated from an approved program in special education – adapted curriculum; or

2. Have completed a major in special education – adapted curriculum or 27 semester hours in the education of students with disabilities distributed in the following areas:

a. Core coursework: 12 semester hours distributed among the following areas:

(1) Foundations – characteristics that include knowledge of the foundation for educating students with disabilities;

(2) Foundations – legal aspects that include an understanding and application of the legal aspects, regulatory requirements, and expectations associated

with identification, education, and evaluation of students with disabilities;

(3) Assessment and management of instruction and behavior that include an understanding and application of the foundation of assessment and evaluation related to best special education practice; of service delivery, curriculum, and instruction of students with disabilities; and of classroom management techniques and individual interventions; and

(4) Collaboration that includes skills in consultation, case management, and collaboration.

b. Adapted curriculum coursework: 15 semester hours distributed in the following areas:

(1) Characteristics: 6 semester hours. Skills in this area include the ability to demonstrate knowledge of the characteristics, learning and support needs of students with disabilities (K-12), whose cognitive impairments or adaptive skills require adaptations to the general curriculum, including, but not limited to, students with moderate to severe mental retardation or developmental delay; autism; multiple disabilities; traumatic brain injury; and sensory impairments as an additional disability to those referenced above.

(2) Individualized education program implementation: 6 semester hours. Skills in this area include the ability to apply knowledge of assessment and evaluation throughout the K-12 grade levels to construct, use, and interpret a variety of standardized and nonstandardized data collection techniques; to make decisions about student progress, instruction, program, modifications, accommodations, placement, and teaching methodology; and to demonstrate the use of assessment, evaluation, and other information to develop and implement individual educational planning and group instruction with students with disabilities in an adapted curriculum across the K-12 grade levels; and

(3) Transitioning: 3 semester hours. Skills in this area include the ability to prepare students and work with families to provide successful student transitions throughout the educational experience to include postsecondary training, employment, and independent living that addresses an understanding of long-term planning, career development, life skills, community experiences and resources, self-advocacy, and self-determination, guardianship and legal considerations.

**[ 8VAC20-22-530, 8VAC20-22-540. ] Special education – general curriculum K-12.**

Endorsement requirements: The candidate must:

1. Have graduated from an approved program in special education – general curriculum; or

2. Have completed a major in special education – general curriculum or 27 semester hours in the education of students with disabilities distributed in the following areas:

a. Core coursework: 12 semester hours distributed among the following areas:

(1) Foundations – characteristics that include knowledge of the foundation for educating students with disabilities;

(2) Foundations – legal aspects that include an understanding and application of the legal aspects, regulatory requirements, and expectations associated with identification, education, and evaluation of students with disabilities;

(3) Assessment and management of instruction and behavior that includes an understanding and application of the foundation of assessment and evaluation related to best special education practice; of service delivery, curriculum, and instruction of students with disabilities; and of classroom management techniques and individual interventions; and

(4) Collaboration that includes skills in consultation, case management, and collaboration.

b. General curriculum coursework: 15 semester hours distributed in the following areas:

(1) Characteristics: 6 semester hours. Skills in this area shall include the ability to demonstrate knowledge of definitions, characteristics, and learning and behavioral support needs of students with disabilities who are accessing the general education curriculum at the elementary, middle, and high school levels, including but not limited to, students with learning disabilities, emotional disturbance, mental retardation; developmental delay; autism; other health impaired; traumatic brain injury; and multiple disabilities;

(2) Individualized Education Program Implementation: 6 semester hours. Skills in this area include the ability to apply knowledge of assessment and evaluation throughout the K-12 grade levels to construct, use, and interpret a variety of standardized and nonstandardized data collection techniques; to make decisions about student progress, instruction, program, accommodations, placement, and teaching methodology for students with disabilities who are accessing the general education curriculum and the standards of learning; and to demonstrate the use of assessment, evaluation, and other information to develop and implement individual educational planning and group instruction with students with disabilities who are accessing the general education curriculum across the K-12 grade levels.

(3) Transitioning: 3 semester hours. Skills in this area include the ability to prepare students and work with families to provide successful student transitions

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throughout the educational experience to include postsecondary training, employment, and independent living which addresses an understanding of long-term planning, career development, life skills, community experiences and resources, self-advocacy, and self-determination, guardianship and legal considerations.

## **[ 8VAC20-22-540. Special Education — Speech language pathology assistant preK-12.**

~~A. The speech language pathology assistant will provide speech language pathology support under the direction and supervision of a speech language pathologist.~~

~~B. Endorsement Requirements. The candidate must have:~~

~~1. Completed a baccalaureate degree in speech language pathology or communication disorders from an accredited college or university; and~~

~~2. Completed a minimum of 500 clock hours in supervised education experiences for the job responsibilities and workplace behaviors of the speech language pathology assistant. Two hundred and fifty clock hours of the supervised education experiences must be direct, on site observation of an ASHA certified speech language pathologist. The remaining 250 clock hours of the supervised education experiences must be fieldwork experiences in a public school setting supervised by an ASHA certified speech language pathologist. One full year of successful, full time experience as a speech language pathology assistant under the supervision of a licensed speech language pathologist will be accepted in lieu of the 500 clock hours of supervised education experience. ]~~

## **8VAC20-22-550. Special education visual impairments preK-12.**

Endorsement requirements. The candidate must have:

1. Graduated from an approved teacher preparation program in special education visual impairments preK-12; or

2. Completed a major in special education visual impairments or 27 semester hours in education of students with visual impairments, including at least one course in foundations/legal aspects of special education; characteristics of persons with visual impairments; psycho-educational assessment and assessment for visual impairment; language/literacy skill development; Braille reading and writing; behavior management; transition; consultation; anatomy, physiology, and diseases of the eye; and instructional programming and methods.

## **8VAC20-22-560. Speech communication (add-on endorsement).**

Endorsement requirements. The candidate must have:

1. A baccalaureate degree and an endorsement in a teaching area; and

2. A minimum of 15 semester hours in speech communication.

## **8VAC20-22-570. Theatre arts preK-12.**

A. Endorsement requirements. The candidate must have:

1. Graduated from an approved teacher preparation program in theatre arts; or

2. Completed a major in theatre or 33 semester hours distributed among the following areas:

a. Directing: 6 semester hours;

b. Technical theatre: 9 semester hours;

c. Cultural context and theatre history: 3 semester hours;

d. Performance: 6 semester hours; and

e. Dramatic literature: 9 semester hours.

B. Add-on endorsement requirements in theatre arts preK-12. The candidate must have:

1. A baccalaureate degree and an endorsement in a teaching area; and

2. Completed 15 semester hours distributed in the following areas:

a. Directing: 3 semester hours;

b. Technical theatre: 3 semester hours;

c. Cultural context and theatre history: 3 semester hours; and

d. Performance: 6 semester hours.

## **8VAC20-22-580. Visual arts preK-12.**

Endorsement requirements. The candidate must have:

1. Graduated from an approved teacher preparation program in visual arts; or

2. Completed a major in visual arts or 36 semester hours in art with course distribution in the following areas:

a. Two-dimensional media: 12 semester hours;

b. Three-dimensional media: 12 semester hours;

c. Cultural context and art history, judgment and criticism, and aesthetics: 9 semester hours; and

d. Related areas of the fine arts: 3 semester hours.

## Part VI

## Licensure Regulations Governing Support Personnel

**8VAC20-22-590. Administration and supervision preK-12.**

A. An endorsement in administration and supervision preK-12 consists of Level I, which is required to serve as a building-level administrator or central office supervisor, and Level II, which is an optional endorsement to which an experienced building-level administrator may aspire. Individuals must meet the requirements for the administration and supervision preK-12 endorsement through one of the [three four] options listed in this section [and be recommended by a Virginia school division superintendent]. A school leader's assessment prescribed by the Board of Education must be met for all individuals who are seeking an initial endorsement authorizing them to serve as principals and assistant principals in the public schools. Individuals seeking an initial administration and supervision endorsement who are interested in serving as central office instructional personnel are not required to take and pass the school leaders assessment prescribed by the Board of Education.

B. Approved program route to Level I administration and supervision preK-12 endorsement. To become eligible for a Level I endorsement under this option, the candidate must have:

1. A master's degree from a regionally accredited college or university;
2. Completed three years of successful, full-time experience [as a classroom teacher] in a public school or accredited nonpublic school [in an instructional personnel position that requires licensure in Virginia];
3. Completed an approved program in administration and supervision from a regionally accredited college or university;
4. Completed a minimum of 320 clock hours of a deliberately structured and supervised internship that provides exposure to multiple sites (elementary, middle, high, central office, agency) with diverse student populations. These experiences shall be an integral component of a Virginia Board of Education approved preparation program. The internship must be focused on [instructional leadership and] learning for all students and must occur in a public school or accredited nonpublic school; and
5. Satisfied the requirements for the school leaders licensure assessment prescribed by the Board of Education. Individuals seeking an initial administration and supervision endorsement who are interested in serving as central office instructional personnel are not required to take and pass the school leaders assessment prescribed by the Board of Education.

C. Alternate route to Level I administration and supervision preK-12 endorsement [restricted to the Virginia school division in which the superintendent submitted the recommendation for endorsement. This endorsement is valid only in the designated Virginia school division and would not be portable or reciprocal]. In order to be eligible for Level I endorsement under this option, the candidate must have:

1. A master's degree from a regionally accredited college or university;
2. Completed graduate coursework [addressing competencies] in school law, evaluation of instruction, and other areas of study as required by an employing Virginia school superintendent; [the graduate coursework must be taken from a regionally accredited college or university that has a state-approved administration and supervision program;
3. Completed three years of successful, full-time experience in a public school or accredited nonpublic school in an instructional personnel position that requires licensure in Virginia; ]
- [~~3.~~ 4.] Satisfied the requirements for the school leaders licensure assessment specified by the Board of Education; and
- [4. 5.] Been recommended by [a the] superintendent in [an the] employing Virginia school division.

[ D. Alternate route to Level I administration and supervision preK-12 endorsement. In order to be eligible for Level I endorsement under this option, the candidate must have:

1. A master's degree from a regionally accredited college or university;
2. Completed graduate coursework in school law, evaluation of instruction, special education, school finance, and educational leadership, and other areas of study as required by an employing Virginia school superintendent; the graduate coursework must be taken from a regionally accredited college or university that has a state-approved administration and supervision program.
3. Completed three years of successful, full-time experience in a public school or accredited nonpublic school in an instructional personnel position that requires licensure in Virginia;
4. Satisfied the requirements for the school leaders licensure assessment specified by the Board of Education; and
5. Been recommended by the superintendent in the employing Virginia school division. ]

[~~D.~~ E.] Out-of-state administration and supervision endorsement. The candidate must have:

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1. A master's degree from a regionally accredited college or university; and

2. A current, valid out-of-state license (full credential [ ] ) with an endorsement in administration and supervision [ ]].

[ E. F. ] Level II endorsement in administration and supervision preK-12. A building-level administrator may seek Level II endorsement in administration and supervision preK-12 after successfully serving as a building-level administrator for at least five years in a public school or accredited nonpublic school and successfully completing a formal induction program as a principal or assistant principal. In order to earn Level II endorsement, the candidate must meet two or more of the following criteria as specified by the Board of Education [ and documented in a Department of Education approved format and be recommended by the employing Virginia school division superintendent ] :

1. Evidence of improved student achievement;

2. Evidence of [ effective ] instructional leadership;

3. Evidence of positive effect on school climate or culture;

4. Earned doctorate in educational leadership or evidence of formal professional development in the areas of school law, school finance, supervision, human resource management, and instructional leadership; or

5. Evidence of a completion of a high-quality professional development project designed by the division superintendent.

## **8VAC20-22-600. Division Superintendent License.**

An individual may be a candidate for the list of eligible division superintendents and the renewable Division Superintendent License through the completion of the requirements in one of the following four options:

1. Option one. The individual must:

a. Hold an earned doctorate degree in educational administration or educational leadership from [ ~~an~~ a regionally ] accredited college or university; and

b. Have completed five years of educational experience in a public or accredited nonpublic school, two of which must be teaching experience at the preK-12 level and two of which must be in administration/supervision at the preK-12 level.

2. Option two. The individual must:

a. Hold an earned master's degree from [ ~~an~~ a regionally ] accredited college or university plus 30 completed hours beyond the master's degree;

b. Have completed requirements for administration and supervision preK-12 endorsement that includes the demonstration of competencies in the following areas:

(1) Knowledge and understanding of student growth and development, including:

(a) Applied learning and motivational theories;

(b) Curriculum design, implementation, evaluation and refinement;

(c) Principles of effective instruction, measurement, evaluation and assessment strategies;

(d) Diversity and its meaning for educational programs; and

(e) The role of technology in promoting student learning.

(2) Knowledge and understanding of systems and organizations, including:

(a) Systems theory and the change process of systems, organizations and individuals;

(b) The principles of developing and implementing strategic plans;

(c) Information sources and processing, including data collection and data analysis strategies;

(d) Learning goals in a pluralistic society; and

(e) Effective communication, including consensus building and negotiation skills.

(3) Knowledge and understanding of theories, models, and principles of organizational development, including:

(a) Operational procedures at the school and division/district level;

(b) Principles and issues of school safety and security;

(c) Human resources management and development, including adult learning and professional development models;

(d) Principles and issues related to fiscal operations of school management;

(e) Principles and issues related to school facilities and use of space;

(f) Legal issues impacting school operations and management; and

(g) Technologies that support management functions.

(4) Knowledge and understanding of the values and ethics of leadership, including:

(a) The role of leadership in modern society;

(b) Emerging issues and trends that impact the school community;

(c) Community resources and partnerships of school, family, business, government and higher education institutions;

(d) Community relations and marketing strategies and processes; and

(e) Conditions and dynamics of the diverse school community.

(5) Knowledge and understanding of the purpose of education and its role in a modern society, including:

(a) The philosophy and history of education; and

(b) Various ethical frameworks and professional ethics.

(6) Knowledge and understanding of principles of representative governance that undergird the system of American schools, including:

(a) The role of public education in developing and renewing a democratic society and an economically productive nation;

(b) The law as related to education and schooling;

(c) The political, social, cultural and economic systems and processes that impact schools;

(d) Models and strategies of change and conflict resolution as applied to the larger political, social, cultural and economic contexts of schooling;

(e) Global issues and forces affecting teaching and learning; and

(f) The importance of diversity and equity in a democratic society.

c. Have completed five years of educational experience in a public or accredited nonpublic school, two of which must be teaching experience at the preK-12 level and two of which must be in administration/supervision at the preK-12 level.

3. Option three. The individual must:

a. Hold an earned master's degree from [ ~~an~~ a regionally ] accredited college or university;

b. Hold a current, valid out-of-state license with an endorsement as a division/district superintendent; and

c. Have completed five years of educational experience in a public or accredited nonpublic school, two of which must be teaching experience at the preK-12 level and two of which must be in administration/supervision.

4. Option four. The individual must:

a. Hold a master's degree, or its equivalent, from [ ~~an~~ a regionally ] accredited college or university;

b. Have held a senior leadership position such as Chief Executive Officer or senior military officer; and

c. Be recommended by a school board interested in employing the individual as superintendent.

## **8VAC20-22-610. Mathematics specialist for elementary and middle education.**

Endorsement requirements. The candidate must have:

1. Completed at least three years of successful classroom teaching experience in which the teaching of mathematics was an important responsibility; and

2. Graduated from an approved mathematics specialist preparation program (master's level); or completed a master's level program in mathematics, mathematics education, or related education field with 30 semester hours of graduate coursework in the competencies listed below, including at least 21 hours of coursework in undergraduate or graduate-level mathematics.

a. Understanding of the knowledge, skills, and processes of the Virginia Mathematics Standards of Learning and how curriculum may be organized to teach these standards to diverse learners;

b. Understanding of a core knowledge base of concepts and procedures within the discipline of mathematics, including the following strands: number systems and number theory; geometry and measurement; statistics and probability; and functions and algebra;

c. Understanding of the sequential nature of mathematics and the mathematical structures inherent in the content strands;

d. Understanding of the connections among mathematical concepts and procedures and their practical applications;

e. Understanding of and the ability to use the five processes – becoming mathematical problem solvers, reasoning mathematically, communicating mathematically, making mathematical connections, and using mathematical representations – at different levels of complexity;

f. Understanding of the history of mathematics, including the contributions of different individuals and cultures toward the development of mathematics and the role of mathematics in culture and society;

g. Understanding of major current curriculum studies and trends in mathematics;

h. Understanding of the role of technology and the ability to use graphing utilities and computers in the teaching and learning of mathematics;

i. Understanding of and the ability to select, adapt, evaluate and use instructional materials and resources, including professional journals and technology;

j. Understanding of and the ability to use strategies for managing, assessing, and monitoring student learning, including diagnosing student errors;

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k. Understanding of and the ability to use strategies to teach mathematics to diverse learners;

l. Understanding of leadership skills needed to improve mathematics programs at the school and division levels, including the needs of high and low-achieving students and of strategies to challenge them at appropriate levels; child psychology, including personality and learning behaviors; educational measurement and evaluation; and effective professional development approaches; and

m. Understanding of and proficiency in grammar, usage, and mechanics and their integration in writing.

## **8VAC20-22-620. Reading specialist.**

Endorsement requirements. The candidate must have completed an approved graduate-level reading specialist approved preparation program (master's degree required) that includes course experiences of at least 30 semester hours of graduate coursework in the competencies for the endorsement, as well as a practicum experience in the diagnosis and remediation of reading difficulties. The individual also must have at least three years of successful classroom teaching experience in which the teaching of reading was an important responsibility.

## **8VAC20-22-630. School counselor preK-12.**

Endorsement requirements:

1. Option I. The candidate must have:

a. An earned master's degree from an approved counselor education program that shall include at least 100 clock hours of clinical experiences in the preK-6 setting and 100 clock hours of clinical experiences in the grades 7-12 setting; and

b. Two years of successful, full-time teaching experience or two years of successful experience in guidance and counseling in a public or accredited nonpublic school. Two years of successful, full-time experience in guidance and counseling under [ ~~an alternate route license~~ a Provisional License ] may be accepted to meet this requirement.

2. Option II. The candidate must have:

a. An earned master's degree from [ ~~an~~ a regionally ] accredited college or university and certification from an approved counselor education program; and

b. Two years of successful, full-time teaching experience or two years of successful, full-time experience in guidance and counseling in a public or accredited nonpublic school. Two years of successful, full-time experience in guidance and counseling under a nonrenewable [ ~~license~~ Provisional License ] may be accepted to meet this requirement.

## **8VAC20-22-640. School manager license.**

A. The school manager license is intended to provide for the differentiation of administrative responsibilities in a school setting. A school manager is licensed to administer noninstructional responsibilities in an educational setting. For example, a school manager is restricted from evaluating teachers, supervising instruction, developing and evaluating curriculum, and serving as a school's student disciplinarian.

B. To earn a school manager license, the candidate must:

1. Hold a baccalaureate degree from a regionally accredited college or university;

2. Have three years successful managerial experience; and

3. Be recommended for the license by a Virginia school division superintendent.

## **8VAC20-22-650. School psychology.**

Endorsement requirements:

1. Option I. The candidate must complete:

a. An approved program in school psychology; and

b. Sixty graduate hours that culminate in at least a master's degree; and

c. An internship that is documented by the degree granting institution. No more than 12 hours of internship can be counted toward the 60 graduate semester hours required for licensure. The internship experience shall occur on a full-time basis over a period of one year or on a half-time basis over a period of two consecutive years. The internship shall occur under conditions of appropriate supervision, i.e., school-based supervisor shall hold a valid credential as a school psychologist and nonschool based supervisor shall be an appropriately credentialed psychologist. The internship shall include experiences at multiple age levels, at least one half of which shall be in an accredited schooling setting.

2. Option II. The candidate must hold a certificate issued by the National School Psychology Certification Board.

## **8VAC20-22-660. School social worker.**

Endorsement requirements:

1. Option I. The candidate must have:

a. An earned master's of social work from [ ~~an~~ a regionally ] accredited college or university school of social work with a minimum of 60 graduate semester hours;

b. A minimum of six graduate semester hours in education; and

c. Completed a supervised practicum or field experience of a minimum of 400 clock hours in a public or accredited nonpublic school discharging the duties of a school social worker.

2. Option II. The candidate must have:

- a. An earned master's of social work from [ ~~an~~ a regionally ] accredited college or university school of social work with a minimum of 60 graduate semester hours;
- b. A minimum of six graduate semester hours in education; and
- c. One year of successful full-time supervised experience as a school social worker in a public or accredited nonpublic school.

**8VAC20-22-670. Special education: speech-language pathologist preK-12.**

Endorsement requirements. The candidate must have:

- 1. An earned master's degree in speech-language pathology from an accredited institution; or
- 2. A current license in speech pathology issued by the Virginia Board of Examiners for Audiology and Speech Pathology.

**8VAC20-22-680. Vocational evaluator.**

Endorsement requirements:

- 1. Option I. The candidate must be certified as a Vocational Evaluation Specialist (CVE), meeting all standards and criteria of the Commission on Certification of Work Adjustment and Vocational Evaluation Specialist (CCWAVES).
- 2. Option II. The candidate must have a master's degree in vocational evaluation, career and technical education, special education, or rehabilitation counseling and completed 15 graduate semester hours distributed in the following areas:
  - a. Tests and measurements: 3 semester hours;
  - b. Medical and educational aspects of disability: 3 semester hours;
  - c. Occupational information and job analysis: 3 semester hours;
  - d. Purposes/practices of vocational evaluation: 3 semester hours; and
  - e. Career/life planning/transition services: 3 semester hours.

Part VII

Revocation, Cancellation, Suspension, Denial, and Reinstatement of Teaching Licenses

**8VAC20-22-690. Revocation.**

A. A license issued by the Board of Education may be revoked for the following reasons:

- 1. Obtaining or attempting to obtain such license by fraudulent means or through misrepresentation of material facts;
- 2. Falsification of school records, documents, statistics, or reports;
- 3. Conviction of any felony;
- 4. Conviction of any misdemeanor involving moral turpitude;
- 5. Conduct [ ~~such as immorality, or personal condition detrimental to~~ with direct and detrimental effect on ] the health, welfare, discipline, or morale of students [ ~~or to the best interest of the public schools of the Commonwealth of Virginia~~ ];
- 6. Misapplication of or failure to account for school funds or other school properties with which the licensee has been entrusted;
- 7. Acts related to secure mandatory tests as specified in §22.1-292.1 of the Code of Virginia;
- 8. Knowingly and willfully with the intent to compromise the outcome of an athletic competition procures, sells, or administers anabolic steroids or causes such drugs to be procured, sold, or administered to a student who is a member of a school athletic team, or fails to report the use of such drugs by a student to the school principal and division superintendent as required by §22.1-279.3:1 of the Code of Virginia. Any person whose administrative or teaching license is suspended or revoked by the board pursuant to this section shall be ineligible for three school years for employment in the public schools of the Commonwealth; or
- 9. Other [ ~~good and~~ ] just cause [ ~~of a similar nature in the best interest of the public schools of the Commonwealth of Virginia.~~ ]

B. Procedures.

- 1. Submission of complaints. A complaint may be filed by anyone, but it shall be the duty of a division superintendent, principal or other responsible school employee to file a complaint in any case in which he has knowledge that a holder of a license is guilty of any offense set forth in subsection A of this section. The person making the complaint shall submit it in writing to the appropriate division superintendent.
- 2. Action by division superintendent; investigation. Upon receipt of the complaint against the holder of a license, a division superintendent or his duly authorized representative shall investigate the charge. If, on the basis of such investigation, the division superintendent finds the complaint to be without merit, he shall so notify the complaining party or parties in writing and then close his file on the matter. This action shall be final unless the local

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school board, on its own motion, votes to proceed to a hearing on the complaint or unless circumstances are present making subsection A of this section applicable.

C. Petition for revocation. Should the division superintendent or local school board conclude that there is reasonable cause to believe that a complaint against the holder of a license is well founded, the teacher shall be notified of the complaint by a written petition for revocation of a license signed by the division superintendent. A copy of such petition shall be sent by certified mail, return receipt requested, to the teacher's last known address. If not otherwise known, the last known address shall be the address shown in the records of the Department of Education.

D. Form of petition. The petition for the revocation of a license shall set forth:

1. The name and last known address of the person against whom the petition is being filed;

2. The [ ~~social security number of and the~~ ] type of license [ and the license number ] held by the person against whom the petition is being filed;

3. The offenses alleged and the specific actions that comprise the alleged offenses;

4. The name and address of the party filing the original complaint against the license holder;

5. [ ~~A copy of the regulations containing a statement of the rights of the person charged under this chapter~~ A statement of rights of the person charged under this chapter. The statement of rights shall include notification to the person of the right to cancel the license if he chooses not to contest the charges. The statement must notify the individual that he shall receive a notice of cancellation that will include the statement: "The license holder voluntarily returned the license in response to a petition for revocation." The individual also shall be notified that the cancellation of the license will be reported to division superintendents in Virginia and to chief state school officers of the other states and territories of the United States ]; and

6. Any other pertinent information.

E. Filing of petition. The original petition shall be entered in the files of the local school board where the license holder is employed.

F. Response to petition. The license holder shall present his written answer to the petition, if any, within 14 days after the date of service of the petition as certified by the United States Postal Service.

1. If the teacher [ ~~responding to the petition states that he~~ ] does not wish to contest the charges, he may [ ~~voluntarily return the license~~ cancel the license by returning the license ] to the division superintendent with a written,

signed statement requesting cancellation. [ ~~The Superintendent of Public Instruction is authorized, upon receipt of the license holder's written, signed request from the division superintendent, to cancel the license. The division superintendent shall forward the request for cancellation along with the petition for revocation to the Superintendent of Public Instruction within 14 days of receipt. The Superintendent of Public Instruction shall cancel the license and send a notice of cancellation by certified mail within 14 days of receipt of the request for cancellation. ]~~

2. If the license holder files a written answer admitting the charges, or refuses to accept the copy of the petition from the postal authorities, or fails to file a written answer within 14 days after service of the petition or has failed to provide postal authorities with a forwarding address so that the petition can be delivered, the local school board shall proceed to a hearing as described in subdivisions 3 and 4 of this subsection.

3. If the license holder files his written answer denying the charges in the petition, the local school board shall provide a hearing at the time and place of its regular meeting or at such other reasonable time and place it may specify. The license holder or his representative, if any, shall be given at least 14 days' notice of the hearing.

4. Following the hearing, the local school board shall receive the recommendation of the division superintendent and then either dismiss the charges or [ ~~make such recommendations as it deems appropriate relative to revocation of a license~~ recommend license revocation or suspension. ] A decision to dismiss the charges shall be final, except as specified in subsection G of this section, and the investigative file on the charges shall be closed and [ ~~destroyed or~~ ] maintained as a separate [ ~~sealed~~ ] file [ ~~under provision of the Code of Virginia~~ ]. Any record or material relating to the charges in any other file shall be [ ~~removed or destroyed~~ placed in the investigative file ]. Should the local school board recommend the revocation or suspension of a license, [ ~~this recommendation, along with the investigative file, shall promptly be forwarded by the division superintendent to the Superintendent of Public Instruction~~ the division superintendent shall forward the recommendation and the investigative file to the Superintendent of Public Instruction within 14 days ].

G. Revocation on motion of the Board of Education. The Board of Education reserves the right, [ in situations not covered by this chapter, to act directly [ ~~in revoking to~~ ] a license [ when the division superintendent or the local school board has not filed a petition for revocation and the Board of Education has reasonable cause to believe that subsection A of this section is applicable. The Superintendent of Public Instruction shall send a petition for revocation to the license holder as provided by subsection D of this section.

The license holder shall have the opportunity to respond to the petition or request cancellation of the license within 14 days of receipt.

1. If the license holder files a written answer admitting the charges, or refuses to accept the copy of the petition from the postal authorities, or fails to file a written answer within 14 days after service of the petition or has failed to provide postal authorities with a forwarding address so that the petition can be delivered, the petition shall be forwarded to the Board of Education for action. ] No [ ~~such~~ ] revocation will be ordered without the involved license holder being given the opportunity [ ~~for the~~ ] to appear at a ] hearing specified in 8VAC20-22-740 B.

[ 2. If the license holder timely files his written answer denying the charges in the petition, the Superintendent of Public Instruction shall schedule a hearing with the investigative panel provided in 8VAC20-21-740. The license holder or his representative, if any, shall be given at least 14 days' notice of the hearing. The investigative panel shall take action on the petition as specified in 8VAC20-21-740. No revocation will be ordered without the involved license holder being given the opportunity to appear at a hearing specified in 8VAC20-21-740 C. ]

H. Reinstatement of license. A license that has been revoked may be reinstated by the Board of Education after five years if the board is satisfied that reinstatement is in the best interest of the former license holder and the public schools of the Commonwealth of Virginia. The individual must apply to the board for reinstatement. Notification to all appropriate parties will be communicated in writing by the state agency.

### **8VAC20-22-700. Cancellation.**

A. A license may be canceled by [ the ] voluntary return [ of the license ] by the [ ~~individual, or for reasons listed under 8VAC20-22-690 A or for the following reason:~~ license holder. ]

[ ~~The teacher in his answer to the petition, as described in 8VAC20-22-690 F 1, states that he does not wish to contest the charges.~~ ] Reasons for cancellation are the same as those listed under 8VAC20-22-690 A.

B. Procedures. The individual may voluntarily return the license to the division superintendent [ or the Superintendent of Public Instruction following revocation on motion by the Board of Education ] with a written, signed statement requesting cancellation. [ ~~The Superintendent of Public Instruction is authorized upon receipt of the license holder's written and signed request from the division superintendent to cancel the license. However, no such cancellation will be made without the involved license holder being given the opportunity for a hearing, as specified in 8VAC20-22-750.~~ The individual shall acknowledge in the request that he understands that the notice of cancellation will include the statement: "The license holder voluntarily returned his

teaching license and requested cancellation. Reasons for cancellation are the same as those for revocation." However, if the request for cancellation is in response to a petition for revocation, the individual shall acknowledge that he understands that the notice of cancellation will include the statement: "The license holder voluntarily returned the license in response to a petition for revocation." The individual also shall acknowledge that he understands that the cancellation of the license will be reported to division superintendents in Virginia and to chief state school officers of the other states and territories of the United States. When applicable, the division superintendent shall forward the request for cancellation along with the petition for revocation to the Superintendent of Public Instruction within 14 days of receipt. The Superintendent of Public Instruction shall cancel the license and send the person a notice of cancellation by certified mail within 14 days of receipt of the request for cancellation. ]

C. Reinstatement of license. A license that has been [ ~~returned for cancellation~~ canceled ] may be reissued using the normal procedure for application if the board is satisfied that reinstatement is in the best interest of the former license holder and the public schools of the Commonwealth of Virginia. The individual must apply to the board for reinstatement. Notification to all appropriate parties will be communicated in writing by the Department of Education.

### **8VAC20-22-710. Suspension.**

A. A license may be suspended for the following reasons:

1. Physical, mental, or emotional incapacity as shown by a competent medical authority;

2. Incompetence or neglect of duty;

3. Failure or refusal to comply with school laws and regulations, including willful violation of contractual obligations;

4. Acts related to secure mandatory tests as specified in §22.1-292.1 of the Code of Virginia;

5. Knowingly and willfully with the intent to compromise the outcome of an athletic competition procures, sells, or administers anabolic steroids or causes such drugs to be procured, sold, or administered to a student who is a member of a school athletic team, or fails to report the use of such drugs by a student to the school principal and division superintendent as required by §22.1-279.3:1 of the Code of Virginia. Any person whose administrative or teaching license is suspended or revoked by the board pursuant to this section shall be ineligible for three school years for employment in the public schools of the Commonwealth; or

6. Other good and just cause of a similar nature [ in the best interest of the public schools of the Commonwealth of Virginia ].

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## B. Procedures.

1. Submission of complaints. A complaint may be filed by anyone, but it shall be the duty of a division superintendent, principal, or other responsible school employee to file a complaint in any case in which he has knowledge that ~~[ a holder of a license is guilty of the license holder has committed ]~~ any offense set forth in subsection A of this section. The person making the complaint shall submit it in writing to the appropriate division superintendent.

2. Action by division superintendent; investigation. Upon receipt of the complaint against the holder of a license, a division superintendent or his duly authorized representative shall investigate the charge. If, on the basis of such investigation, the division superintendent finds the complaint to be without merit, he shall so notify the complaining party or parties in writing and then close his file on the matter. This action shall be final unless the local school board on its own motion votes to proceed to a hearing on the complaint or unless circumstances are present making subsection C of this section applicable.

C. Petition for suspension. Should the division superintendent or local school board conclude that there is reasonable cause to believe that a complaint against the holder of a license is well founded, the teacher shall be notified of the complaint by a written petition for suspension of a license signed by the division superintendent. A copy of such petition shall be sent by certified mail, return receipt requested, to the teacher's last known address. If not otherwise known, the last known address shall be the address shown in the records of the Department of Education.

D. Form of petition. The petition for the suspension of a license shall set forth:

1. The name and last known address of the person against whom the petition is being filed;
2. The [ ~~social security number and the~~ ] type of license [ and the license number ] held by the person against whom the petition is being filed;
3. The offenses alleged and the specific actions that comprise the alleged offenses;
4. The name and address of the party filing the original complaint against the license holder;
5. A statement of the rights of the person charged under this chapter [ . The statement of rights shall notify the person of the right to cancel the license if he chooses not to contest the charges. The statement also shall notify the individual that the license may be suspended for up to five years and that he shall receive a notice of cancellation that will include the statement: "The license holder voluntarily returned the license in response to a petition for suspension." The individual also shall be notified that the

cancellation and period of suspension will be reported to division superintendents in Virginia and to chief state school officers of the other states and territories of the United States ] ; and

6. Any other pertinent information.

E. Filing of petition. The original petition shall be entered in the files of the local school board where the license holder is employed.

F. Response to petition. The license holder shall present his written answer to the petition, if any, within 14 days after the date of service of the petition as certified by the United States Postal Service.

1. If the teacher [ ~~responding to the petition states that he~~ ] does not wish to contest the charges, he may [ ~~voluntarily return his~~ cancel the ] license [ by returning the license ] to the division superintendent with a written and signed statement requesting [ ~~suspension.~~ cancellation ]. [ ~~The Superintendent of Public Instruction is authorized, upon receipt of the license holder's written, signed request from the division superintendent, to cancel the license. The~~ division superintendent shall forward the request for cancellation along with the petition for suspension to the Superintendent of Public Instruction within 14 days of receipt. The Superintendent of Public Instruction shall cancel the license and send the person a notice of cancellation along with the time period for the suspension by registered mail within 14 days of receipt of the request for cancellation. ]

2. If the license holder files a written answer admitting the charges, or refuses to accept the copy of the petition from the postal authorities, or fails to file a written answer within 14 days after service of the petition, or has failed to provide postal authorities with a forwarding address so that the petition can be delivered, the local school board shall proceed to a hearing as described in subdivisions 3 and 4 of this subsection.

3. If the license holder files his written answer denying the charges in the petition, the local school board shall provide a hearing at the time and place of its regular meeting or at such other reasonable time and place it may specify. The license holder or his representative, if any, shall be given at least 14 days' notice of the hearing.

4. Following its hearing, the local school board shall receive the recommendation of the division superintendent and then either dismiss the charges or make such recommendations relative to suspension of a license as it deems appropriate. A decision to dismiss the charges shall be final, except as specified in subsection G of this section, and the file on the charges shall be closed and all materials expunged. Should the local school board recommend the suspension of a license, this recommendation, along with supporting evidence, shall promptly be forwarded by the

division superintendent to the Superintendent of Public Instruction.

G. Suspension on motion of Board of Education. The Board of Education reserves the right, in situations not covered by this chapter, to act directly in suspending a license. No such suspension will be ordered without the involved license holder being given the opportunity for the hearing as specified in [ 8VAC20-22-740 B 8VAC20-22-740 C ].

H. Reinstatement of license. A license may be suspended for a period of time not to exceed five years. The license may be reinstated by the Department of Education, upon request, with verification that all requirements for license renewal have been satisfied. The individual must apply to the board for reinstatement. Notification to all appropriate parties will be communicated in writing by the Department of Education.

**8VAC20-22-720. Denial.**

A. A license may be denied for the following reasons:

1. Attempting to obtain such license by fraudulent means or through misrepresentation of material facts;
2. Falsification of records or documents;
3. Conviction of any felony;
4. Conviction of any misdemeanor involving moral turpitude;
5. Conduct [ ~~such as immorality, or personal condition detrimental to the health, welfare, discipline, or morale of students or to the best interest of the public schools of the Commonwealth of Virginia~~ with a direct and detrimental effect on the health, welfare, discipline, or morale of students ] ;
6. Revocation, suspension, or invalidation of the license by another state or territory; or
7. Other good and just cause of a similar nature.

B. Expired license. The holder of a license that has expired may be denied renewal or reinstatement by the Superintendent of Public Instruction for any of the reasons specified in 8VAC20-22-690 A. No such denial will be ordered unless the license holder is given the opportunity for the hearing specified in [ 8VAC20-22-740 B, 8VAC20-22-740 C ].

**8VAC20-22-730. Right to counsel and transcript.**

A license holder shall have the right, at his own expense, to be represented by [ ~~counsel of choice~~ an attorney or other representative ] at the local school board hearing provided for in 8VAC20-22-690 F [ ~~, the investigative panel hearing provided for in 8VAC20-22-740 A,~~ ] or in the proceedings before the Board of Education, as specified in 8VAC20-22-740 A [ ~~and B Counsel may, but need not, be an attorney.~~ ]. The hearing before the local school board and the

investigative panel hearing provided in 8VAC20-22-740A shall be recorded, and upon written request, the license holder shall be provided a transcript of the hearing at his own expense. ] Any such hearing before a local school board and any hearing before the Board of Education shall be recorded; and, upon written request, the party charged shall be provided a hearing transcript without charge.

**8VAC20-22-740. Action by the State Superintendent of Public Instruction and the Board of Education.**

A. [ Superintendent's Investigative Panel: Superintendent's Recommendation. ] Upon receipt of the complaint from the local school division, the Superintendent of Public Instruction will ensure that an investigative panel at the state level reviews the petition. The panel shall consist of three to five members selected by the Assistant Superintendent of Teacher Education and Licensure of the Virginia Department of Education. The license holder [ ~~should~~ shall ] be notified within 14 days of the receipt of the complaint to the Department of Education as to the date, time, and location of the hearing. [ The Department of Education shall ensure that the license holder receives all documentation that will be used during the investigative panel hearing prior to the hearing. ] [ ~~Both parties, A representative of~~ ] the local school division and the license holder, are entitled to be present with counsel [ and witnesses ] if so desired. [ ~~Individuals requesting a license or the continuation of a license must appear before the Superintendent's Investigative Panel.~~ The investigative panel hearing shall be recorded. ] The recommendation of the [ state level investigative ] panel is made to the State Superintendent of Public Instruction [ ~~for presentation who will forward his recommendation and the license holder's file~~ ] to the State Board of Education [ or its duly designated committee at one of its scheduled meetings ]. [ ~~The superintendent shall then present his report to the Board of Education or its duly designated committee at one of its duly scheduled meetings.~~ ] The license holder shall be given at least 14 days' notice [ ~~(in the manner specified in 8VAC20-22-690 F)~~ ] of the [ date on which the Superintendent of Public Instruction's report will be continued, where necessary, from one meeting of the Board of Education or committee to another. State Board of Education meeting when his case will be considered. Following the investigative panel hearing, the Department of Education shall forward the recommendation of the investigative panel and the license holder's file to the license holder as soon as practicable, but no later than 14 days prior to the scheduled State Board of Education meeting when his case will be considered. ]

B. The State Superintendent of Public Instruction is authorized to approve the issuance of licenses for individuals who have misdemeanor convictions related to drugs based on a review of the cases. No individual would be denied a license without a hearing of the Board of Education as required in [ 8VAC20-22-740 B this subsection ].

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~~C. [ Hearings State Board of Education hearing ]. The Board of Education, or its duly designated committee, shall [ receive and ] consider the [ report recommendation ] of the Superintendent of Public Instruction and such relevant and material evidence as the license holder may desire to present at the hearing. [ At its discretion, the Board of Education may ask the license holder questions. ] At the conclusion of the hearing, the [ Superintendent of Public Instruction may recommend the action — revocation or suspension — that should be taken by the Board of Education. The Board of Education will then enter its order within 14 days after the hearing has concluded. This order will contain findings of fact either sustaining or dismissing the complaint Board of Education will announce its decision ].~~

~~D. [ Decision not to revoke or suspend. If the decision of the Board of Education is not to revoke or suspend the license, the license holder and the principal complainants will be so notified and the Board of Education's file and any other record or material will be removed or destroyed. The decision of the State Board of Education shall be recorded in the minutes of the meeting, and the license holder and principal complainants will receive written notice of the decision. ]~~

~~[ E. Decision to revoke or suspend. If the decision of the Board of Education is to revoke or suspend the license, a written order will be entered in the minutes of the meeting at which the matter was decided. A copy of this order will be sent to the license holder and the principal complainants. ]~~

## **8VAC20-22-750. Right of license holder to appear at hearing.**

A license holder shall have the right to appear in person at the hearings held by the local school board, Board of Education, or board committee described in this part unless he is confined to jail or a penal institution. The local school board or Board of Education, at its discretion, may continue such hearings for a reasonable time if the license holder is prevented from appearing in person for reasons such as documented medical or mental impairment.

## **8VAC20-22-760. Notification.**

Notification of the revocation, [ cancellation, ] denial, or reinstatement of a license shall be made by the Superintendent of Public Instruction, or his designee, to division superintendents in Virginia and to chief state school officers of the other states and territories of the United States.

VA.R. Doc. No. R05-141; Filed Aug 1, 2007, 9:55 a.m.

## **Final Regulation**

**Titles of Regulations: 8VAC20-541. Regulations Governing Approved Programs for Virginia Institutions of Higher Education (repealing 8VAC20-541-10 through 8VAC20-541-60).**

**8VAC20-542. Regulations Governing the Review and Approval of Education Programs in Virginia (adding 8VAC20-542-10 through 8VAC20-542-600).**

Statutory Authority: §§22.1-16 and 22.1-298.1 of the Code of Virginia.

Effective Date: September 21, 2007.

Agency Contact: Dr. Margaret N. Roberts, Office of Policy & Communications, Department of Education, P.O. Box 2120, 101 N. 14th St., 25th Floor, Richmond, VA 23219, telephone 804-225-2540, FAX 804-225-2524, or email [margaret.roberts@doe.virginia.gov](mailto:margaret.roberts@doe.virginia.gov).

### Summary:

*The program approval process in Virginia is designed to ensure an alignment between approved education programs and the needs of preK-12 schools. Due to significant proposed revisions to the Regulations Governing Approved Programs for Virginia Institutions of Higher Education (8VAC20-541), which were effective on May 23, 2001, the Board of Education proposes to promulgate new Regulations Governing the Review and Approval of Education Programs in Virginia (8VAC20-542).*

*Substantive elements of the new regulations focus on revision of selected definitions to conform with changes in the proposed new regulations; modifications in administration of the proposed new regulations, including separation of the accreditation process from the program approval process; the development of regulations focused on biennial measures of accountability; and inclusion and modification of competencies contained in the 1998 Regulations Governing the Licensure of School Personnel.*

*Major changes or provisions made to the regulations since publication of the proposed stage focus on the following: (i) changes of definitions; (ii) deletion of the proposed requirement that institutions provide certain information on candidates exiting the education program; (iii) change in the proposed requirement that candidates pass basic entry-level competency assessments to require that candidates take basic entry-level requirements; (iv) alignment of the number of clock hours required for supervised classroom experiences for initial licensure endorsements and the endorsement in administration and supervision preK-12; (v) addition of new competencies to establish an add-on endorsement for early childhood for three-and-four-year-olds; (vi) deletion of competencies for new endorsement requirements for speech-language*

*pathology assistants; (vii) amended professional studies requirements to include competencies relative to instructional design based on assessment data, classroom and behavior management skills, and competencies in foundations of education; and (viii) amended competencies in the endorsement areas of early/primary education preK-3; elementary education preK-6; special education adapted curriculum K-12; and special education general curriculum K-12.*

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.

## CHAPTER 542

### REGULATIONS GOVERNING THE REVIEW AND APPROVAL OF EDUCATION PROGRAMS IN VIRGINIA

#### Part I

#### Definitions

#### **8VAC20-542-10. Definitions.**

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

"Accreditation" means a process for assessing and improving academic and educational quality through voluntary peer review. This process informs the public that an institution has a professional education unit that has met national standards of educational quality.

"Accredited institution" means an institution of higher education accredited by a regional accrediting agency recognized by the United States Department of Education.

"Accredited program" means a [ Virginia ] professional education program accredited by the National Council for the Accreditation of Teacher Education (NCATE), the Teacher Education Accreditation Council (TEAC), or a process approved by the Board of Education.

"Biennial accountability measures" means those specific benchmarks set forth in 8VAC20-542-40 to meet the standards required to obtain or maintain program approval status.

"Biennial report" means the report submitted to the Virginia Department of Education every two years by approved education programs.

"Candidates" means individuals enrolled in education programs.

"Candidates completing a program" means individuals who have successfully completed all coursework, required assessments, including those prescribed by the Board of

Education, and supervised student teaching or required internship.

"Candidates exiting a program" means individuals who have successfully completed all coursework, regardless of whether the individuals attempted, passed, or failed required assessments, including those prescribed by the Board of Education, and/or who may not have completed supervised student teaching or required internship.

"Distance learning" means a formal educational process in which the majority of the instruction occurs when the learner and the instructor are not in the same place at the same time. In this process, information or distributed learning technology is the likely connector between the learner, the instructor, or the site of program origin.

"Diversity" means the wide range of differences among groups of people and individuals based on ethnicity, race, socioeconomic status, gender, exceptionalities, language, religion, and geographical area.

"Education program" means a planned sequence of courses and experiences leading to a degree, a state license, or preparation to provide professional education services in schools.

"Exceptionalities" means physical, mental, sensory, and emotional disabilities or differences, including gifted/talented abilities.

"Field experiences" means program components that are conducted in off-campus settings [ or on-campus settings dedicated to the instruction of children who would or could otherwise be served by school divisions in Virginia, or accredited nonpublic schools, and are accredited for this purpose by external entities such as regional accrediting agencies ]. They include classroom observations, tutoring, assisting teachers and school administrators, student teaching, and internships.

"Full-time faculty" means employees of a higher education institution with full-time assignments within the education program as instructors, professors, administrators, or other professional support personnel (e.g., student teaching supervisor or advisor).

"General education" means courses and other learning experiences in the liberal arts and sciences that candidates in baccalaureate programs typically complete in the first two or three years of their programs for the purpose of becoming liberally educated college students.

"Governance" means the system and structure for defining policy and administering procedures for the professional education program.

"Indicators" means operational definitions that suggest the kinds of evidence that professional education programs shall provide to demonstrate that a standard is met.

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"Instructional technology" means the theory and practice of design, development, utilization, management, and evaluation of processes and resources for learning and the use of computers and other technologies.

"Licensing" means the official recognition by a state governmental agency that an individual has met state requirements and is, therefore, approved to practice as a licensed professional.

"Part-time faculty" means employees of a higher education institution who have less than a full-time assignment in the education program. Some part-time faculty are full-time employees of the college or university with a portion of their assignments in the education program. Other part-time faculty are not full-time employees of the institution and are commonly considered adjunct faculty.

"Pedagogical studies" means courses and other learning experiences in which candidates study and apply concepts, theories, and research about effective teaching.

"Professional education faculty" means those individuals who teach one or more courses meeting essential competencies in endorsement areas, provide services to education students (e.g., advising or supervising student teaching) or administer some portion of the education program.

"Professional education program" means the [ Virginia ] institution, college, school, department, or other administrative body within a Virginia institution of higher education, or another [ Virginia ] entity for a defined educator preparation program that is primarily responsible for the preparation of teachers and other professional school personnel.

"Professional studies" means courses and other learning experiences to teach candidates the historical, economic, sociological, philosophical, and psychological foundations of schooling and education.

"Program approval" means the process by which a state governmental agency reviews an education program to determine if it meets the state's standards for the preparation of school personnel.

"Regional accrediting agency" means one of the six accrediting associations, including New England Association of Schools and Colleges, Middle States Association of Colleges and Schools, North Central Association of Colleges and Schools, Northwest Association of Schools and Colleges, Southern Association of Colleges and Schools, and Western Association of Schools and Colleges, recognized by the United States Department of Education.

"Scholarly activities" means the active involvement in an individual's area of specialization as demonstrated through such faculty activities as research, articles published in refereed journals, program evaluation studies, documentation

of ongoing activities, grant-seeking, and presentations at professional meetings.

"School faculty" means licensed practitioners in preK-12 schools who provide on-site instruction, supervision, and direction for candidates during field-based assignments.

"Standards of Learning for Virginia public schools" means the [ ~~commonwealth's~~ Commonwealth's ] expectations for student learning and achievement in grades K-12 in English, mathematics, science, history/social science, technology, the fine arts, foreign language, health, and physical education, and driver education.

## Part II

### Administering the Regulations

#### **8VAC20-542-20. Administering the regulations.**

A. Professional education programs [ in Virginia ] shall obtain national accreditation from the National Council for the Accreditation of Teacher Education (NCATE), the Teacher Education Accreditation Council (TEAC), or a process approved by the Board of Education.

B. Teacher candidates shall complete academic degrees in the arts and sciences (or equivalent), except in health, physical, and career and technical education. Candidates in early/primary education [ preK-3, elementary education ] (preK-6) middle education (6-8), and special education programs may complete a major in interdisciplinary studies or its equivalent.

C. Professional studies coursework and methodology, excluding field experiences, are limited to 24 semester hours for any baccalaureate degree program (or equivalent thereof) in early/primary education (preK-3), elementary education (preK-6), and special education. All other baccalaureate degree programs (or equivalent thereof) shall not exceed 18 semester hours of professional coursework and methodology, excluding field experiences.

D. Institutions of higher education seeking approval of an education program shall be accredited by a regional accrediting agency.

E. If a professional education program fails to maintain accreditation, enrolled candidates shall be permitted to complete their programs of study. Professional education programs shall not admit new candidates. Candidates shall be notified of program approval status.

F. Education programs shall ensure that candidates demonstrate proficiency in the use of educational technology for instruction and complete study in child abuse recognition and intervention.

G. Standards and procedures for the review and approval of each education program shall adhere to procedures for administering the regulations as defined in this section and in

8VAC20-542-40, 8VAC20-542-50, and 8VAC20-542-70. These procedures shall result in biennial recommendations to the Board of Education for one of the following three ratings: "approved," "approved with stipulations," or "approval denied."

H. Education programs shall be approved under these regulations biennially based on compliance with the criteria described in 8VAC20-542-40.

I. Education programs shall submit to the Department of Education, on behalf of each education program under consideration, a Program Compliance Certification Affidavit in accordance with department procedures and timelines.

J. The education program administrator shall maintain copies of approved programs and required reports.

K. The Department of Education may conduct on-site visits to review programs and verify data.

L. The Advisory Board on Teacher Education and Licensure (ABTEL) is authorized to review and make recommendations to the Board of Education on approval of [ Virginia education ] programs for school personnel. The Board of Education has final authority on program approval.

M. Modifications may be made by the Superintendent of Public Instruction in the administration of these regulations. Proposed modifications shall be made in writing to the Superintendent of Public Instruction, Commonwealth of Virginia.

### Part III

#### Accreditation or a Process Approved by the Board of Education

#### **8VAC20-542-30. Options for accreditation or a process approved by the Board of Education.**

A. Each professional education program [ in Virginia ] shall obtain and maintain national accreditation from the National Council for the Accreditation of Teacher Education (NCATE), the Teacher Education Accreditation Council (TEAC), or a process approved by the Board of Education.

B. Each [ Virginia ] professional education program seeking accreditation through a process approved by the Board of Education shall be reviewed. A report of the review shall be submitted to the Board of Education in accordance with established timelines and procedures and shall include one of the following recommendations:

1. Accredited. The professional education program meets standards outlined in 8VAC20-542-60.

2. Accredited with stipulations. The professional education program has met the standards minimally, but significant weaknesses have been identified. Within a two-year period, the professional education program shall fully meet standards as set forth in 8VAC20-542-60.

3. Accreditation denied. The professional education program has not met standards as set forth in 8VAC20-542-60. The State Council of Higher Education for Virginia (SCHEV) shall be notified of this action by the Department of Education.

C. Professional education program accreditation that has been denied may be considered by the Board of Education after two years if a written request for review is submitted to the Department of Education.

D. Professional education programs [ in Virginia ] seeking accreditation through NCATE, TEAC, or an accreditation process approved by the Board of Education shall adhere to the following requirements:

1. Accredited professional education programs shall be aligned with standards in 8VAC20-542-60; and

2. Accredited professional education programs shall be aligned with competencies in 8VAC20-542-70 through 8VAC20-542-600.

E. Professional education programs [ in Virginia ] seeking accreditation through a process approved by the Board of Education shall follow procedures and timelines as prescribed by the Department of Education.

### Part IV

#### Standards for Biennial Approval of Education Programs

#### **8VAC20-542-40. Standards for biennial approval of education programs.**

Approved education programs in Virginia shall have national accreditation or be accredited by a process approved by the Board of Education and demonstrate achievement biennially of the following accountability measures:

1. Candidate progress and performance on prescribed Board of Education licensure assessments. Candidate passing rates, reported by percentages, shall not fall below 70% biennially for individuals completing and exiting the program. Achievement of an 80% biennial passing rate shall be required by July 1, 2010. Candidates completing a program shall have successfully completed all coursework, required assessments, including those prescribed by the Board of Education, and supervised student teaching or internship. Candidates exiting a program shall have successfully completed all coursework, regardless of whether the individuals attempted, passed, or failed required assessments, including those prescribed by the Board of Education, and/or who may not have completed supervised student teaching or required internship.

2. Candidate progress and performance on an assessment of basic skills as prescribed by the Board of Education for individuals seeking entry into an approved education preparation program. Indicators of the achievement of this standard shall include the following:

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a. Results on Board of Education prescribed entry-level assessments; and

b. Documentation [ ~~of tutorial assistance~~ that candidates enrolled in the program who fail to achieve a minimum score established by the Board of Education have the opportunity to address any deficiencies ].

3. Structured and integrated field experiences to include student teaching requirements. Indicators of the achievement of this standard shall include the following:

a. Evidence that candidates receive quality structured and integrated field experiences that prepare them to work in diverse educational environments; and

b. Evidence that at least [ ~~500 300~~ ] clock hours of field experiences for initial programs (including early exposure to preK-12 classroom experiences) to include a minimum of [ ~~300 150~~ ] clock hours of directed student teaching requirements are provided. Programs in administration and supervision shall provide [ ~~at least 440 clock hours of~~ ] field experiences with a minimum of 320 clock hours as part of a deliberately structured internship over the duration of a preparation program. The majority of the school level supervised experience shall take place during the school day in concentrated blocks of time when preK-12 students are present.

4. Evidence of opportunities for candidates to participate in [ ~~hard to staff schools~~ diverse school settings that provide experiences with populations that include racial, economic, linguistic, and ethnic diversity ] throughout the program experiences. The indicator of the achievement of this standard shall include evidence that the professional education programs provide opportunities for candidates to have program experiences in [ ~~hard to staff schools~~ diverse school settings that provide experiences with populations that include racial, economic, linguistic, and ethnic diversity ] within each biennial period.

5. Evidence of contributions to preK-12 student achievement by candidates completing [ ~~and exiting~~ ] the program. Indicators of the achievement of this standard shall include the following:

a. Evidence to show that candidates know about, create, and use appropriate and effective assessments in teaching that shall provide dependable information about student achievement;

b. Evidence to document faculty have made provisions for evaluating effects that candidates have on preK-12 student learning in the context of teaching as they design unit assessment systems and assessments for each program; and

c. Evidence that the education program assesses candidates' mastery of exit criteria and performance proficiencies, including the ability to affect student

learning, through the use of multiple sources of data such as a culminating experience, portfolios, interviews, videotaped and observed performance in schools, standardized tests, and course grades.

6. Evidence of employer job satisfaction with candidates completing [ ~~and exiting~~ ] the program. The indicator of the achievement of this standard shall include documentation that the education program has two years of evidence regarding candidate performance based on employer surveys.

7. Partnerships and collaborations based on preK-12 school needs. Indicators of the achievement of this standard shall include the following:

a. Documented evidence that the education program has established partnerships reflecting collaboratively designed program descriptions based on identified needs of the preK-12 community.

b. Documented evidence that the administration and supervision program collaborates with partnering schools to identify and select candidates for school leadership programs who meet local needs, demonstrate both potential for and interest in school leadership, and meet the qualifications for admission to advanced programs.

## Part V

### Application of Standards for Biennial Approval of Education Programs

#### **8VAC20-542-50. Application of the standards.**

A. As a prerequisite to program approval, [ ~~the~~ ] professional education [ ~~program~~ programs in Virginia ] shall have national accreditation or be accredited by a process approved by the Board of Education as prescribed in 8VAC20-542-30 and 8VAC20-542-60. Failure to do so will result in the education program being designated as "approval denied."

B. The education program's candidate passing rates shall not fall below 70% biennially for individuals completing and exiting the program. Achievement of an 80% biennial passing rate for individuals completing and exiting the program shall be required by July 1, 2010.

C. The education program is responsible to certify documented evidence that the following standards as set forth in 8VAC20-542-40 have been met:

1. The education program shall demonstrate candidate progress and performance on an assessment of basic skills as prescribed by the Board of Education for individuals seeking entry into an approved education preparation program.

2. The education program shall provide structured and integrated field experiences.

3. The education program shall provide evidence of opportunities for candidates to participate in [ ~~hard to staff schools~~ diverse school settings that provide experiences with populations that include racial, economic, linguistic, and ethnic diversity ] throughout the program experiences.

4. The education program shall provide evidence of contributions to preK-12 student achievement by candidates completing [ ~~and exiting~~ ] the program.

5. The education program shall provide evidence of employer job satisfaction with candidates completing [ ~~and exiting~~ ] the program.

D. The education program shall develop biennial accountability measures to be reviewed and approved by the Board of Education for partnerships and collaborations based on preK-12 school needs.

E. After submitting to the Department of Education the information contained in 8VAC20-542-50, [ ~~the~~ ] education [ ~~program~~ programs in Virginia ] shall receive one of the following three ratings:

1. Approved. The education program has met all standards set forth in 8VAC20-542-40.

2. Approved with stipulations. The education program has met standards in subsections A and B of this section and is making documented progress toward meeting standards in subsections C and D of this section.

3. Approval denied. The education program has not met standards in subsections A and B of this section. The program shall be denied and the public notified. The program may resubmit a request for approval at the end of the next biennial period.

Part VI

Standards for Board of Education Approved Accreditation Process

**8VAC20-542-60. Standards for Board of Education approved accreditation process.**

A. Standard 1: Program Design. The professional education program shall develop and maintain high quality programs that are collaboratively designed and based on identified needs of the preK-12 community. Indicators of the achievement of this standard shall include the following:

1. The program design includes a statement of program philosophy, purposes and goals.

2. The program design incorporates the specific knowledge and skills that are necessary for competence at the entry level for educational professionals.

3. The program design includes a knowledge base that reflects current research, best educational practice and the Virginia Standards of Learning.

4. The program is designed from a framework that is knowledge-based, evidenced-based and articulated and that has been collaboratively developed with various stakeholders.

5. The professional education programs for teachers, school leaders, and other school personnel shall develop the essential entry-level competencies needed for success in preK-12 schools by demonstrating alignment among the general, content, and professional courses and experiences. Indicators of the achievement of this standard shall include the following:

a. The professional education program develops, implements, and evaluates programs, courses, and activities that enable entry-level candidates to develop the knowledge, skills, and dispositions identified in the program design framework.

b. The professional education program assesses candidates' attainment of the knowledge, skills, and dispositions identified in the program design framework.

c. The professional education program provides evidence that candidates have achieved the knowledge, skills, and dispositions identified in the program design framework.

6. The professional education program shall have multiple well-planned, sequenced, and integrated field experiences that include observations, practica, student teaching, internships, and other opportunities to interact with students and the school environment. Indicators of the achievement of this standard shall include the following:

a. Field experiences provide opportunities for candidates to relate theory to actual practice in classrooms and schools, to create meaningful learning experiences for a variety of students, and to practice in settings with students of diverse backgrounds.

b. Field experiences provide opportunities for candidates to demonstrate competence in the professional teaching or administrative roles for which they are preparing, including opportunities to interact and communicate effectively with parents, community and other stakeholders.

c. Student teaching and other field experiences include a minimum of [ ~~500~~ 300 ] clock hours, with at least [ ~~300~~ 150 ] hours of that time spent in directed teaching activities at the level of endorsement. Programs in administration and supervision provide [ ~~at least 440 clock hours of~~ ] field experiences with a minimum of 320 clock hours as part of a deliberately structured internship over the duration of a preparation program.

d. Candidates in education programs complete field experiences, internships, or other supervised activities that allow them to develop and apply the new knowledge and skill gained in their programs.

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e. Candidate performance in field experiences is evaluated and documented using multiple assessments, including feedback from education and arts and sciences faculty, school faculty, and peers, as well as self-reflection by candidates.

7. Professional education faculty collaborate with arts and sciences faculty, school personnel, and other members of the professional community to design, deliver, assess, and renew programs for the preparation and continuing development of school personnel and to improve the quality of education in preK-12 schools. Indicators of the achievement of this standard shall include the following:

a. Professional education faculty collaborate with the faculty who teach general and content courses to design and evaluate programs that shall prepare candidates to teach the Standards of Learning.

b. Partnership agreements ensure that professional education faculty collaborate with personnel in partnering schools and school divisions to design and evaluate programs, teaching methods, field experiences, and other activities.

c. Partnership agreements ensure that professional education faculty collaborate with personnel in partnering schools to assess candidates during observations, practica, student teaching, internships, and other field experiences.

d. Opportunities exist for professional education faculty, school personnel, and other members of the professional community to collaborate on the development and refinement of knowledge bases, conduct research, and improve the quality of education.

B. Standard 2: Candidate Performance on Competencies for Endorsement Areas. Candidates in education programs shall demonstrate the knowledge, skills, and dispositions to meet professional, state, and institutional standards to ensure student success. Candidates shall demonstrate the competencies specified in 8VAC20-542-70 through 8VAC20-542-600.

1. Candidates in education programs have completed general education courses and experiences in the liberal arts and sciences and demonstrate the broad theoretical and practical knowledge necessary for teaching and preK-12 student achievement. Indicators of the achievement of this standard shall include the following:

a. Candidates demonstrate that they have a full command of the English language, use standard English grammar, have rich speaking and writing vocabularies, are knowledgeable of exemplary authors and literary works, and communicate effectively in educational, occupational, and personal areas.

b. Candidates demonstrate that they can solve mathematical problems, communicate and reason mathematically, and make mathematical connections.

c. Candidates demonstrate that they develop and use experimental design in scientific inquiry, use the language of science to communicate understanding of the discipline, investigate phenomena using technology, understand the history of scientific discovery, and make informed decisions regarding contemporary issues in science, including science-related careers.

d. Candidates demonstrate that they know and understand our national heritage; and have knowledge and skills in American and world history, geography, government/political science, and economics that create informed and responsible citizens who can understand, discuss, and participate in democratic processes.

e. Candidates demonstrate that they have supporting knowledge in fine arts, communications, literature, foreign language, health, psychology, philosophy and/or other disciplines that contribute to a broad-based liberal education.

f. Candidates [ ~~pass~~ take ] basic entry-level competency assessments prescribed by the Virginia Board of Education.

g. Candidates achieve passing scores on professional content assessments for licensure prescribed by the Board of Education prior to completing their programs.

2. Candidates in education programs shall demonstrate the knowledge, skills, and dispositions to work with a variety of students, including those from diverse backgrounds, and to have a positive effect on student learning. Indicators of the achievement of this standard shall include the following:

a. Candidates demonstrate the ability to apply knowledge and skills related to the physical, neurological, social, emotional, intellectual, and cognitive development of children and youth; the complex nature of language acquisition and reading; and an understanding of contemporary educational issues including the prevention of child abuse, appropriate use of technology, and diversity.

b. Candidates demonstrate the ability to apply the principles of learning, methods for teaching reading, methods for teaching the content area, classroom [ and behavior ] management, selection and use of teaching materials, and evaluation of student performance.

c. Candidates demonstrate the ability to have a positive effect on student learning through judging prior student learning; planning instruction; teaching; and assessing, analyzing, and reflecting on student performance.

d. Candidates demonstrate the ability to use educational technology to enhance student learning, including the use of computers and other technologies in instruction, assessment, and professional productivity.

e. Candidates demonstrate the ability to analyze and use various types of data to plan and assess student learning.

3. Candidates in graduate programs for other school personnel demonstrate competencies for educational leadership roles as school superintendents, principals and/or assistant principals, central office administrators and supervisors, school counselors, reading specialists, mathematics specialists, or school psychologists. They demonstrate the knowledge and understanding to lead schools that use effective educational processes, achieve increased student learning, and make strong and positive connections to the community. Indicators of the achievement of this standard shall include the following:

a. Candidates demonstrate understanding of the Virginia Standards of Learning and standards of appropriate specialty organizations, including how these standards relate to the leadership roles for which they are being prepared.

b. Candidates demonstrate the competencies specified in their intended licensure/endorsement areas as defined in 8VAC20-542-70 through 8VAC20-542-600.

c. Candidates achieve passing scores on the professional content assessments for licensure prescribed by the Board of Education prior to completing their programs.

d. Candidates demonstrate understanding of research, research methods, issues, trends, and research-based best practices that shall enhance the academic achievement of all preK-12 students and reduce academic achievement gaps among diverse preK-12 student groups.

e. Candidates demonstrate the ability to use educational technology, including computers and other technologies, in instruction, assessment, and professional development activities.

f. Candidates demonstrate the ability to use test data to revise instruction and enhance student achievement.

g. Candidates understand emerging issues that impact the school community and demonstrate the ability to collaborate with families, community members and other stakeholders.

h. Candidates demonstrate mastery of administration/supervision competencies through multiple sources of data such as internships, portfolios, and interviews, including employer satisfaction surveys.

C. Standard 3: Faculty in Professional Education Programs. Faculty in the professional education program represent well-

qualified education scholars who are actively engaged in teaching and learning.

1. The full-time and part-time professional education faculty, including school faculty, adjunct faculty and others, represent diverse backgrounds, are qualified for their assignments and are actively engaged in the professional community. Indicators of the achievement of this standard shall include the following:

a. Professional education faculty have completed formal advanced study; have earned doctorates or the equivalent, or exceptional expertise in their field.

b. Professional education faculty have demonstrated competence in each field of endorsement area specialization.

c. Professional education faculty demonstrate understanding of current practice related to the use of computers and technology and integrate technology into their teaching and scholarship.

d. Professional education faculty demonstrate understanding of Virginia's Standards of Learning.

e. Professional education faculty demonstrate understanding of cultural differences and exceptionalities and their instructional implications.

f. Professional education faculty who supervise field experiences have had professional teaching experiences in preK-12 school settings.

g. Professional education faculty are actively involved with the professional world of practice and the design and delivery of instructional programs in preK-12 schools.

h. Professional education faculty are actively involved in professional associations and participate in education-related services at the local, state, national, and international levels in areas of expertise and assignment.

2. Teaching in the professional education program is of high quality and is consistent with the program design and knowledge derived from research and sound professional practice. Indicators of the achievement of this standard shall include the following:

a. Professional education faculty use instructional teaching methods that reflect an understanding of different models and approaches to learning and student achievement.

b. The teaching of professional education faculty encourages candidates to reflect, think critically and solve problems.

c. The teaching of professional education faculty reflects knowledge and understanding of cultural diversity and exceptionalities.

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d. The teaching of professional education faculty is continuously evaluated, and the results are used to improve teaching and learning within the program.

3. The professional education program ensures that policies and assignments are in keeping with the character and mission of the institution or other education program entity and allows professional education faculty to be involved effectively in teaching, scholarship, and service. Indicators of the achievement of this standard shall include the following:

a. Workload policies and assignments accommodate and support the involvement of professional education faculty in teaching, scholarship, and service, including working in preK-12 schools, curriculum development, advising, administration, institutional committee work, and other internal service responsibilities.

b. Policies governing the teaching loads of professional education faculty, including overloads and off-site teaching, are mutually agreed upon and allow faculty to engage effectively in teaching, scholarship, and service.

c. Recruitment and retention policies for professional education faculty include an explicit plan with adequate resources to hire and retain a qualified and diverse faculty. The plan is evaluated annually for its effectiveness in meeting recruitment goals.

4. The professional education program ensures that there are systematic and comprehensive activities to enhance the competence and intellectual vitality of the professional education faculty. Indicators of the achievement of this standard shall include the following:

a. Policies and practices encourage professional education faculty to be continuous learners.

b. Support is provided for professional education faculty and others who may contribute to professional education programs to be regularly involved in professional development activities.

c. Professional education faculty are actively involved in scholarly activities that are designed to enhance professional skills and practice.

d. Regular evaluation of professional education faculty includes contributions to teaching, scholarship, and service.

e. Evaluations are used systematically to improve teaching, scholarship, and service of the professional education faculty.

D. Standard 4: Governance and Capacity. The professional education program demonstrates the governance and capacity to prepare candidates to meet professional, state, and institutional standards.

1. The professional education program is clearly identified and has the responsibility, authority, and personnel to develop, administer, evaluate, and revise all education programs. Indicators of the achievement of this standard shall include the following:

a. The professional education program has responsibility and authority in the areas of education faculty selection, tenure, promotion, and retention decisions; recruitment of candidates; curriculum decisions; and the allocation of resources for professional education program activities.

b. The program has a long-range plan that is regularly monitored to ensure the ongoing vitality of the professional education programs as well as the future capacity of its physical facilities.

c. Candidates, school faculty in partnering school divisions, adjunct faculty, and other members of the professional community are actively involved in the policy-making and advisory bodies that organize and coordinate programs of the professional education program.

d. Policies and practices of the professional education program are nondiscriminatory and guarantee due process to faculty and candidates.

2. The professional education program has adequate resources to offer quality programs that reflect the mission of the professional education program and support teaching and scholarship by faculty and candidates. Indicators of achievement of this standard shall include the following:

a. The size of the professional education program, the number of candidates, and the number of faculty, administrators, clerical and technical support staff support the consistent delivery and quality of each program offered.

b. Facilities, equipment, technology, and other budgetary resources are sufficient for the operation and accountability of the professional education program.

c. Resources are allocated to programs in a manner that allows each program to meet its anticipated outcomes.

d. The institution provides training in and access to education-related electronic information, video resources, computer hardware, software, related technologies, and other similar resources to higher education faculty and candidates.

3. The professional education program shall ensure that full, part-time, and adjunct faculty are provided with appropriate resources such as office space, access to technology, teaching aids, materials and other resources necessary to ensure quality preparation of school personnel.

## Part VII

## Competencies for Endorsement Areas

## Article 1

## General Competencies

**8VAC20-542-70. Competencies for endorsement areas.**

The professional education program develops, maintains, and continuously evaluates high quality professional education programs that are collaboratively designed and based on identified needs of the preK-12 community. Candidates in education programs for teachers demonstrate competence in the core academic content areas that they plan to teach. The indicator of the achievement of this standard shall include the following:

Candidates demonstrate an understanding of competencies including the core concepts and facts of the disciplines and the Virginia Standards of Learning for the content areas they plan to teach.

## Article 2

Early/Primary Education, Elementary Education, and Middle Education**8VAC20-542-80. Professional studies requirements for early/primary education, elementary education, and middle education.**

Professional studies requirements for early/primary education, elementary education, and middle education:

1. Human growth and development (birth through adolescence). Skills in this area shall contribute to an understanding of the physical, social, emotional, [ speech and language, ] and intellectual development of children and the ability to use this understanding in guiding learning experiences [ and relating meaningfully to students ]. The interaction of children with individual differences – economic, social, racial, ethnic, religious, physical, and mental – should be incorporated to include skills contributing to an understanding of developmental disabilities and developmental issues related to but not limited to attention deficit disorders, gifted education including the use of multiple criteria to identify gifted students, substance abuse, child abuse, and family disruptions.

2. Curriculum and instructional procedures.

a. Early/primary education preK-3 or elementary education preK-6 curriculum and instructional procedures. Skills in this area shall contribute to an understanding of the principles of learning; the application of skills in discipline-specific methodology; communication processes; selection and use of materials, including media and computers; [ and ] selection, development and use of appropriate curricula,

methodologies, and materials that support and enhance student learning and reflect the research on unique, age-appropriate, and culturally relevant curriculum and pedagogy; ] evaluation of pupil performance [ ; and the relationships among assessment, instruction, and monitoring student progress to include student performance measures in grading practices, the ability to construct and interpret valid assessments using a variety of formats in order to measure student attainment of essential skills in a standards-based environment, and the ability to analyze assessment data to make decisions about how to improve instruction and student performance ]. The teaching methods, including for [ ~~second language learners,~~ limited English proficient students, ] gifted and talented students [ , ] and those students with disabling conditions, shall be appropriate for the level of endorsement (preK-3 or preK-6) and be tailored to promote student academic progress and effective preparation for the Standards of Learning assessments. Study in methods of improving communication between schools and families, ways of increasing family involvement in student learning at home and in school [ and , ] the Standards of Learning, and [ ~~demonstrated~~ Foundation Blocks for Early Learning shall be included. ] Early childhood educators must understand the role of families in child development and in relation to teaching educational skills. They must demonstrate knowledge and skills in communicating with families regarding the social and instructional needs of children. Early childhood educators must understand the role of the informal and play-mediated settings for promoting students' skills and development and must demonstrate knowledge and skill in interacting in such situations to promote specific learning outcomes as reflected in Virginia's Foundation Blocks for Early Learning. Demonstrated ] proficiency in the use of educational technology for instruction shall be included. Persons seeking initial licensure as teachers and persons seeking licensure renewal as teachers for the first time shall complete study in child abuse recognition and intervention in accordance with curriculum guidelines developed by the Board of Education in consultation with the Department of Social Services that are relevant to the specific teacher licensure routes. Pre-student teaching experiences (field experiences) should be evident within these skills.

b. Middle education 6-8 curriculum and instructional procedures. Skills in this area shall contribute to an understanding of the principles of learning; the application of skills in discipline-specific methodology; communication processes; selection and use of materials, including media and computers; [ and ] evaluation of pupil performance [ ; and the relationships among assessment, instruction, and monitoring student progress to include student performance measures in grading

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practices, the ability to construct and interpret valid assessments using a variety of formats in order to measure student attainment of essential skills in a standards-based environment, and the ability to analyze assessment data to make decisions about how to improve instruction and student performance.] The teaching methods, including for [ ~~second language learners~~ limited English proficient students ], gifted and talented students [ , ] and students with disabling conditions, shall be appropriate for the middle education endorsement and be tailored to promote student academic progress and effective preparation for the Standards of Learning assessments. Study in methods of improving communication between schools and families, ways of increasing family involvement in student learning at home and in school, and the Standards of Learning shall be included. Demonstrated proficiency in the use of educational technology for instruction also shall be included. Persons seeking initial licensure as teachers and persons seeking licensure renewal as teachers for the first time shall complete study in child abuse recognition and intervention in accordance with curriculum guidelines developed by the Board of Education in consultation with the Department of Social Services that are relevant to the specific teacher licensure routes. Pre-student teaching experiences (field experiences) should be evident within these skills.

[ ~~e. Instructional design based on assessment data. Skills in this area shall contribute to an understanding of the relationship among assessment, instruction and monitoring student progress to include student performance measures in grading practices, the ability to construct and interpret valid assessments using a variety of formats in order to measure student attainment of essential skills in a standards based environment, and the ability to analyze assessment data to make decisions about how to improve instruction and student performance. ]~~

[ ~~d. c. ] Classroom [ and behavior ] management. Skills in this area shall contribute to an understanding and application of classroom [ and behavior ] management techniques [ , classroom community building, ] and individual interventions, including techniques that promote emotional well-being and teach and maintain behavioral conduct and skills consistent with norms, standards, and rules of the educational environment. This area shall address diverse approaches based upon behavioral, cognitive, affective, social and ecological theory and practice. [ Approaches should support professionally appropriate practices that promote positive redirection of behavior, development of social skills, and of self discipline. The link between classroom and behavior management and students' ages must be~~

understood and demonstrated in techniques used in the classroom.

d. Foundations of education: Skills in this area shall be designed to develop an understanding of the historical, philosophical, and sociological foundations underlying the role, development and organization of public education in the United States. Attention must be given to the legal status of teachers and students, including federal and state laws and regulations, school as an organization/culture, and contemporary issues in education. The historical, philosophical, and sociological foundations of the instructional design based on assessment data (the relationships among assessment, instruction, and monitoring student progress to include student performance measures in grading practices, the ability to construct and interpret valid assessments using a variety of formats in order to measure student attainment of essential skills in a standards-based environment, and the ability to analyze assessment data to make decisions about how to improve instruction and student performance) must be addressed. ]

## e. Reading.

(1) Early/primary preK-3 and elementary education preK-6 – language acquisition and reading. Skills listed for these endorsement areas represent the minimum competencies that a beginning teacher shall be able to demonstrate. These skills are not intended to limit the scope of a beginning teacher's program. Additional knowledge and skills that add to a beginning teacher's competencies to deliver instruction and improve student achievement should be included as part of a quality learning experience.

Skills in this area shall be designed to impart a thorough understanding of the complex nature of language acquisition and reading, to include: phonemic awareness, concept of print, phonics, fluency, vocabulary development, and comprehension strategies. Additional skills shall include proficiency in writing strategies, as well as the ability to foster appreciation of a variety of literature and independent reading.

[ Knowledge of typical language development, components and sequence of literacy development, and the connection between language development and literacy must be evident in coursework. Knowledge and skills in specific methods by which adults elicit and foster the components of language development must be included. ]

(2) Middle education – language acquisition and reading in the content areas. Skills in this area shall be designed to impart an understanding of comprehension skills in all content areas, including a repertoire of questioning strategies, summarizing and retelling skills, and strategies

in literal, interpretive, critical, and evaluative comprehension, as well as the ability to foster appreciation of a variety of literature and independent reading.

[ ~~3~~ (3) ] Supervised classroom experience. The student teaching experience should provide for the prospective teacher to be in classrooms full time for a minimum of [ ~~500~~ 300 ] clock hours (including pre- and post-clinical experiences) with at least [ ~~300~~ 150 ] clock hours spent supervised in direct teaching activities (providing direct instruction) at the level of endorsement. One year of successful full-time teaching experience in the endorsement area in any public school or accredited nonpublic school may be accepted in lieu of the supervised teaching experience. A fully licensed, experienced teacher shall be available in the school building to assist a beginning teacher employed through the alternate route.

**[ 8VAC20-542-90. Early childhood for three- and four-year-olds (add-on endorsement).**

The program in early childhood education for three- and four-year-olds shall ensure that the candidate has demonstrated the following competencies:

1. Understanding child growth and development, with a specific focus on three- and four-year-olds, including:

a. Knowledge of characteristics and developmental needs of three- and four-year-olds, including the ability to recognize indicators of atypical development, in the domains of social, emotional, cognitive, physical, and gross and fine motor development;

b. Understanding of the multiple interacting influences on child development (biological and environmental), interconnectedness of developmental domains, the wide range of ages at which developmental skills are manifested, and the individual differences in behavioral styles; and

c. Knowledge of child development within the context of family, culture, and society.

2. Understanding principles of developmental practice, with a focus on three- and four-year-olds, including practices that are:

a. Appropriate to the child's age and stage of development;

b. Appropriate for children with a wide range of individual differences in abilities, interests, and behavioral styles; and

c. Appropriate for the child's cultural background and experience.

3. Understanding health, safety, and nutritional practices that impact early learning including:

a. Practices and procedures that support health status conducive to optimal development (e.g., health assessment, prevention of the spread of communicable disease, oral hygiene, reduction of environmental hazards, injury prevention, emergency preparedness);

b. Indicators of possible child abuse or neglect and the appropriate response if such indicators are observed;

c. Nutritional and dietary practices that support healthy growth and development while remaining sensitive to family preferences;

d. Skills for communicating with families about health and dietary concerns;

e. Community resources that support healthy living; and

f. Practices that allow children to become independent and knowledgeable about healthy living;

4. Understanding and application of formal and informal assessment procedures for documenting development and knowledge of how to use assessment to plan curriculum, including:

a. Age and stage-appropriate methods for assessing and documenting development;

b. Identifying and documenting children's interests, strengths and challenges; and

c. Communicating with families to acquire and to share information relevant to assessment.

5. Understanding effective strategies for facilitating positive reciprocal relationships with children for teachers, families and communities, including mutual respect, communication strategies, collaborative linkages among families, and community resources, and nurturing the capacity of family members to serve as advocates on behalf of children.

6. Understanding strategies for planning, implementing, assessing, and modifying physical and psychological aspects of the learning environment to support physical, cognitive, and social, as well as emotional well-being in children with a broad range of developmental levels, special needs, individual interests, and cultural backgrounds, including the ability to:

a. Utilize learning strategies that stimulate curiosity, and encourage participation in exploration and play;

b. Provide curriculum experiences that facilitate learning goals in content areas and provide opportunities to acquire concepts and skills that are precursors to academic content taught in elementary school;

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c. Adapt tasks to the child's zone of proximal development;

d. Nurture children's development through experiences, relationships and active engagement in play;

e. Select materials/equipment, arrange physical space, and plan schedules/routines to stimulate and facilitate development; and

f. Collaborate with families, colleagues, and members of the broader community to construct learning environments that promote a spirit of unity, respect, and service in the interest of the common good.

7. Understanding strategies that create positive and nurturing relationships with each child based on respect, trust, calm approaches, respect for diversity and acceptance of individual differences in ability levels, temperament, and other characteristics, including the ability to:

a. Emphasize the importance of supportive verbal and nonverbal communication;

b. Establish classroom and behavior management practices that are respectful, meet children's emotional needs, clearly communicate expectations for appropriate behavior, promote pro-social behaviors, prevent or minimize behavioral problems through careful planning of the learning environment, teach conflict resolution strategies, and mitigate or redirect challenging behaviors; and

c. Build positive, collaborative relationships with children's families with regard to behavioral guidance. ]

**[ 8VAC20-542-90. 8VAC20-542-100. ] Early/primary education preK-3.**

The program for early/primary education preK-3 shall ensure that the candidate has demonstrated the following competencies:

## 1. Methods.

a. Understanding of the knowledge, skills, and processes to support learners in achievement of the Virginia Standards of Learning in English, mathematics, history and social science, science, and computer/technology;

b. The ability to integrate English, mathematics, science, health, history and social sciences, art, music, drama, movement, and technology in learning experiences;

c. The use of differentiated instruction and flexible groupings to meet the needs of learners at different stages of development, abilities, and achievement;

d. The use of appropriate methods [ including those in visual and performing arts ], to help learners develop knowledge and basic skills, sustain intellectual curiosity, and problem solve;

e. The ability to utilize effective classroom management skills through methods that shall build responsibility and self-discipline and maintain a positive learning environment;

f. The ability to modify and manage learning environments and experiences to meet the individual needs of children, including children with disabilities, gifted children, children with limited proficiency in English, and children with diverse cultural needs;

g. The ability to use formal and informal assessments to diagnose needs, plan and modify instruction, and record student progress;

h. A commitment to professional growth and development through reflection, collaboration, and continuous learning;

i. The ability to analyze, evaluate, apply quantitative and qualitative research; and

j. The ability to use technology as a tool for teaching, learning, research, and communication.

## 2. Knowledge and skills.

a. Reading/English. Understanding of the content, knowledge, skills, and processes for teaching the Virginia Standards of Learning for English including: oral language (speaking and listening), reading, and writing, and how these standards provide the core for teaching English in grades preK-3 (early/primary licensure).

(1) Assessment and diagnostic teaching. The individual shall:

(a) Be proficient in the use of both formal and informal assessment and screening measures for the component of reading: phoneme awareness, letter recognition, decoding, fluency, vocabulary, reading levels, and comprehension; and

(b) Be proficient in the ability to use diagnostic data to tailor instruction for acceleration, intervention, remediation, and flexible skill-level groupings.

(2) Oral communication. The individual shall:

(a) Be proficient in the knowledge, skills, and processes necessary for teaching oral language (speaking and listening);

(b) Be proficient in developing students' phonological awareness skills;

(c) Demonstrate effective strategies for facilitating the learning of standard English by speakers of other languages and dialects;

(d) Demonstrate the ability to promote creative thinking and expression, as through storytelling, drama, choral/oral reading, etc.

(3) Reading/literature. The individual shall:

(a) Be proficient in explicit phonics instruction, including an understanding of sound/symbol relationships, syllables, phonemes, morphemes, decoding skills, and word attack skills;

(b) Be proficient in strategies to increase vocabulary/concept development;

(c) Be proficient in the structure of the English language, including an understanding of syntax;

(d) Be proficient in reading comprehension strategies for both fiction and nonfiction text predicting, retelling, summarizing and guiding students to make connections beyond the text;

(e) Demonstrate the ability to develop comprehension skills in all content areas;

(f) Demonstrate the ability to foster the appreciation of a variety of literature; and

(g) Understand the importance of promoting independent reading by selecting fiction and nonfiction books, at appropriate reading levels.

(4) Writing. The individual shall:

(a) Be proficient in the knowledge, skills, and processes necessary for teaching writing, including the domains of composing, written expression, and usage and mechanics and the writing process of planning, drafting, revising, editing, and sharing;

(b) Be proficient in systematic spelling instruction, including awareness of the purpose and limitations of "invented spelling," orthographic patterns, and strategies for promoting generalization of spelling study to writing; and

(c) Demonstrate the ability to teach the writing process: plan, draft, revise, edit, and share in the narrative, descriptive, and explanative modes.

(5) Technology. The individual shall demonstrate the ability to guide students in their use of technology for both process and product as they work with reading and writing.

b. Mathematics.

(1) Understanding of the mathematics relevant to the content identified in the Virginia Standards of Learning and how the standards provide the foundation for teaching mathematics in grades preK-3. Experiences with practical applications and the use of appropriate

technology and manipulatives should be used within the following content:

(a) Number systems, their structure, basic operations, and properties;

(b) Elementary number theory, ratio, proportion and percent;

(c) Algebra: operations with monomials and polynomials; algebraic fractions; linear and quadratic equations and inequalities, linear systems of equations and inequalities; radicals and exponents; arithmetic and geometric sequences and series; algebraic and trigonometric functions; and transformations among graphical, tabular, and symbolic form of functions;

(d) Geometry: geometric figures, their properties, relationships, Pythagorean Theorem; deductive and inductive reasoning; perimeter, area, and surface area of two- and three-dimensional figures; coordinate and transformational geometry; and constructions;

(e) Probability and statistics: permutations and combinations; experimental and theoretical probability; prediction; graphical representations including box-and-whisker plots; measures of central tendency, range, and normal distribution; and

(f) Computer science: terminology, simple programming, and software applications.

(2) Understanding of the sequential nature of mathematics.

(3) Understanding of the multiple representations of mathematical concepts and procedures.

(4) Understanding of and the ability to use the five processes – reasoning mathematically, solving problems, communicating mathematics effectively, making mathematical connections, and using mathematical representations at different levels of complexity.

(5) Understanding of the contributions of different cultures toward the development of mathematics, and the role of mathematics in culture and society.

(6) Understanding of the role of technology and the ability to use calculators and computers in the teaching and learning of mathematics.

c. History and social sciences.

(1) Understanding of the knowledge, skills, and processes of history and the social science disciplines as defined in the Virginia Standards of Learning and how the standards provide the necessary foundation for teaching history and social sciences, including in:

(a) History.

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(i) The contributions of ancient civilizations to American social and political institutions;

(ii) Major events in Virginia history from 1607 to the present;

(iii) Key individuals, documents, and events in United States history; and

(iv) The evolution of American's constitutional republic, its ideas, institutions, and practices.

(b) Geography.

(i) The use of maps and other geographic representations, tools, and technologies to acquire, process, and report information;

(ii) The relationship between human activity and the physical environment in the community and the world; and

(iii) Physical processes that shape the surface of the earth.

(c) Civics.

(i) The privileges and responsibilities of good citizenship and the importance of the rule of law for the protection of individual rights;

(ii) The process of making laws in the United States and the fundamental ideals and principles of a republican form of government; and

(iii) The understanding that Americans are a people of diverse ethnic origins, customs, and traditions, who are united by the basic principles of a republican form of government and a common identity as Americans.

(d) Economics.

(i) The basic economic principles that underlie the United States market economy;

(ii) The role of the individual and how economic decisions are made in the market place; and

(iii) The role of government in the structure of the United States economy.

(2) Understanding of the nature of history and the social sciences, and how the study of the disciplines assists students in developing critical thinking skills in helping them to understand:

(a) The relationship between past and present;

(b) The use of primary sources such as artifacts, letters, photographs, and newspapers;

(c) How events in history are shaped both by the ideas and actions of people;

(d) Diverse cultures and shared humanity;

(e) Civic participation in a democracy; and

(f) The relationship between history, literature, art, and music.

d. Science.

(1) Understanding of the knowledge, skills, and processes of the earth, life, and physical sciences as defined in the Virginia Science Standards of Learning and how these standards provide a sound foundation for teaching science in the elementary grades.

(2) Understanding of the nature of science and scientific inquiry, including:

(a) The role of science in explaining and predicting events and phenomena; and

(b) The science skills of data analysis, measurement, observation, prediction, and experimentation.

(3) Understanding of the knowledge, skills, and processes for an active elementary science program, including the ability to:

(a) Design instruction reflecting the goals of the Virginia Science Standards of Learning;

(b) Conduct research projects and experiments in a safe environment;

(c) Organize key science content into meaningful units of instruction;

(d) Adapt instruction to diverse learners using a variety of techniques;

(e) Evaluate instructional materials, instruction, and student achievement; and

(f) Incorporate instructional technology to enhance student performance in science.

(4) Understanding of the content, processes, and skills of the Earth sciences, biology, chemistry, and physics supporting the teaching of elementary school science as defined by the Virginia Science Standards of Learning and equivalent to academic course work in each of these core science areas.

(5) Understanding of the core scientific disciplines to ensure:

(a) The ability to teach the processes and organizing concepts common to the natural and physical sciences; and

(b) Student achievement in science.

(6) Understanding of the contributions and significance of science, including:

(a) Its social and cultural significance;

(b) The relationship of science to technology; and

(c) The historical development of scientific concepts and scientific reasoning.

[ 8VAC20-542-100, 8VAC20-542-110. ]

**Elementary education preK-6.**

The program in elementary education preK-6 may require that the candidate has completed an undergraduate major in interdisciplinary studies (focusing on the areas of English, mathematics, history and social sciences, and science) or in Virginia's core academic areas of English, mathematics, history and social sciences (i.e., history, government, geography and economics), or science and demonstrated the following competencies:

1. Methods.

a. Understanding of the needed knowledge, skills, and processes to support learners in achievement of the Virginia Standards of Learning in English, mathematics, history and social science, science, and computer/technology;

b. The ability to integrate English, mathematics, science, health, history and social sciences, art, music, drama, movement, and technology in learning experiences;

c. The use of differentiated instruction and flexible groupings to meet the needs of learners at different stages of development, abilities, and achievement;

d. The use of appropriate methods [ , including those in visual and performing arts, ] to help learners develop knowledge and basic skills, sustain intellectual curiosity, and problem solve;

e. The ability to utilize effective classroom [ and behavior ] management skills through methods that shall build responsibility and self-discipline and maintain a positive learning environment;

f. The ability to modify and manage learning environments and experiences to meet the individual needs of children, including children with disabilities, gifted children, and children with limited proficiency in English, and children with diverse cultural needs;

g. The ability to use formal and informal assessments to diagnose needs, plan and modify instruction, and record student progress;

h. A commitment to professional growth and development through reflection, collaboration, and continuous learning;

i. The ability to analyze, evaluate, and apply, quantitative and qualitative research; and

j. The ability to use technology as a tool for teaching, learning, research, and communication.

2. Knowledge and skills.

a. Reading/English. Understanding of the content, knowledge, skills, and processes for teaching the Virginia Standards of Learning for English including: oral language (speaking and listening), reading, writing, and literature, and how these standards provide the core for teaching English in grades preK-6 (elementary licensure).

(1) Assessment and diagnostic teaching. The individual shall:

(a) Be proficient in the use of both formal and informal assessment and screening measures for the components of reading: phoneme awareness, letter recognition, decoding, fluency, vocabulary, reading level, and comprehension; and

(b) Be proficient in the ability to use diagnostic data to tailor instruction, for acceleration, intervention, remediation and flexible skill-level groupings.

(2) Oral communication. The individual shall:

(a) Be proficient in the knowledge, skills, and processes necessary for teaching oral language (speaking and listening);

(b) Be proficient in developing students' phonological awareness skills;

(c) Demonstrate effective strategies for facilitating the learning of standard English by speakers of other languages and dialects; and

(d) Demonstrate the ability to promote creative thinking and expression, as through storytelling, drama, choral/oral reading, etc.

(3) Reading/literature. The individual shall:

(a) Be proficient in explicit phonics instruction, including an understanding of sound/symbol relationships, syllables, phonemes, morphemes, decoding skills, and word attack skills;

(b) Be proficient in strategies to increase vocabulary/concept development;

(c) Be proficient in the structure of the English language, including an understanding of syntax and semantics;

(d) Be proficient in reading comprehension strategies for both fiction and nonfiction text, including questioning, predicting, summarizing, clarifying, and associating the unknown with what is known;

(e) Demonstrate the ability to develop comprehension skills in all content areas;

(f) Demonstrate the ability to foster appreciation of a variety of literature; and

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(g) Understand the importance of promoting independent reading by selecting fiction and nonfiction books, at appropriate reading levels.

(4) Writing. The individual shall:

(a) Be proficient in the knowledge, skills, and processes necessary for teaching writing, including the domains of composing, written expression, and usage and mechanics and the writing process of planning, drafting, revising, editing, and sharing;

(b) Be proficient in systematic spelling instruction, including awareness of the purpose and limitations of "invented spelling," orthographic patterns, and strategies for promoting generalization of spelling study to writing; and

(c) Demonstrate the ability to teach the writing process: plan draft, revise, edit, and share in the narrative, descriptive, and explanative modes.

(5) Technology. The individual shall demonstrate the ability to guide students in their use of technology for both process and product as they work with reading, writing, and research.

b. Mathematics.

(1) Understanding of the mathematics relevant to the content identified in the Virginia Standards of Learning and how the standards provide the foundation for teaching mathematics in grades preK-6. Experiences with practical applications and the use of appropriate technology and manipulatives should be used within the following content:

(a) Number systems, their structure, basic operations, and properties;

(b) Elementary number theory, ratio, proportion and percent;

(c) Algebra: operations with monomials and polynomials; algebraic fractions; linear and quadratic equations and inequalities, linear systems of equations and inequalities; radicals and exponents; arithmetic and geometric sequences and series; algebraic and trigonometric functions; and transformations among graphical, tabular, and symbolic form of functions;

(d) Geometry: geometric figures, their properties, relationships, Pythagorean Theorem; deductive and inductive reasoning; perimeter, area, and surface area of two- and three-dimensional figures; coordinate and transformational geometry; and constructions;

(e) Probability and statistics: permutations and combinations; experimental and theoretical probability; prediction; graphical representations including box-and-

whisker plots; measures of central tendency, range, and normal distribution; and

(f) Computer science: terminology, simple programming, and software applications.

(2) Understanding of the sequential nature of mathematics.

(3) Understanding of the multiple representations of mathematical concepts and procedures.

(4) Understanding of and the ability to use the five processes – reasoning mathematically, solving problems, communicating mathematics effectively, making mathematical connections, and using mathematical representations at different levels of complexity.

(5) Understanding of the contributions of different cultures toward the development of mathematics, and the role of mathematics in culture and society.

(6) Understanding of the role of technology and the ability to use calculators and computers in the teaching and learning of mathematics.

c. History and social sciences.

(1) Understanding of the knowledge, skills, and processes of history and the social sciences disciplines as defined in the Virginia Standards of Learning and how the standards provide the necessary foundation for teaching history and social sciences, including in:

(a) History.

(i) The contributions of ancient civilizations to American social and political institutions;

(ii) Major events in Virginia history from 1607 to the present;

(iii) Key individuals, documents, and events in United States history; and

(iv) The evolution of America's constitutional republic, its ideas, institutions, and practices.

(b) Geography.

(i) The use of maps and other geographic representations, tools, and technologies to acquire, process, and report information;

(ii) The relationship between human activity and the physical environment in the community and the world; and

(iii) Physical processes that shape the surface of the earth;

(c) Civics.

(i) The privileges and responsibilities of good citizenship and the importance of the Rule of Law for the protection of individual rights;

(ii) The process of making laws in the United States and the fundamental ideals and principles of a republican form of government; and

(iii) The understanding that Americans are a people of diverse ethnic origins, customs, and traditions, who are united by basic principles of a republican form of government and a common identity as Americans.

(d) Economics.

(i) The basic economic principles that underlie the United States market economy;

(ii) The role of the individual and how economic decisions are made in the market place; and

(iii) The role of government in the structure of the United States economy.

(2) Understanding of the nature of history and social sciences and how the study of the disciplines assists students in developing critical thinking skills in helping them to understand:

(a) The relationship between past and present;

(b) The use of primary sources such as artifacts, letters, photographs, and newspapers;

(c) How events in history are shaped both by the ideas and actions of people;

(d) Diverse cultures and shared humanity;

(e) Civic participation in a democracy; and

(f) The relationship between history, literature, art, and music.

d. Science.

(1) Understanding of the knowledge, skills, and processes of the earth, life, and physical sciences as defined in the Virginia Science Standards of Learning and how these standards provide a sound foundation for teaching science in the elementary grades;

(2) Understanding of the nature of science and scientific inquiry, including:

(a) The role of science in explaining and predicting events and phenomena; and

(b) The science skills of data analysis, measurement, observation, prediction, and experimentation.

(3) Understanding of the knowledge, skills, and processes for an active elementary science program including the ability to:

(a) Design instruction reflecting the goals of the Virginia Science Standards of Learning;

(b) Conduct research projects and experiments in a safe environment;

(c) Organize key science content into meaningful units of instruction;

(d) Adapt instruction to diverse learners using a variety of techniques;

(e) Evaluate instructional materials, instruction, and student achievement; and

(f) Incorporate instructional technology to enhance student performance in science.

(4) Understanding of the content, processes, and skills of the Earth sciences, biology, chemistry, and physics supporting the teaching of elementary school science as defined by the Virginia Science Standards of Learning and equivalent course work reflecting each of these core science areas.

(5) Understanding of the core scientific disciplines to ensure:

(a) The ability to teach the processes and organizing concepts common to the natural and physical sciences; and

(b) Student achievement in science.

(6) Understanding of the contributions and significance of science including:

(a) Its social and cultural significance;

(b) The relationship of science to technology; and

(c) The historical development of scientific concepts and scientific reasoning.

**[ 8VAC20-542-110, 8VAC20-542-120. ] **Middle education 6-8.****

The program in middle education 6-8 with at least one area of academic preparation shall ensure that the candidate has demonstrated the following competencies:

1. Methods.

a. Understanding of the required knowledge, skills, and processes to support learners in achievement of the Virginia Standards of Learning for grades 6-8;

b. The use of appropriate methods, including direct instruction, to help learners develop knowledge and skills, sustain intellectual curiosity, and solve problems;

c. The ability to plan and teach collaboratively to facilitate interdisciplinary learning;

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d. The use of differentiated instruction and flexible groupings to meet the needs of preadolescents at different stages of development, abilities, and achievement;

e. The ability to utilize effective classroom [ and behavior ] management skills through methods that shall build responsibility and self-discipline and maintain a positive learning environment;

f. The ability to modify and manage learning environments and experiences to meet the individual needs of preadolescents, including children with disabilities, gifted children, and children with limited proficiency in the English language;

g. The ability to use formal and informal assessments to diagnose needs, plan and modify instruction, and record student progress;

h. A commitment to professional growth and development through reflection, collaboration, and continuous learning;

i. The ability to analyze, evaluate, apply, and conduct quantitative and qualitative research;

j. The ability to use technology as a tool for teaching, learning, research, and communication;

k. An understanding of how to apply a variety of school organizational structures, schedules, groupings, and classroom formats appropriately for middle level learners;

l. Skill in promoting the development of all students' abilities for academic achievement and continued learning; and

m. The ability to use reading in the content area strategies appropriate to text and student needs.

## 2. English.

a. Possession of the skills necessary to teach the writing process, to differentiate among the forms of writing (narrative, descriptive, informational, and persuasive), and to use computers and other available technology;

b. Understanding of and knowledge in grammar, usage, and mechanics and its integration in writing;

c. Understanding and the nature and development of language and its impact on vocabulary development and spelling;

d. Understanding of and knowledge in techniques and strategies to enhance reading comprehension and fluency;

e. Understanding of and knowledge in the instruction of speaking, and listening, and note taking; and

f. Knowledge of varied works from current and classic young adult literature appropriate for English instruction of fiction, nonfiction, and poetry.

## 3. History and social sciences.

a. Understanding of the knowledge, skills, and processes of history and the social science disciplines as defined by the Virginia History and Social Sciences Standards of Learning and how the standards provide the foundation for teaching history and social sciences, including in:

### (1) United States history.

(a) The evolution of the American constitutional republic and its ideas, institutions, and practices from the colonial period to the present; the American Revolution, including ideas and principles preserved in significant Virginia and United States historical documents as required by §22.1-201 of the Code of Virginia (Declaration of American Independence, the general principles of the Constitution of the United States, the Virginia Statute of Religious Freedom, the charters of April 10, 1606, May 23, 1609, and March 12, 1612, of The Virginia Company, and the Virginia Declaration of Rights), and historical challenges to the American political system (i.e., slavery, the Civil War, emancipation, and civil rights);

(b) The influence of religious traditions on the American heritage and on contemporary American society;

(c) The changing role of America around the world; the relationship between domestic affairs and foreign policy; global political and economic interactions;

(d) The influence of immigration on American political, social, and economic life;

(e) Origins, effects, aftermath and significance of the two world wars, the Korean and Vietnam conflicts, and the Post-Cold War Era;

(f) Social, political, and economic transformations in American life during the 20th century; and

(g) Tensions between liberty and equality, liberty and order, region and nation, individualism and the common welfare, and between cultural diversity and civic unity.

### (2) World history.

(a) The political, philosophical, and cultural legacies of ancient, American, Asian, African, and European civilizations;

(b) Origins, ideas, and institutions of Judaism, Christianity, Hinduism, Confucianism and Taoism, and Shinto, Buddhist and Islamic religious traditions;

(c) Medieval society and institutions; relations with Islam; feudalism and the evolution of representative government;

(d) The social, political, and economic contributions of selected civilizations in Africa, Asia, Europe, and the Americas;

(e) The culture and ideas of the Renaissance and the Reformation, European exploration, and the origins of capitalism and colonization;

(f) The cultural ideas of the Enlightenment and the intellectual revolution of the 17th and 18th centuries;

(g) The sources, results, and influence of the American and French revolutions;

(h) The social consequences of the Industrial Revolution and its impact on politics and culture;

(i) The global influence of European ideologies of the 19th and 20th centuries (liberalism, republicanism, social democracy, Marxism, nationalism, Communism, Fascism, and Nazism); and

(j) The origins, effects, aftermath, and significance of the two world wars.

### (3) Civics and economics.

(a) Essential characteristics of limited and unlimited governments;

(b) Importance of the Rule of Law for the protection of individual rights and the common good;

(c) Rights and responsibilities of American citizenship;

(d) Nature and purposes of constitutions and alternative ways of organizing constitutional governments;

(e) American political culture;

(f) Values and principles of the American constitutional republic;

(g) Structures, functions, and powers of local and state government;

(h) Importance of citizen participation in the political process in local and state government;

(i) Structures, functions, and powers of the national government; and

(j) The structure and function of the United States market economy as compared with other economies.

b. Understanding of the nature of history and social sciences and how the study of these disciplines helps students go beyond critical thinking skills to help them appreciate:

(1) The significance of the past to their lives and to society;

(2) Diverse cultures and shared humanity;

(3) How things happen, how they change, and how human intervention matters;

(4) The interplay of change and continuity;

(5) Historical cause and effect;

(6) The importance of individuals who have made a difference in history and the significance of personal character to the future of society;

(7) The relationship among history, geography, civics, and economics; and

(8) The difference between fact and conjecture, evidence and assertion, and the importance of framing useful questions.

### 4. Mathematics.

a. Understanding of the knowledge and skills necessary to teach the Virginia Mathematics Standards of Learning and how curriculum may be organized to teach these standards to diverse learners;

b. Understanding of a core knowledge base of concepts and procedures within the discipline of mathematics, including the following strands: number and number sense; computation and estimation; geometry and measurement; statistics and probability; patterns, functions, and algebra;

c. Understanding of the sequential nature of mathematics and the mathematical structures inherent in the content strands;

d. Understanding of and the ability to use the five processes - becoming mathematical problem solvers, reasoning mathematically, communicating mathematically, making mathematical connections, and representing and describing mathematical ideas, generalizations, and relationships using a variety of methods - at different levels of complexity;

e. Understanding of the history of mathematics, including the contributions of various individuals and cultures toward the development of mathematics, and the role of mathematics in culture and society;

f. Understanding of the major current curriculum studies and trends in mathematics;

g. Understanding of the role of technology and the ability to use graphing utilities and computers in the teaching and learning of mathematics;

h. Understanding of and the ability to select, adapt, evaluate and use instructional materials and resources, including professional journals and technology;

i. Understanding of and the ability to use strategies for managing, assessing, and monitoring student learning, including diagnosing student errors; and

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j. Understanding of and the ability to use strategies to teach mathematics to diverse learners.

## 5. Science.

a. Understanding of the knowledge, skills, and processes of the Earth, life, and physical sciences as defined in the Virginia Science Standards of Learning and how these provide a sound foundation for teaching science in the middle grades.

b. Understanding of the nature of science and scientific inquiry, including:

(1) Function of research design and experimentation;

(2) Role of science in explaining and predicting events and phenomena; and

(3) Science skills of data analysis, measurement, observation, prediction, and experimentation.

c. Understanding of the knowledge, skills, and processes for an active middle school science program, including the ability to:

(1) Design instruction reflecting the goals of the Virginia Science Standards of Learning;

(2) Conduct research projects and experiments;

(3) Implement safety rules/procedures and ensure that students take appropriate safety precautions;

(4) Organize key science content into meaningful units of instruction;

(5) Adapt instruction to diverse learners using a variety of techniques;

(6) Evaluate instructional materials, instruction, and student achievement; and

(7) Incorporate instructional technology to enhance student performance in science.

d. Understanding of the content, processes, and skills of the Earth sciences, biology, chemistry, and physics supporting the teaching of middle school science as defined by the Virginia Science Standards of Learning and equivalent to academic course work in each of these core science areas.

e. Understanding of the core scientific disciplines to ensure:

(1) The placement of science in an appropriate interdisciplinary context;

(2) The ability to teach the processes and organize concepts common to the natural and physical sciences; and

(3) Student achievement in science.

f. Understanding of the contributions and significance of science to include:

(1) Its social and cultural significance;

(2) The relationship of science to technology; and

(3) The historical development of scientific concepts and scientific reasoning.

## Article 3

PreK-12 Endorsements, Special Education, Secondary Grades 6-12 Endorsements, and Adult Education

**[ ~~8VAC20-542-120.~~ 8VAC20-542-130. ] Professional studies requirements for preK-12 endorsements, special education, secondary grades 6-12 endorsements, and adult education.**

Professional studies requirements for preK-12 endorsements, special education, secondary grades 6-12 endorsements, and adult education [ may be taught in integrated coursework or modules ]:

1. Human growth and development (birth through adolescence). Skills in this area shall contribute to an understanding of the physical, social, emotional, [ speech and language, ] and intellectual development of children and the ability to use this understanding in guiding learning experiences. The interaction of children with individual differences – economic, social, racial, ethnic, religious, physical, and mental – should be incorporated to include skills contributing to an understanding of developmental disabilities and developmental issues related to but not limited to attention deficit disorders, gifted education including the use of multiple criteria to identify gifted students, substance abuse, child abuse, and family disruptions.

2. Curriculum and instructional procedures. Skills in this area shall contribute to an understanding of the principles of learning; the application of skills in discipline-specific methodology; communication processes; selection and use of materials, including media and computers; [ ~~and~~ ] evaluation of pupil performance [ ; and the relationships among assessment, instruction, and monitoring student progress to include student performance measures in grading practices, the ability to construct and interpret valid assessments using a variety of formats in order to measure student attainment of essential skills in a standards-based environment, and the ability to analyze assessment data to make decisions about how to improve instruction and student performance. ] Teaching methods appropriate for [ limited English proficient students; ] exceptional students, including [ ~~for second language learners,~~ ] gifted and talented and those with disabling conditions [ ; ; ] and appropriate for the level of

endorsement sought shall ~~[ be ]~~ included. Teaching methods shall be tailored to promote student academic progress and effective preparation for the Standards of Learning assessments. Methods of improving communication between schools and families and ways of increasing family involvement in student learning at home and in school and the Standards of Learning shall be included. Demonstrated proficiency in the use of educational technology for instruction also shall be included. Persons seeking initial licensure as teachers and persons seeking licensure renewal as teachers for the first time shall complete study in child abuse recognition and intervention in accordance with curriculum guidelines developed by the Board of Education in consultation with the Department of Social Services that are relevant to the specific teacher licensure routes. Curriculum and instructional procedures for secondary grades 6-12 endorsements shall include middle and secondary education. Pre-student teaching experiences (field experiences) should be evident within these skills. For preK-12, field experiences shall be at the elementary, middle, and secondary levels.

~~[ 3. Instructional design based on assessment data. Skills in this area shall contribute to an understanding of the relationship among assessment, instruction and monitoring student progress to include student performance measures in grading practices, the ability to construct and interpret valid assessments using a variety of formats in order to measure student attainment of essential skills in a standards based environment, and the ability to analyze assessment data to make decisions about how to improve instruction and student performance. ]~~

~~[ 4- 3.] Classroom [ and behavior ] management [ . ]~~ Skills in this area shall contribute to an understanding and application of classroom [ and behavior ] management techniques and individual interventions, including techniques that promote emotional well-being and teach and maintain behavioral conduct and skills consistent with norms, standards, and rules of the educational environment. This area shall address diverse approaches based upon behavioral, cognitive, affective, social and ecological theory and practice.

[ 4. Foundations of education. Skills in this area shall be designed to develop an understanding of the historical, philosophical, and sociological foundations underlying the role, development and organization of public education in the United States. Attention must be given to the legal status of teachers and students, including federal and state laws and regulations, school as an organization/culture, and contemporary issues in education. The historical, philosophical, and sociological foundations of the instructional design based on assessment data (the relationships among assessment, instruction, and monitoring student progress to include student

performance measures in grading practices, the ability to construct and interpret valid assessments using a variety of formats in order to measure student attainment of essential skills in a standards-based environment, and the ability to analyze assessment data to make decisions about how to improve instruction and student performance) must be addressed. ]

## 5. Reading.

a. Adult education, preK-12, and secondary grades 6-12 – reading in the content area. Skills in this area shall be designed to impart an understanding of comprehension skills in all content areas, including a repertoire of questioning strategies, summarizing and retelling skills, and strategies in literal, interpretive, critical, and evaluative comprehension, as well as the ability to foster appreciation of a variety of literature and independent reading.

b. Special education – Language acquisition and reading. Skills listed for these endorsement areas represent the minimum competencies that a beginning teacher shall be able to demonstrate. These skills are not intended to limit the scope of a beginning teacher’s program. Additional knowledge and skills that add to a beginning teacher’s competencies to deliver instruction and improve student achievement should be included as part of a quality learning experience.

Skills in this area shall be designed to impart a thorough understanding of the complex nature of language acquisition and reading, to include: phonemic awareness, concept of print, phonics, fluency, vocabulary development, and comprehension strategies. Additional skills shall include proficiency in writing strategies, as well as the ability to foster appreciation of a variety of literature and independent reading.

6. Supervised classroom experience. The student teaching experience should provide for the prospective teacher to be in classrooms full time for a minimum of ~~[ 500 300 ]~~ clock hours (including pre- and post-clinical experiences) with at least ~~[ 300 150 ]~~ clock hours spent supervised in direct teaching activities (providing direct instruction) in the endorsement area sought. If a preK-12 endorsement is sought, teaching activities shall be at the elementary and middle or secondary levels. Individuals seeking the endorsement in library media shall complete the supervised experience in a school library media setting. Individuals seeking an endorsement in an area of special education shall complete the supervised classroom experience requirement in the area of special education for which the endorsement is sought. One year of successful full-time teaching experience in the endorsement area in any public school or accredited nonpublic school may be accepted in lieu of the supervised teaching experience. A fully licensed, experienced teacher shall be available in the

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school building to assist a beginning teacher employed through the alternate route.

**[ ~~8VAC20-542-130~~, 8VAC20-542-140. ] Adult education.**

The program in adult education shall ensure that the candidate has demonstrated the following competencies:

1. Understanding of the nature or psychology of the adult learner or adult development;
2. Understanding of the knowledge, skills, and processes needed for the selection, evaluation, and instructional applications of the methods and materials for adult basic skills including:
  - a. Curriculum development in adult basic education or GED instruction;
  - b. Beginning reading for adults;
  - c. Beginning mathematics for adults;
  - d. Reading comprehension for adult education;
  - e. Foundations of adult education; and
  - f. Other adult basic skills instruction.
3. Understanding of and proficiency in grammar, usage, and mechanics and their integration in writing; and
4. One semester of supervised successful full-time (or an equivalent number of hours of part-time experience) teaching of adults.

**[ ~~8VAC20-542-140~~, 8VAC20-542-150. ] Adult English as a second language (add-on endorsement).**

The program in adult English as a second language shall ensure that the candidate has demonstrated the following competencies:

1. Knowledge in the growth and development of the adult learner;
2. Knowledge of teaching methods and materials in adult English as a second language;
3. Knowledge in adult language acquisition;
4. Knowledge of assessment methods in adult English as a second language instruction;
5. Skills in teaching the adult learner;
6. Understanding of the effects of socio-cultural variables in the instructional setting;
7. Skills in teaching a variety of adult learning styles;
8. Proficiency in cross-cultural communication;
9. Proficiency in speaking, listening, and reading; and
10. Understanding of and proficiency in grammar, usage, and mechanics and their integration in writing.

**[ ~~8VAC20-542-150~~, 8VAC20-542-160. ] Career and technical education – agricultural education.**

The program in agricultural education shall ensure that the candidate has demonstrated the following competencies:

1. Understanding of the importance and relationship of agriculture to the economy of the community, the state, and the nation, including:
  - a. An awareness and appreciation for agriculture;
  - b. Knowledge of the occupational opportunities in agriculture and related fields;
  - c. Knowledge of the U.S. food and fiber system; and
  - d. Knowledge of the contributions of agriculture to the economy of the state and nation.
2. Understanding of the knowledge, skills, and processes involved in plant and soil sciences, including:
  - a. Production, use, and marketing of row crops, specialty crops, forage crops, fruits, small grains, vegetables, and cereal crops; and
  - b. Soil and water management.
3. Understanding of the knowledge, skills, and processes involved in the production, management, and marketing of animals, including:
  - a. Production of cattle, swine, poultry, dairy cows, sheep, aquaculture species, goats, and horses; and
  - b. Care and management of small companion animals.
4. Understanding of the knowledge, skills, and processes involved in agricultural mechanics, including:
  - a. Safe operation, repair, and maintenance of equipment, tools, and machinery used in agriculture;
  - b. Setting up and adjusting agriculture machinery;
  - c. Basic knowledge of a set of hand tools, measuring devices, and testing equipment used in agriculture;
  - d. Basic knowledge of energy transfer systems used in agriculture; and
  - e. Properties of metals used in tools and equipment.
5. Understanding of agricultural economics, including the various markets, international trade, government policies, and the operation and management of various agricultural businesses.
6. Understanding of the knowledge, skills, and processes involved in natural resources, including:
  - a. Care, management, and conservation of soil, air, water, and wildlife; and
  - b. Production and management of the forest.

7. Understanding of the importance and processes necessary for community resource development, including:

- a. Fundamentals of the community development process;
- b. Knowledge of public and private programs and resources available;
- c. Knowledge of the promotion of community development; and
- d. Knowledge of civic organizations and their purposes.

8. Knowledge of and the ability to teach:

- a. How the biological, physical, and applied sciences relate to practical solutions of agricultural problems;
- b. Leadership development skills; and
- c. Agricultural competencies needed by secondary students to be successful in continuing their education and entering a related occupation.

9. Knowledge and skills necessary to teach leadership skills, organize and manage an effective co-curricular student organization (FFA) and implement the organization's activities as an integral part of instruction.

10. Understanding of and proficiency in grammar, usage, and mechanics and their integration in writing.

11. Understanding of and proficiency in instructional technology and microcomputer applications.

**[ ~~8VAC20-542-160.~~ 8VAC20-542-170. ] Career and technical education – business and information technology.**

The program in business and information technology shall ensure that the candidate has demonstrated the following competencies:

1. Knowledge, skills, and principles of manual and automated accounting, including:

- a. Accounting concepts, terminology, and applications;
- b. Accounting systems; and
- c. The basic accounting cycle of source documents, verifications, analyzing, recording, posting, trial balances, and preparing financial statements.

2. Knowledge and skills in economics necessary to:

- a. Communicate basic economic principles as applied to the American economic system; and
- b. Apply basic economic principles to consumerism.

3. Knowledge and skills in the foundations of business selected from the following areas:

- a. Business law.

(1) Ability to recognize the legal requirements affecting business organization; and

(2) Ability to apply legal principles to business situations.

b. Business principles.

(1) Ability to identify, explain, and apply contemporary business principles;

(2) Ability to identify and explain the advantages and disadvantages of various business organizational structures; and

(3) Knowledgeable in the foundations of international business, the global business environment, international business communications, and global business ethics.

c. Management. Understanding and analyzing of basic management functions, tools, theories, and leadership styles to explore and solve problems in business organizations, economics, international business, and human relations issues.

d. Marketing and entrepreneurship.

(1) Understanding of basic marketing concepts in sales techniques, advertising, display, buying, wholesale/retail, distribution, service occupations, market analysis, warehousing, and inventory control; and

(2) Understanding of the unique characteristics of an entrepreneur and the knowledge and skills necessary for an entrepreneurial venture.

e. Finance.

(1) Knowledgeable about and skilled in the areas of money management, recordkeeping, and banking needed for sound financial decision making; and

(2) Understanding of the basic concepts of economics, insurance, credit, and other related topics.

4. Knowledge and skills in all of the following communications and information technologies:

a. Communications.

(1) Ability to communicate in a clear, courteous, concise, and correct manner for personal and professional purposes through the foundations of listening, writing, reading, speaking, nonverbal cues, and following written/oral directions;

(2) Ability to use information systems and technology to expedite and enhance the effectiveness of communications and telecommunications; and

(3) Ability to gather, evaluate, use, and cite information from information technology sources.

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b. Impact of technology on society. Knowledge to assess the impact of information technology on society.

c. Computer architecture. Ability to describe current and emerging computer architecture; configure, install, and upgrade hardware; and diagnose and repair hardware problems.

d. Operating systems, environments, and utilities. Ability to identify, evaluate, select, install, use, upgrade, customize, and diagnose and solve problems with various types of operating systems, environments, and utilities.

e. Application software (e.g., word processing, database, spreadsheet, graphics, web design, desktop/presentation/multimedia and imaging, and emerging technologies).

(1) Ability to identify, evaluate, select, install, use, upgrade, and customize application software; and

(2) Ability to diagnose and solve problems resulting from an application software's installation and use.

f. Input technologies. Ability to use input technologies (e.g., touch keyboarding\*, speech recognition, handwriting recognition, personal digital assistants (PDAs) and other hand-held devices, touch screen or mouse, scanning, and other emerging input technologies) to enter, manipulate, and format text and data. \*Touch keyboarding is required.

g. Database management systems. Ability to use, plan, develop, and maintain database management systems.

h. Programming and application development. Ability to help students design, develop, test, and implement programs that solve business problems.

i. Networking and communications infrastructures.

(1) Facilitate students' development in the skills to design, deploy, and administer networks and communications systems; and

(2) Facilitate students' ability to use, evaluate, and deploy communications and networking applications.

j. Information management.

(1) Ability to plan the selection and acquisition of information technologies (hardware and software);

(2) Ability to instruct students in the development of technical and interpersonal skills and knowledge to support the user community; and

(3) Ability to describe, analyze, develop, and follow policies for managing privacy and ethical issues in organizations and in a technology-based society.

## 5. Career development.

a. Experience in a supervised career in business and information technology through cooperative education, internship, shadowing, mentorship, and/or work experience; and

b. Ability to provide instruction in self-awareness as it relates to career exploration and development, career research, workplace expectation, and career planning.

6. Knowledge and skills necessary to teach leadership skills, organize and manage an effective co-curricular student organization and implement the organization's activities as an integral part of instruction.

7. Understanding of and proficiency in grammar, usage, and mechanics and their integration in writing.

8. Knowledge and skills necessary to apply basic mathematical operations to solve business problems.

## [ **8VAC20-542-170, 8VAC20-542-180.** ] **Career and technical education – family and consumer sciences.**

The program in family and consumer sciences shall ensure that the candidate has demonstrated the following competencies:

1. Knowledge of the developmental processes of childhood, preadolescence, adolescence, and adulthood/aging and in creating and maintaining an environment in which family members develop and interact as individuals and as members of a group;

2. Knowledge of the decision-making processes related to housing, furnishings, and equipment for individuals and families with attention given to special needs and the diversity of individuals;

3. The ability to plan, purchase, and prepare food choices that promote nutrition and wellness;

4. Knowledge of the management of resources to achieve individual and family goals at different stages of the life span;

5. Knowledge of the sociological, psychological, and physiological aspects of clothing and textiles for individuals and families;

6. Knowledge of the management of families, work, and their interrelationships;

7. Knowledge of occupational skill development and career planning;

8. Knowledge of the use of critical science and creative skills to address problems in diverse family, community, and work environments;

9. Knowledge and skills necessary to teach leadership skills, organize and manage an effective co-curricular student organization and implement the organization's activities as an integral part of instruction;

10. The ability to plan, develop, teach, supervise, and evaluate programs in occupational programs at the secondary, postsecondary, and adult levels;

11. The ability to organize and implement Family, Career, and Community Leaders of America (FCCLA) programs as an integral part of classroom instruction; and

12. Understanding of and proficiency in grammar, usage, and mechanics and their integration in writing.

**[ ~~8VAC20-542-180~~, 8VAC20-542-190.] Career and technical education – health and medical sciences.**

The program in health and medical sciences shall ensure that the candidate has demonstrated the following competencies:

1. Knowledge of teaching methods.
  - a. Instructional planning – ability to determine the needs and interests of students;
  - b. Organizing instruction – ability to prepare teacher-made instructional materials for clinical laboratory experience;
  - c. Instructional execution – ability to use techniques for simulating patient care and demonstrating manipulative skills;
  - d. Application of technology in the classroom; and
  - e. Instructional evaluation – ability to determine grades for students in classroom and clinical settings.
2. Knowledge of program management.
  - a. Planning – ability to organize an occupational advisory committee;
  - b. Curriculum development – ability to keep informed of current curriculum content and patient care practices;
  - c. Planning and organizing teaching/occupational laboratory for laboratory simulations/demonstrations;
  - d. Understanding of the process for issuing credentials for health workers;
  - e. Understanding of the health care industry; and
  - f. Evaluation – ability to conduct a student follow-up study.
3. Knowledge and skills necessary to teach leadership skills, organize and manage an effective co-curricular student organization and implement the organization's activities as an integral part of instruction.
4. Understanding of and proficiency in grammar, usage, and mechanics and their integration in writing.

**[ ~~8VAC20-542-190~~, 8VAC20-542-200.] Career and technical education – industrial cooperative training (add-on endorsement).**

The program in industrial cooperative training (ICT) shall ensure that the candidate has demonstrated the following competencies:

1. Understanding of industrial education and its role in the development of technically competent, socially responsible, and culturally sensitive individuals with potential for leadership in skilled technical work and professional studies;
2. Understanding of and the ability to relate experiences designed to develop skills in the interpretation and implementation of industrial education philosophy in accordance with changing demand;
3. The knowledge and experience of systematically planning, executing, and evaluating individual and group instruction;
4. Understanding of the competencies necessary for effective organization and management of laboratory instruction;
5. Understanding of the competencies necessary for making physical, social, and emotional adjustments in multicultural student-teacher relationships;
6. Understanding of the competencies necessary for developing and utilizing systematic methods and instruments for appraising and recording student progress in the vocational classroom;
7. Understanding of the ability to provide technical work experience through cooperative education or provide a method of evaluating previous occupational experience commensurate with the minimum required standard;
8. Understanding of the competencies necessary to assist students in job placement and in bridging the gap between education and work;
9. Understanding of the awareness of the human relations factor in industry with emphasis on the area of cooperation among labor, management, and the schools;
10. Understanding of the teacher's role in the school and community;
11. Understanding of the content, skills, and techniques necessary to teach a particular trade area;
12. Understanding of the competencies necessary to organize and manage an effective student organization; and
13. Understanding of and proficiency in grammar, usage, and mechanics and their integration in writing.

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## **[ ~~8VAC20-542-200~~, 8VAC20-542-210. ] Career and technical education – marketing education.**

The program in marketing education shall ensure that the candidate has demonstrated the following competencies:

1. Knowledge of marketing, merchandising, marketing mathematics, communication theory and techniques, advertising and sales promotion, personal selling, and management through a variety of educational and work experiences;
2. Knowledge of planning, developing, and administering a comprehensive program of marketing education for high school students and adults;
3. Knowledge of organizing and using a variety of instructional methods and techniques for teaching youths and adults;
4. Knowledge of conducting learning programs that include a variety of career objectives and recognize and respond to individual differences in students;
5. Knowledge of assisting learners of different abilities in developing skills needed to qualify for further education and employment;
6. Knowledge of acquiring knowledge of career requirements and opportunities in marketing, merchandising, and management;
7. Knowledge and skills necessary to teach leadership skills, organize and manage an effective co-curricular student organization and implement the organization's activities as an integral part of instruction;
8. Understanding of and proficiency in grammar, usage, and mechanics and their integration in writing; and
9. Knowledge of utilizing current technological applications as these relate to marketing functions.

## **[ ~~8VAC20-542-210~~, 8VAC20-542-220. ] Career and technical education – technology education.**

The program in technology education shall ensure that the candidate has demonstrated the following competencies:

1. Understanding and utilization of technology, including the human activities of:
  - a. Designing and developing technological systems;
  - b. Determining and controlling the behavior of technological systems;
  - c. Utilizing technological systems; and
  - d. Assessing the impacts and consequences of technological systems.
2. Understanding of technological knowledge, including:
  - a. The nature and evolution of technology;

- b. Technological concepts and principles; and

- c. Technological resources, impacts, consequences, and linkages with other fields.

3. Understanding and utilization of the major systems of technology, including the:

- a. Synthesis of the processes for creating, encoding, transmitting, receiving, decoding, storage, and retrieval of information using communication systems in a global information society;

- b. Application of the principles and processes characteristic of contemporary and future production systems, including the research, engineering design and testing, planning, organization, resources, and distribution; and

- c. Integration and organization of transportation systems, including land, sea, air, and space as a means of transporting people, goods, and services in a global economy.

4. Understanding and utilization of the knowledge, skills, and processes for teaching in a laboratory environment, including:

- a. Laboratory safety rules, regulations, processes and procedures;

- b. Ability to organize technological content into effective instructional units;

- c. Ability to deliver instruction to diverse learners;

- d. Ability to evaluate student achievement, curriculum materials and instructional processes;

- e. Ability to incorporate new and emerging instructional technologies to enhance student performance; and

- f. Understanding the concepts and procedures for developing a learner's technological literacy.

5. Knowledge and skills necessary to teach leadership skills, organize and manage an effective co-curricular student organization and implement the organization's activities as an integral part of instruction;

6. Understanding of and proficiency in grammar, usage, and mechanics and their integration in writing.

## **[ 8VAC20-542-220, 8VAC20-542-230. ] Career and technical education – trade and industrial education.**

The program in trade and industrial education shall ensure that the candidate has demonstrated the following competencies:

1. Understanding of industrial education and its role in the development of technically competent, socially responsible, and culturally sensitive individuals with

potential for leadership in skilled technical work and/or professional studies;

2. Understanding of and the ability to relate experiences designed to develop skills in the interpretation and implementation of industrial education philosophy in accordance with changing demand;

3. The knowledge and experience of systematically planning, executing, and evaluating individual and group instruction;

4. Knowledge of the competencies necessary for effective organization and management of laboratory instruction;

5. Knowledge of the competencies necessary for making physical, social, and emotional adjustments in multicultural student-teacher relationships;

6. Knowledge of the competencies necessary for developing and utilizing systematic methods and instruments for appraising and recording student progress in the vocational classroom;

7. Knowledge of the ability to provide technical work experience through cooperative education or provide a method of evaluating previous occupational experience commensurate with the minimum required standard;

8. Knowledge of the competencies necessary to assist students in job placement and in otherwise bridging the gap between education and work;

9. Understanding of the awareness of the human relations factor in industry, with emphasis on the area of cooperation among labor, management, and the schools;

10. Knowledge of the teacher's role in the school and community;

11. Understanding of the content, skills, and techniques necessary to teach a particular trade area;

12. Knowledge of the competencies necessary to organize and manage an effective student organization; and

13. Understanding of and proficiency in grammar, usage, and mechanics and their integration in writing.

**[ ~~8VAC20-542-230.~~ 8VAC20-542-240. ] Career and technical education – vocational special needs (add-on endorsement).**

The program in vocational special needs (add-on endorsement) shall ensure that the candidate has demonstrated the following competencies:

1. Understanding of vocational special needs programs and services; characteristics of students who are disadvantaged, disabled, and gifted; and program development, implementation, and evaluation.

2. Understanding of instructional methods and resources in career-vocational, community-based, and transition programs for targeted populations in career and technical education, including:

a. Use of learning and teaching styles to plan and deliver instruction;

b. Use of vocational assessment results to plan individual instruction strategies;

c. Ability to plan and manage a competency-based education system;

d. Ability to adapt curriculum materials to meet special student needs;

e. Use of a variety of classroom [ and behavior ] management techniques to develop an enhanced learning environment;

f. Use of different processes to improve collaboration with colleagues, parents, and the community; and

g. Ability to plan learning experiences that prepare individuals for transition to more advanced education and career development options.

3. Understanding of the planning, delivery, and management of work-based education programs such as community surveying, cooperative education, simulation, directed observation, shadowing, mentoring, and internship.

4. Understanding of strategies for enabling students to learn all aspects of particular industries—planning, management, finances, technical and production skills, labor and community issues, health and safety, environmental issues, and the technology associated with the specific industry.

5. Understanding of career/life planning procedures, transitioning processes and procedures, and career-search techniques.

6. Understanding of and proficiency in grammar, usage, and mechanics and their integration in writing.

**[ ~~8VAC20-542-240.~~ 8VAC20-542-250. ] Computer science.**

The program in computer science shall ensure that the candidate has demonstrated the following competencies:

1. Understanding of mathematical principles that are the basis of many computer applications;

2. Knowledge of structured program and algorithm design, and data structures;

3. Knowledge of programming and evaluating programs in at least two widely used, high-level, structured programming languages;

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4. Knowledge of programming languages including definition, structure, and comparison;

5. Knowledge of the functions, capabilities, and limitations of computers;

6. Knowledge of mainframe, minicomputer, and microcomputer systems and their applications;

7. An ability to use currently available software for word processing, calculation/spreadsheet, database management, and communications; and

8. Understanding of and proficiency in grammar, usage, and mechanics and their integration in writing.

**[ ~~8VAC20-542-250~~, 8VAC20-542-260. ] Dance arts preK-12.**

The program in dance arts shall ensure that the candidate has demonstrated the following competencies:

1. Understanding of the knowledge, skills, and processes of the dance arts discipline as defined in the Virginia Standards of Learning and how they provide a foundation needed to teach dance arts;

2. Understanding of the knowledge, skills, and processes for teaching dance arts to meet the developmental levels [ and academic needs ] of students in preK-12, including the following:

a. Knowledge of and experience in planning, developing, administering, and evaluating a program of dance arts education;

b. Knowledge and understanding for teaching dance arts, including: performance and production, cultural context and dance history, judgment and criticism, and aesthetics;

c. Ballet, folk, jazz, and modern dance with an area of concentration in one of these areas;

d. Scientific foundations, including human anatomy, kinesiology, and injury prevention and care for dance arts;

e. The relationship of dance arts and culture and the influence of dance on past and present cultures, including history of dance;

f. Knowledge and understanding of artistic copyright laws;

g. Knowledge of assessment strategies to foster, support, and enhance student dance arts learning;

h. Knowledge of related areas of the fine arts, such as music, theater arts, and the visual arts; and

i. Observation and student teaching experiences at the elementary, middle, and secondary levels.

3. Understanding of and proficiency in grammar, usage, and mechanics and their integration in writing.

**[ ~~8VAC20-542-260~~, 8VAC20-542-270. ] Driver education (add-on endorsement).**

The program in driver education shall ensure that the candidate has demonstrated the following competencies:

1. Basic understanding of the administration of a driver education program as required by §22.1-205 of the Code of Virginia and the Curriculum and Administrative Guide for Driver Education in Virginia including:

a. Coordination and scheduling of classroom and in-car instruction;

b. Skill and content knowledge assessment;

c. Student safety and other legal issues;

d. The juvenile licensing process;

e. Motor vehicle section of the Code of Virginia;

f. Vehicle procurement and equipment requirements; and

g. Instructional technologies.

2. Basic content knowledge needed to understand and teach classroom and in-car driver education including:

a. Traffic laws, signs, signals, pavement markings, and right-of-way rules;

b. Licensing procedures, and other legal responsibilities associated with the driving privilege; and vehicle ownership;

c. Vehicle control skills;

d. Interaction with other highway users (pedestrians, animals, motorcycles, bicycles, trucks, buses, trains, trailers, motor homes, ATVs, and other recreational users);

e. Time, space, visibility and risk management skills;

f. Alcohol and other drugs and driving;

g. Passive and active restraint systems;

h. Vehicle maintenance;

i. Risk reducing behaviors (i.e., aggressive driving, fatigue and distracted driving);

j. Natural laws and driving;

k. Adverse driving conditions and handling emergencies; and

l. Planning a safe trip.

3. Basic content knowledge needed to understand and teach the driver education laboratory phase including:

- a. Simulation and other instructional technologies;
- b. Multiple-car range;
- c. Route planning;
- d. Basic and evasive maneuvers;
- e. Vehicle control from instructor’s seat;
- f. Manual transmission; and
- g. Administration of the driver’s license road skills examination and procedures for licensing students with disabilities.

4. Understanding of and proficiency in grammar, usage, and mechanics and their integration in writing.

**[ ~~8VAC20-542-270.~~ 8VAC20-542-280. ] English.**

The program in English shall ensure that the candidate has demonstrated the following competencies:

- 1. Understanding of the knowledge, skills, and processes of English as defined in the Virginia Standards of Learning;
- 2. Skills necessary to teach the writing process and the different forms of writing (narrative, descriptive, expository, persuasive, and informational) and to employ available technology;
- 3. Knowledge of grammar, usage, and mechanics and their integration in writing;
- 4. Understanding of the nature and development of language including vocabulary appropriate to the topic, audience, and purpose;
- 5. Knowledge of reading strategies and techniques used to enhance reading comprehensive skills;
- 6. Knowledge of speaking and listening skills;
- 7. Knowledge of varied works from British, American, world, and ethnic/minority literature appropriate for English instruction; and
- 8. The ability to provide experiences in communication arts, such as journalism, dramatics, debate, forensics, radio, television, films and other media.

**[ ~~8VAC20-542-280.~~ 8VAC20-542-290. ] English as a second language preK-12.**

The program in English as a second language shall ensure that the candidate has demonstrated the following competencies:

- 1. Knowledge of general linguistics and English linguistics;
- 2. Skills in elementary and secondary teaching methods and student assessment for English as a second language;

3. Skills in the teaching of reading to include the five areas of reading instruction: phonemic awareness, phonics, fluency, vocabulary and text comprehension as well as the similarities and differences between reading in a first language and reading in a second language;

4. Knowledge of the effects of socio-cultural variables in the instructional setting;

5. Proficiency in spoken and written English;

6. Knowledge of another language and its structure; and

7. Understanding of and proficiency in grammar, usage, and mechanics and their integration in writing.

**[ ~~8VAC20-542-290.~~ 8VAC20-542-300. ] Foreign language preK-12.**

A. The specific language of the endorsement shall be noted on the license.

B. Foreign language preK-12 – languages other than Latin.

[ ~~1.~~ ] The program in the foreign language shall ensure that the candidate has:

[ ~~a.~~ 1. ] Demonstrated the following competencies:

[ ~~(1)~~ a. ] Understanding of authentic speech at a normal tempo;

[ ~~(2)~~ b. ] Ability to speak with a command of vocabulary, pronunciation, and syntax adequate for expressing thoughts to a native speaker not used to dealing with foreigners;

[ ~~(3)~~ c. ] Ability to read and comprehend authentic texts of average difficulty and of mature content;

[ ~~(4)~~ d. ] Ability to write a variety of texts including description and narration with clarity and correctness in vocabulary and syntax;

[ ~~(5)~~ e. ] Knowledge of geography, history, social structure and artistic and literary contributions of the target societies;

[ ~~(6)~~ f. ] Ability to interpret contemporary lifestyles, customs, and cultural patterns of the target societies;

[ ~~(7)~~ g. ] Understanding of the application of basic concepts of phonology, syntax, and morphology to the teaching of the foreign language;

[ ~~(8)~~ h. ] Knowledge of the national standards for foreign language learning, current proficiency-based objectives of the teaching of foreign languages at the elementary and secondary levels, elementary and secondary methods and techniques for attaining these objectives, the assessment of foreign language skills, the use of media in teaching languages, current curricular developments, the relationship of language study to other areas of the

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curriculum, and the professional literature of foreign language teaching; and

[ ~~(9)~~ i. ] Understanding of and proficiency in grammar, usage, and mechanics and their integration in writing; and

[ ~~b~~. 2. ] Participated in opportunities for significant foreign language study or living experiences in this country or abroad, or both.

C. Foreign language preK-12 – Latin. [ ~~1~~ ] The program in Latin shall ensure that the candidate has demonstrated the following competencies:

[ ~~a~~. 1. ] Ability to read and comprehend Latin in the original;

[ ~~b~~. 2. ] Ability to pronounce Latin with consistent classical (or ecclesiastical) pronunciation;

[ ~~e~~. 3. ] Knowledge of the vocabulary, phonetics, morphology and syntax of Latin and the etymological impact of Latin;

[ ~~d~~. 4. ] Ability to discuss the culture and civilization of Greco-Roman society, including history, daily life, art, architecture, and geography;

[ ~~e~~. 5. ] Ability to explain the relationship of Greco-Roman culture and civilization to subsequent cultures and civilizations;

[ ~~f~~. 6. ] Knowledge of major literary masterpieces and their relationship to the historical and social context of the society;

[ ~~g~~. 7. ] Competency in (i) current methodologies for teaching Latin at the elementary and secondary levels; (ii) lesson planning, scope and sequencing of material, instructional strategies and assessment under the guidance of an experienced Latin teacher; and

[ ~~h~~. 8. ] Understanding of and proficiency in grammar, usage, and mechanics and their integration in writing.

D. Foreign language preK-12 – American Sign Language. [ ~~1~~ ] The program in American Sign Language shall ensure that the candidate has:

[ ~~a~~. 1. ] Demonstrated the following competencies:

[ ~~(1)~~ a. ] Understanding of native users of American Sign Language at a normal tempo;

[ ~~(2)~~ b. ] Ability to sign with a command of vocabulary, nominal behaviors, and syntax adequate for expressing thoughts to an American Sign Language user not accustomed to dealing with non-American Sign Language users;

[ ~~(3)~~ c. ] Knowledge of history, social structure and artistic and literary contributions of the deaf culture;

[ ~~(4)~~ d. ] Ability to interpret contemporary lifestyles, customs, and cultural patterns of the deaf culture;

[ ~~(5)~~ e. ] Understanding of the application of basic concepts of phonology (e.g., hand shapes, types of signs, orientation on the body, sign movements), syntax, and morphology to the teaching of the American Sign Language;

[ ~~(6)~~ f. ] Knowledge of the national standards for foreign language learning, current proficiency-based objectives of the teaching of foreign languages at the elementary and secondary levels, elementary and secondary methods and techniques for attaining these objectives, the assessment of foreign language skills, the use of media in teaching languages, current curricular developments, the relationship of language study to other areas of the curriculum, and the professional literature of foreign language teaching; and

[ ~~(7)~~ g. ] Understanding of and proficiency in English grammar, usage, and mechanics and their integration in writing.

[ ~~b~~. 2. ] Participation in opportunities for significant study of the linguistics of American Sign Language and immersion experiences in the deaf culture.

**[ 8VAC20-542-300, 8VAC20-542-310. ] Gifted education (add-on endorsement).**

The program in gifted education shall ensure that the candidate has demonstrated the following competencies:

1. Understanding of principles of the integration of gifted education and general education, including:

a. Strategies to encourage the interaction of gifted students with students of similar and differing abilities; and

b. Development of activities to encourage parental and community involvement in the education of the gifted, including the establishment and maintenance of an effective advisory committee.

2. Understanding of the characteristics of gifted students, including:

a. Varied expressions of advanced aptitudes, skills, creativity, and conceptual understandings;

b. Methodologies that respond to the affective (social-emotional) needs of gifted students; and

c. Gifted behaviors in special populations (i.e., those who are culturally diverse, economically disadvantaged, or physically disabled).

3. Understanding of specific techniques to identify gifted students using diagnostic and prescriptive approaches to assessment, including:

- a. The selection, use, and evaluation of multiple assessment instruments and identification strategies;
  - b. The use of both subjective and objective measures to provide relevant information regarding the aptitude/ability or achievement of potentially gifted students;
  - c. The use of authentic assessment tools such as portfolios to determine performance, motivation/interest and other characteristics of potentially gifted students;
  - d. The development, use, and reliability of rating scales, checklists, and questionnaires by parents, teachers and others;
  - e. The evaluation of data collected from student records such as grades, honors, and awards;
  - f. The use of case study reports providing information concerning exceptional conditions; and
  - g. The structure, training, and procedures used by the identification and placement committee.
4. Understanding and application of a variety of educational models, teaching methods, and strategies for selecting materials and resources that ensure:
- a. Academic rigor through the development of high-level proficiency in all core academic areas utilizing the Virginia Standards of Learning as a baseline;
  - b. The acquisition of knowledge and development of products that demonstrate creative and critical thinking as applied to learning both in and out of the classroom; and
  - c. The development of learning environments that guide students to become self-directed, independent learners.
5. Understanding and application of theories and principles of differentiating curriculum designed to match the distinct characteristics of gifted learners to the programs and curriculum offered to gifted students, including:
- a. The integration of multiple disciplines into an area of study;
  - b. Emphasis on in-depth learning, independent and self-directed study skills and metacognitive skills;
  - c. The development of analytical, organizational, critical, and creative thinking skills;
  - d. The development of sophisticated products using varied modes of expression;
  - e. The evaluation of student learning through appropriate and specific criteria; and
  - f. The development of advanced technological skills to enhance student performance.

6. Understanding of contemporary issues and research in gifted education, including:

- a. The systematic gathering, analyzing, and reporting of formative and summative data; and
- b. Current local, state, and national issues and concerns.

7. Understanding of and proficiency in grammar, usage, and mechanics and their integration in writing.

8. The program shall include a practicum that shall include a minimum of 45 instructional hours of successful teaching experiences with gifted students in a heterogeneously grouped (mixed ability) classroom and a homogeneously grouped (single ability) classroom.

**[ ~~8VAC20-542-310.~~ 8VAC20-542-320. ] Health and physical education preK-12.**

The program in health and physical education preK-12 shall ensure that the candidate has demonstrated the following competencies:

1. Understanding of the knowledge, skills, and processes of health and physical education as defined in the Virginia Standards of Learning.

2. Understanding basic human anatomy and physiology needed to teach quality health and physical education.

3. Understanding of the basic scientific principles undergirding human movement as they apply to:

- a. Health-related fitness (flexibility, muscular strength, cardiovascular endurance, and body composition); and
- b. Skill-related fitness (coordination, agility, power, balance, speed and reaction).

4. Basic understanding of the administration of a health and physical education program, including:

- a. Instruction;
- b. Student safety and other legal issues;
- c. Assessment; and
- d. Its role in comprehensive school health.

5. Understanding of the knowledge, skills, and processes for teaching health education, including:

- a. Personal health and fitness;
- b. Mental and emotional health;
- c. Nutrition, body image and weight management;
- d. Tobacco, alcohol, and other drugs;
- e. Safety and emergency care (first aid, CPR, universal precautions);
- f. Injury prevention and rehabilitation;

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- g. Consumer health and information access;
- h. Communicable and noncommunicable diseases prevention and treatment;
- i. Environmental health;
- j. Community health and wellness; and
- k. Violence prevention, resistance skills and conflict mediation.

6. Understanding of the knowledge, skills, and processes for teaching physical education, including:

- a. Sequential preK-12 instruction in a variety of movement forms that include:

- (1) Cooperative activities;
- (2) Outdoor and adventure activities;
- (3) Rhythms and dance; and
- (4) Team and individual activities;

- b. Activities for the physically and mentally challenged; and

- c. Activities designed to help students understand, develop, and value personal fitness.

7. Understanding of and ability to teach:

- a. The relationship between a physically active lifestyle and health;

- b. The cultural significance of dance, leisure, competition, and sportsmanship; and

- c. The use of new and emerging instructional technology.

8. Understanding of and proficiency in grammar, usage, and mechanics and their integration in writing.

**[ 8VAC20-542-320, 8VAC20-542-330. ] History and social sciences.**

The program in history and social sciences shall ensure that the candidate has demonstrated the following competencies:

1. Understanding of the knowledge, skills, and processes of history and the social science disciplines as defined by the Virginia History and Social Sciences Standards of Learning and how the standards provide the foundation for teaching history and the social sciences, including in:

- a. United States history.

- (1) The evolution of the American constitutional republic and its ideas, institutions, and practices from the colonial period to the present; the American Revolution, including ideas and principles preserved in significant Virginia and United States historical documents as required by §22.1-201 of the Code of Virginia (Declaration of American Independence, the general principles of the Constitution

of the United States, the Virginia Statute of Religious Freedom, the charters of April 10, 1606, May 23, 1609, and March 12, 1612, of the Virginia Company, and the Virginia Declaration of Rights); and historical challenges to the American political system;

(2) The influence of religious traditions on American heritage and contemporary American society;

(3) The influence of immigration on American political, social, and economic life;

(4) The origins, effects, aftermath and significance of the two world wars, the Korean and Vietnam conflicts, and the Post-Cold War Era;

(5) The social, political, and economic transformations in American life during the 20th century;

(6) The tensions between liberty and equality, liberty and order, region and nation, individualism and the common welfare, and between cultural diversity and national unity; and

(7) The difference between a democracy and a republic.

b. World history.

(1) The political, philosophical, and cultural legacies of ancient American, Asian, African, and European civilizations;

(2) The origins, ideas, and institutions of Judaism, Christianity, Hinduism, Confucianism and Taoism, and Shinto, Buddhist and Islamic religious traditions;

(3) Medieval society, institutions, and civilizations; feudalism and the evolution of representative government;

(4) The social, political, and economic contributions of selected civilizations in Africa, Asia, Europe, and the Americas;

(5) The culture and ideas of the Renaissance and the Reformation, European exploration, and the origins of capitalism and colonization;

(6) The cultural ideas of the Enlightenment and the intellectual revolution of the 17th and 18th centuries;

(7) The sources, results, and influences of the American and French revolutions;

(8) The social consequences of the Industrial Revolution and its impact on politics and culture;

(9) The global influence of European ideologies of the 19th and 20th centuries (liberalism, republicanism, social democracy, Marxism, nationalism, Communism, Fascism, and Nazism); and

(10) The origins, effects, aftermath and significance of the two world wars, the Korean and Vietnam conflicts, and the Post-Cold War Era.

c. Civics/government and economics.

(1) The essential characteristics of limited and unlimited governments;

(2) The importance of the Rule of Law for the protection of individual rights and the common good;

(3) The rights and responsibilities of American citizenship;

(4) The nature and purposes of constitutions and alternative ways of organizing constitutional governments;

(5) American political culture;

(6) Values and principles of the American constitutional republic;

(7) The structures, functions, and powers of local and state government;

(8) Importance of citizen participation in the political process in local and state government;

(9) The structures, functions, and powers of the national government;

(10) The role of the United States in foreign policy and national security;

(11) The structure of the federal judiciary;

(12) The structure and function of the United States market economy as compared with other economies;

(13) Knowledge of the impact of the government role in the economy and individual economic and political freedoms;

(14) Knowledge of economic systems in the areas of productivity and key economic indicators; and

(15) The analysis of global economic trends.

d. Geography.

(1) Use of maps and other geographic representations, tools, and technologies to acquire, process, and report information;

(2) Physical and human characteristics of places;

(3) Relationship between human activity and the physical environment;

(4) Physical processes that shape the surface of the earth;

(5) Characteristics and distribution of ecosystems on the earth;

(6) Characteristics, distribution, and migration of human populations;

(7) Patterns and networks of economic interdependence;

(8) Processes, patterns, and functions of human settlement;

(9) How the forces of conflict and cooperation influence the division and control of the earth's surface;

(10) How physical systems affect human systems;

(11) Changes that occur in the meaning, use, distribution, and importance of resources; and

(12) Applying geography to interpret the past and the present and to plan for the future.

2. Understanding of history and social sciences to appreciate the significance of:

a. Diverse cultures and shared humanity;

b. How things happen, how they change, and how human intervention matters;

c. The interplay of change and continuity;

d. How people in other times and places have struggled with fundamental questions of truth, justice, and personal responsibility;

e. The importance of individuals who have made a difference in history and the significance of personal character to the future of society;

f. The relationship among history, geography, civics, and economics;

g. The difference between fact and conjecture, evidence and assertion, and the importance of framing useful questions;

h. How ideas have real consequences;

i. The importance of primary documents and the potential problems with second-hand accounts; and

j. How scientific and technological advances affect the workplace, healthcare, and education.

3. Understanding of the use of the content and processes of history and social sciences instruction, including:

a. Fluency in historical analysis skills;

b. Skill in debate, discussion, and persuasive writing;

c. The ability to organize key social science content into meaningful units of instruction;

d. The ability to provide instruction using a variety of instructional techniques;

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e. The ability to evaluate primary and secondary instructional resources, instruction, and student achievement; and

f. The ability to incorporate appropriate technologies into social science instruction.

4. Understanding of the content, processes, and skills of one of the social sciences disciplines at a level equivalent to an undergraduate major, along with sufficient understanding of the three supporting disciplines to ensure:

a. The ability to teach the processes and organizing concepts of social science;

b. An understanding of the significance of the social sciences;

c. Student achievement in the social sciences; and

d. An understanding of the media influence on contemporary America.

5. Understanding of and proficiency in grammar, usage, and mechanics and their integration in writing.

**[ ~~8VAC20-542-330.~~ 8VAC20-542-340. ] Journalism (add-on endorsement).**

The program in journalism (add-on endorsement) shall ensure that the candidate has demonstrated the following competencies:

1. Understanding of the history and functions of journalism in American culture including the value of freedom of speech and press and the complexity of legal and ethical issues;

2. Understanding of the knowledge of and experience in theory and practice of both print and nonprint media including design and layout production and the use of technology; and

3. Possession of skills in journalistic management and the processes of interviewing and writing, including news articles, features, ad copy, obituaries, reviews, editorials, and captions; their differences and the ability to analyze and evaluate journalism.

**[ 8VAC20-542-340. 8VAC20-542-350. ] Keyboarding (add-on endorsement).**

The program in keyboarding (add-on endorsement) shall ensure that the candidate has demonstrated the following competencies:

1. Possession of skills in fingering and keyboard manipulation techniques to model and provide touch keyboarding instruction;

2. Ability to provide instruction that allows students to develop touch fingering techniques in a kinesthetic

response to the keyboard required for rapid, accurate entry of data and information; and

3. Ability to provide instruction for current procedures in formatting documents.

**[ ~~8VAC20-542-350.~~ 8VAC20-542-360. ] Library media preK-12.**

The program in library media preK-12 shall ensure that the candidate has demonstrated the following competencies:

1. Proficiency in selecting, evaluating, organizing, and processing materials and equipment;

2. Proficiency in the production and use of a variety of media (print and nonprint);

3. Proficiency in organizing, managing, and evaluating media programs;

4. Proficiency in applying the principles of curriculum planning, learning, and teaching as they relate to informational skills and to the role of the library-media specialist as a resource person and as a member of the educational team;

5. Understanding of the knowledge, skills, and processes of the issues surrounding ethical access and use of information, including copyright, intellectual freedom, privacy, and security; and

6. Understanding of and proficiency in grammar, usage, and mechanics and their integration in writing.

**[ 8VAC20-542-360. 8VAC20-542-370. ] Mathematics.**

The program in mathematics shall ensure that the candidate has demonstrated the following competencies:

1. Understanding of the knowledge, skills, and processes of the Virginia Mathematics Standards of Learning and how curriculum may be organized to teach these standards to diverse learners;

2. Understanding of a core knowledge base of concepts and procedures within the discipline of mathematics, including the following strands: number systems and number theory; geometry and measurement; analytic geometry; statistics and probability; functions and algebra; calculus; and discrete mathematics;

3. Understanding of the sequential nature of mathematics and the mathematical structures inherent in the content strands;

4. Understanding of the connections among mathematical concepts and procedures and their practical applications;

5. Understanding of and the ability to use the five processes – becoming mathematical problem solvers, reasoning mathematically, communicating mathematically,

making mathematical connections, and using mathematical representations – at different levels of complexity;

6. Understanding of the history of mathematics, including the contributions of different individuals and cultures toward the development of mathematics and the role of mathematics in culture and society;

7. Understanding of major current curriculum studies and trends in mathematics;

8. Understanding of the role of technology and the ability to use graphing utilities and computers in the teaching and learning of mathematics;

9. Understanding of and the ability to select, adapt, evaluate and use instructional materials and resources, including professional journals and technology;

10. Understanding of and the ability to use strategies for managing, assessing, and monitoring student learning, including diagnosing student errors;

11. Understanding of and the ability to use strategies to teach mathematics to diverse learners; and

12. Understanding of and proficiency in grammar, usage, and mechanics and their integration in writing.

**[ 8VAC20-542-370, 8VAC20-542-380. ] Mathematics – Algebra I (add-on endorsement).**

The program in Algebra I shall ensure that the candidate has demonstrated the following competencies:

1. Understanding of the mathematics relevant to the content identified in the Mathematics Standards of Learning and how the standards provide the foundation for teaching middle level mathematics through Algebra I. The use of technology shall be used in enhancing the student's ability to develop concepts, compute, solve problems, and apply mathematics in practical applications with the mathematics content, including:

a. The structure of real numbers and subsets, basic operations, and properties;

b. Elementary number theory, ratio, proportion, and percent;

c. Algebra, trigonometry, and analytic geometry: operations with monomials and polynomials; algebraic fractions; linear, quadratic, and higher degree equations and inequalities; linear systems of equations and inequalities; nonlinear systems of equations; radicals and exponents; complex numbers; arithmetic and geometric sequences and series; algebraic, trigonometric, logarithmic, exponential, absolute value, and step functions; domain and range of functions; composite and inverse functions; one-to-one mapping; transformations between graphical, tabular and symbolic form of functions; direct and inverse variation; line and curve of

best fit; conics; and recognition and application of trigonometric identities;

d. Calculus: applications of limits and standard integration and differentiation;

e. Linear algebra: matrices, vectors, and linear transformations;

f. Measurement systems, including U.S. customary and metric;

g. Geometry: geometric figures, their properties, relationships, and application of the Pythagorean Theorem; using deductive axiomatic methods of proof and inductive reasoning; perimeter, area and surface area of two- and three-dimensional figures; coordinate and transformational geometry; and constructions;

h. Probability and statistics: experimental and theoretical probability; prediction; graphical representations, including box-and-whisker plots; and measures of central tendency, range, standard deviation, and simple distributions;

i. Discrete mathematics: symbolic logic, sets, permutations and combinations, functions that are defined recursively, and linear programming; and

j. Computer science: terminology, simple programming, and software applications.

2. Understanding of and proficiency in grammar, usage, and mechanics and their integration in writing.

**[ 8VAC20-542-380, 8VAC20-542-390. ] Music education – instrumental preK-12.**

The program in music education – instrumental preK-12 shall ensure that the candidate has demonstrated the following competencies:

1. Understanding of the knowledge, skills, and processes of the music discipline as defined in the Virginia Standards of Learning and how they provide a necessary foundation integral to teaching instrumental music.

2. Understanding of the common elements of music – rhythm, melody, harmony, timbre, texture, dynamics, form – and their relationship with each other [ and student academic needs ] and to employ this understanding in the analysis of music.

3. Effective musicianship through the development of:

a. Basic skills in conducting, in score reading, in teaching musical courses and in rehearsal techniques for choral and instrumental music;

b. Skills in composing, arranging, and adapting music to meet the classroom needs and ability levels of school performing groups;

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c. Skills in providing and directing creative experiences and improvising when necessary;

d. Proficiency, sufficient for classroom instruction, on keyboard or other accompanying instrument; and

e. The ability to perform in ensembles.

4. Knowledge of music history and literature with emphasis on the relationship of music to culture and the ability to place compositions in historical and stylistic perspective.

5. Knowledge of a comprehensive program of music education based upon sound philosophy, content, and methodology for teaching in elementary, middle, and secondary schools.

6. Observation and professional laboratory experiences with pupils in elementary, middle, and secondary schools, including instruction of instrumental groups.

7. Specialization on a musical instrument and functional teaching knowledge on each of the string, brass, woodwind, and percussion instruments.

8. Competency in rehearsing and conducting combined instrumental and vocal groups. In addition, the program shall provide instruction in business procedures, organization, and management of large and small instrumental ensembles, with knowledge of vocal techniques in rehearsing and conducting combined instrumental and vocal groups.

9. Knowledge and understanding of artistic copyright laws.

10. Knowledge and understanding of safety, including performance and studio.

11. Knowledge of assessment strategies to foster, support, and enhance student music learning.

12. Knowledge of related areas of the fine arts, such as dance arts, theatre arts, and the visual arts.

13. Understanding of and proficiency in grammar, usage, and mechanics and their integration in writing.

**[ ~~8VAC20-542-390~~, ~~8VAC20-542-400~~. ] Music education – vocal/choral preK-12.**

A. The program in music education – vocal/choral preK-12 shall ensure that the candidate has demonstrated the following competencies:

1. Understanding of the knowledge, skills, and processes of the music discipline as defined in the Virginia Standards of Learning and how they provide a necessary foundation integral to teaching instrumental music.

2. Understanding of the common elements of music—rhythm, melody, harmony, timbre, texture, dynamics, form—and their relationship with each other [ and student

academic needs ] and to employ this understanding in the analysis of music.

3. Effective musicianship through the development of:

a. Basic skills in conducting, in score reading, in teaching musical courses, and in rehearsal techniques for choral and instrumental music;

b. Skills in composing, arranging, and adapting music to meet the classroom needs and ability levels of school performing groups;

c. Skills in providing and directing creative experiences and improvising when necessary;

d. Proficiency, sufficient for classroom instruction, on keyboard or other accompanying instrument; and

e. The ability to perform in ensembles.

4. Knowledge of music history and literature with emphasis on the relationship of music to culture and the ability to place compositions in historical and stylistic perspective.

5. Knowledge of a comprehensive program of music education based upon sound philosophy, content, and methodology for teaching in elementary, middle, and secondary schools.

6. Observation and professional laboratory experiences with pupils at elementary, middle, and secondary levels, including instruction of choral groups.

7. Specialization in the methods, materials, and media appropriate to the teaching of vocal/choral and general music at elementary, middle, and secondary levels.

8. Competency in rehearsing and conducting choral ensembles and combined vocal and instrumental school groups. In addition, the program shall provide instruction in business procedures, organization, and management of large and small choral ensembles, with knowledge of instrumental techniques in rehearsing and conducting combined vocal and instrumental school groups.

9. Knowledge and understanding of artistic copyright laws.

10. Knowledge and understanding of safety, including performance and studio.

11. Knowledge of assessment strategies to foster, support, and enhance student music learning.

12. Knowledge of related areas of the fine arts, such as dance arts, theatre arts, and the visual arts.

13. Understanding of and proficiency in grammar, usage, and mechanics and their integration in writing.

[ ~~8VAC20-542-400~~, ~~8VAC20-542-410~~. ] **Science – biology.**

The program in biology shall ensure that the candidate demonstrates the following competencies:

1. Understanding of the knowledge, skills, and processes of the four core science disciplines as defined in the Virginia Science Standards of Learning and how these provide a sound foundation for teaching biology.

2. Understanding of the nature of science and scientific inquiry, including the:

- a. Function of research design and experimentation;
- b. Role and nature of the theory in explaining and predicting events and phenomena; and
- c. Role of observation, measurement, data, and evidence in verifying and validating scientific concepts and principles.

3. Understanding of the knowledge, skills, and processes for teaching laboratory science, including the ability to:

- a. Design instruction reflecting the goals of the Virginia Science Standards of Learning;
- b. Conduct research projects and experiments;
- c. Implement laboratory safety rules/procedures and ensure that students take appropriate safety precautions;
- d. Organize key biological content into meaningful units of instruction;
- e. Adapt instruction to diverse learners using a variety of techniques;
- f. Evaluate student achievement, instructional materials, and teaching practices; and
- g. Incorporate instructional technology to enhance student performance.

4. Understanding of the content, processes, and skills of biology, equivalent to an undergraduate degree in biology, with course work in genetics/molecular biology, botany, zoology, anatomy/physiology, and ecology.

5. Understanding of basic physics, chemistry (including organic chemistry), the Earth sciences, and mathematics (including statistics) to ensure:

- a. The placement of biology in an appropriate interdisciplinary context;
- b. The ability to teach the processes and organizing concepts common to the natural and physical sciences; and
- c. Student achievement in biology.

6. Understanding of the contributions and significance of biology, including:

- a. Its social and cultural significance;
  - b. The relationship of biology and other sciences to technology; and
  - c. The historical development of scientific concepts and scientific reasoning.
7. Understanding of and proficiency in grammar, usage, and mechanics and their integration in writing.

[ ~~8VAC20-542-410~~, ~~8VAC20-542-420~~. ] **Science – chemistry.**

The program in chemistry shall ensure that the candidate demonstrates the following competencies:

1. Understanding of the knowledge, skills, and processes of the four core science disciplines as defined in the Virginia Science Standards of Learning and how they provide a sound foundation for teaching chemistry.

2. Understanding of the nature of science and scientific inquiry including the:

- a. Function of research design and experimentation;
- b. Role and nature of the theory in explaining and predicting events and phenomena; and
- c. Role of observation, measurements, data, and evidence in verifying and validating scientific concepts and principles.

3. Understanding of the knowledge, skills, and processes for teaching laboratory science, including the ability to:

- a. Design instruction reflecting the goals of the Virginia Science Standards of Learning;
- b. Conduct research projects and experiments;
- c. Implement laboratory safety rules/procedures and ensure that students take appropriate safety precautions;
- d. Organize key chemistry content into meaningful units of instruction;
- e. Adapt instruction to diverse learners using a variety of techniques;
- f. Evaluate student achievement, instructional materials, and teaching materials; and
- g. Incorporate instructional technology to enhance student performance.

4. Understanding of content, processes, and skills of chemistry, equivalent to an undergraduate degree in chemistry, with course work in inorganic chemistry, organic chemistry, physical chemistry, and analytical chemistry.

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5. Understanding of basic physics, biology, the Earth sciences, and mathematics (including statistics and calculus) to ensure:

- a. The placement of chemistry in an appropriate interdisciplinary context;
- b. The ability to teach the processes and organizing concepts common to the natural and physical sciences; and
- c. Student achievement in chemistry.

6. Understanding of the contributions and significance of chemistry, including:

- a. Its social and cultural significance;
- b. The relationship of chemistry and other sciences to technology; and
- c. The historical development of scientific concepts and scientific reasoning.

7. Understanding of and proficiency in grammar, usage, and mechanics and their integration in writing.

**[ ~~8VAC20-542-420, 8VAC20-542-430.~~ ] Science – Earth science.**

The program in Earth science shall ensure that the candidate demonstrates the following competencies:

1. Understanding of the knowledge, skills, and processes of the four core science disciplines as defined in the Virginia Science Standards of Learning and how these provide a sound foundation for teaching Earth science.

2. Understanding of the nature of science and scientific inquiry, including the:

- a. Function of research design and experimentation;
- b. Role and nature of the theory in explaining and predicting events and phenomena; and
- c. Role of observation, measurement, data, and evidence in verifying and validating scientific concepts and principles.

3. Understanding of the knowledge, skills, and processes for teaching laboratory science, including the ability to:

- a. Design instruction reflecting the goals of the Virginia Science Standards of Learning;
- b. Conduct research projects and experiments;
- c. Implement laboratory safety rules/procedures and ensure that students take appropriate safety precautions;
- d. Organize key Earth science content into meaningful units of instruction;
- e. Adapt instruction to diverse learners using a variety of techniques;

f. Evaluate student achievement, instructional materials, and teaching practices; and

g. Incorporate instructional technology to enhance student performance.

4. Understanding of the content, processes, and skills of Earth science, equivalent to an undergraduate degree in geology (or a related area), with course work in geology, oceanography, meteorology, and astronomy.

5. Understanding of basic physics, chemistry (including organic chemistry), biology, and mathematics to ensure:

- a. The placement of Earth science in an appropriate interdisciplinary context;
- b. The ability to teach the processes and organizing concepts common to the natural and physical sciences; and
- c. Student achievement in Earth science.

6. Understanding of the contributions and significance of Earth science, including:

- a. Its social and cultural significance;
- b. The relationship of Earth science and other sciences to technology; and
- c. The historical development of scientific concepts and scientific reasoning.

7. Understanding of and proficiency in grammar, usage, and mechanics and their integration in writing.

**[ ~~8VAC20-542-430, 8VAC20-542-440.~~ ] Science – physics.**

The program in physics shall ensure that the candidate demonstrates the following competencies:

1. Understanding of the knowledge, skills, and processes of the four core science disciplines as defined in the Virginia Science Standards of Learning and how these provide a sound foundation for teaching physics.

2. Understanding of the nature of science and scientific inquiry, including the:

- a. Function of research design and experimentation;
- b. Role and nature of the theory in explaining and predicting events and phenomena; and
- c. Role of observation, measurement, data, and evidence in verifying and validating scientific concepts and principles.

3. Understanding of the knowledge, skills, and processes for teaching laboratory science, including the ability to:

- a. Design instruction reflecting the goals of the Virginia Science Standards of Learning;
- b. Conduct research projects and experiments;

c. Implement laboratory safety rules/procedures and ensure that students take appropriate safety precautions;

d. Organize key physics content into meaningful units of instruction;

e. Adapt instruction to diverse learners using a variety of techniques;

f. Evaluate student achievement, instructional materials, and teaching materials; and

g. Incorporate instructional technology to enhance student performance.

4. Understanding of content, processes, and skills of physics, equivalent to an undergraduate degree in physics, with course work in mechanics, electricity and magnetism, and optics.

5. Understanding of basic chemistry, biology, the Earth sciences, and mathematics (including statistics and calculus) to ensure:

a. The placement of physics in an appropriate interdisciplinary context;

b. The ability to teach the processes and organizing concepts common to the natural and physical sciences; and

c. Student achievement in physics.

6. Understanding of the contributions and significance of physics, including:

a. Its social and cultural significance;

b. The relationship of physics and other sciences to technology; and

c. The historical development of scientific concepts and scientific reasoning.

7. Understanding of and proficiency in grammar, usage, and mechanics and their integration in writing.

**[ 8VAC20-542-440, 8VAC20-542-450. ] **Special education early childhood (birth through age 5).****

The program in special education early childhood (birth through age five) is designed to ensure through course work and field experiences in a variety of settings that the candidate has demonstrated the following competencies:

1. Understanding of the nature and characteristics of major disabling and at-risk conditions, including:

a. Trends for service delivery to the birth-through-age-five population;

b. An overview of early childhood special education;

c. Historical perspective of special education; and

d. Social development issues.

2. Understanding of the foundation of the legal aspects associated with students with disabilities, including:

a. Legislative and judicial mandates related to education and special education;

b. The Individuals with Disabilities Education Act (IDEA), §504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act;

c. Legal decisions related to persons with disabilities;

d. Current regulations and procedures governing special education to include individualized education program (IEP) development and/or individualized family service plan (IFSP); and

e. Disciplinary practices, policies and procedures and alternative placements/programs in schools.

3. Knowledge of the selection, administration, and interpretation of formal and informal assessment techniques for young children with disabling and at-risk conditions and their families.

4. Understanding of the methods for providing instructional programs for early intervention, including:

a. Service delivery options;

b. Development of individualized education programs (IEPs) and individualized family service plans (IFSPs);

c. Curriculum development and implementation to ensure developmentally appropriate intervention techniques in the areas of self-help, motor, cognitive, social/emotional, and language.

5. Understanding of behavior management and the application of principles of learning and child development to individual and group management using a variety of techniques that are appropriate to the age of that child.

6. Understanding of speech and language development and intervention methods, including the effects of disabling and at-risk conditions on young children.

7. Understanding of and experiences with the medical aspects of young children with disabling and at-risk conditions and the management of neurodevelopmental and motor disabilities, including emergency care and the role of health care professionals in the lives of individuals with disabilities.

8. Skills in consultation, case management, and collaboration, including techniques in working with children, families, educators, related service providers, and other human service professionals that include:

a. Service coordination;

b. Interagency coordination;

c. Integration with nondisabled peers;

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d. Transition facilitation; and

e. Training, managing, and monitoring paraprofessionals.

9. Understanding of normal child growth and development from birth through age five.

10. Understanding of the theories and techniques of family-centered intervention, including:

a. Multicultural issues and influence; and

b. Family issues.

11. Understanding of the standards of professionalism.

12. Completion of supervised experiences at the preschool level in a variety of settings, including but not limited to home-based, school-based, and community-based.

**[ ~~8VAC20-542-450~~, ~~8VAC20-542-460~~. ] **Special education hearing impairments preK-12.****

The program in special education hearing impairments preK-12 is designed to ensure through course work and field experiences in a variety of settings that the candidate has demonstrated the following competencies:

1. Understanding of the characteristics of individuals with disabilities, including the following:

a. Characteristics of children and youth with disabilities: developmental and cognitive;

b. Characteristics of individuals with hearing impairments, including socio-cultural influences and health-related problems; and

c. Foundations of the education and culture of persons with hearing impairments.

2. Understanding of the foundation of the legal aspects associated with students with disabilities and students with hearing impairments, including:

a. Legislative and judicial mandates related to education and special education;

b. The Individuals with Disabilities Education Act (IDEA), §504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act;

c. Legal decisions related to persons with disabilities;

d. Current regulations and procedures governing special education, including individualized education program (IEP) development, individualized family service plan (IFSP), and transition services; and

e. Disciplinary practices, policies and procedures and alternative placements/programs in schools.

3. Understanding of the foundation of assessment and evaluation with an emphasis on individuals who are hearing impaired, including:

a. Administering, scoring, and interpreting assessments, including norm-referenced, criterion-referenced, and curriculum-based individual and group assessments;

b. Interpreting assessments for eligibility, placement, and program uses;

c. Techniques to collect, record, and analyze information from observing students;

d. Diagnostic instruction using assessment data;

e. Techniques for recognizing capacity and diversity and its influence on student assessment and evaluation; and

f. Using data from student program evaluation.

4. Understanding of service delivery, classroom management, and instruction, including:

a. The application of current research in practice;

b. Classroom organization and curriculum development;

c. Curriculum adaptations and accommodations;

d. The development of language/literacy skills;

e. The use of technology;

f. Classroom [ and behavior ] management, including behavior support systems and individual planning;

g. Methods and procedures for teaching persons with hearing impairments;

h. Instructional programming and modifications of curriculum to facilitate integration of students with disabilities into the continuum of programs and services with peers without disabilities;

i. Individual and group behavior management techniques; and

j. Career and vocational aspects of individuals with disabilities, including persons with hearing impairments, in society.

5. Skills in consultation, case management, and collaboration, including:

a. Coordinating service delivery with other professionals in collaborative work environments;

b. Training, managing, and monitoring paraprofessionals;

c. Involving families in the education of their children with disabilities; and

d. Cooperating with community agencies and resources.

6. Understanding of speech, language, and hearing development, including:

a. Speech and language development and the effects of disabling conditions and cultural diversity on typical language development;

b. The effects of hearing impairments and cultural diversity on language development;

c. Anatomy of speech structures, auditory and visual mechanisms, production, transmission and psychophysical characteristics of sound; and

d. General and specific effects of hearing impairment on production and reception of speech.

7. Understanding of audiology, including:

a. Diagnosis in hearing evaluation, testing procedures and characteristics of amplification devices and their application to the instructional processes; and

b. Individual, group amplification systems, cochlear implant systems and other assistive/augmentative communication devices with emphasis on utilization in educational environments.

8. Understanding of communication modalities to include various modalities of communication, including cued speech, speech reading, verbal communication, and demonstrated proficiency in sign language communication.

9. Understanding of the standards for professionalism.

10. Completion of supervised classroom experiences at the elementary and secondary levels with students who have hearing impairments.

**[ 8VAC20-542-460, 8VAC20-542-470. ] **Special education adapted curriculum K-12.****

A. The program in special education is designed to ensure through course work and field experiences in a variety of settings that the candidate has demonstrated the following core competencies to prepare children and youth for participation in the general education curriculum and within the community to the maximum extent possible. The candidate shall also complete the competencies in at least one of the endorsement areas of Special Education Adapted Curriculum K-12, in addition to those required under professional studies, including reading and language acquisition.

1. Foundations. Characteristics, legal and medical aspects.

a. Knowledge of the foundation for educating students with disabilities, including:

(1) Historical perspectives, models, theories, philosophies, and trends that provide the basis for special education practice;

(2) Characteristics of children and youth with disabilities relative to age, varying levels of severity, and developmental differences manifested in cognitive, linguistic, physical, psychomotor, social, or emotional functioning;

(3) Normal patterns of development (i.e., physical, psychomotor, cognitive, linguistic, social, emotional development and their relationship to the various disabilities);

(4) Medical aspects of disabilities;

(5) The dynamic influence of the family system and cultural/environmental milieu and related issues pertinent to the education of students with disabilities;

(6) Educational implications of the various disabilities; and

(7) Understanding of ethical issues and the practice of accepted standards of professional behavior.

b. An understanding and application of the legal aspects, regulatory requirements, and expectations associated with identification, education, and evaluation of students with disabilities, including:

(1) Legislative and judicial mandates related to education and special education (e.g., the Individuals with Disabilities Education Act, §504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, the No Child Left Behind Act of 2001, etc.);

(2) Current regulations governing special education (e.g., individualized education program (IEP) development; disciplinary practices, policies, and procedures; and alternative placements/programs in schools); and

(3) "Rights and responsibilities" of parents, students, teachers, and schools as they relate to individuals with disabilities and disability issues.

2. Assessments and management of instruction and behavior.

a. An understanding and application of the foundation of assessment and evaluation related to best special education practice, including:

(1) Ethical issues and responsibilities in the assessment of individuals with disabilities;

(2) Procedures for screening, prereferral, referral, and eligibility determinations;

(3) Factors that may influence assessment findings such as cultural, behavioral, and learning diversity;

(4) Administration, scoring, and interpretation of commonly used individual and group instruments, including norm-referenced, criterion-referenced, and curriculum-based measures as well as task analysis, observation, portfolio, and environmental assessments; and

(5) Synthesis and interpretation of assessment findings for eligibility, program planning, and program evaluation decisions.

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b. An understanding and application of service delivery, curriculum, and instruction of students with disabilities, including:

(1) Classroom organization and curriculum development;

(2) Scope and sequence of the general education curriculum;

(3) Complex nature of language acquisition and reading (reading competencies in Professional studies requirements): Reading, special education – language acquisition and reading: Skills in this area shall be designed to impart a thorough understanding of the complex nature of language acquisition and reading to include: phonemic awareness, an understanding of sound/symbol relationships, explicit phonics instruction, syllables, phonemes, morphemes, decoding skills, word attack skills, and a knowledge of how phonics, syntax, and semantics interact. Additional skills shall include proficiency in a wide variety of comprehension strategies, as well as the ability to foster appreciation of a variety of literature and independent reading;

(4) Complex nature of numeracy acquisition and the sequential nature of mathematics;

(5) Alternative ways to teach content material including curriculum adaptation and curriculum modifications;

(6) Procedures to develop, provide, and evaluate instruction consistent with students' individual needs;

(7) Strategies to promote successful integration of students with disabilities with their nondisabled peers;

(8) Use of technology to promote student learning; and

(9) Structure and organization of general education classrooms and other instructional settings representing the continuum of special education services (to include field experiences).

c. An understanding and application of classroom [ and behavior ] management techniques and individual interventions, including techniques that:

(1) Promote emotional well-being and teach and maintain behavioral conduct and skills consistent with norms, standards, and rules of the educational environment;

(2) Address diverse approaches based upon behavioral, cognitive, affective, social and ecological theory and practice;

(3) Provide positive behavioral supports; and

(4) Are based on functional assessment of behavior.

d. The ability to prepare students and work with families to promote successful student transitions throughout the educational experience to include postsecondary training, employment, and independent living that addresses an

understanding of long-term planning, career development, life skills, community experiences and resources, self-advocacy and self-determination, guardianship, and legal considerations.

### 3. Collaboration.

a. Skills in consultation, case management, and collaboration, including:

(1) Coordination of service delivery with related service providers, general educators, and other professions in collaborative work environments to include:

(a) Understanding the Standards of Learning (SOL), the structure of the curriculum, and accountability systems across K-12;

(b) Understanding and assessing the organization and environment of general education classrooms across the K-12 setting;

(c) Implementation of collaborative models, including collaborative consultation, co-teaching, and student intervention teams;

(d) Procedures to collaboratively develop, provide, and evaluate instructional and behavioral plans consistent with students' individual needs;

(e) Understanding the roles and responsibilities of each member of the collaborative team; and

(f) Application of effective communication strategies with a variety of stakeholders in the collaborative environment.

b. Training, managing, and monitoring paraprofessionals;

c. Involvement of families in the education of their children with disabilities;

d. Understanding the standards of professionalism;

e. Cooperating with community agencies and other resource providers; and

f. Models and strategies for promoting students' self-advocacy skills.

B. The program in special education adapted curriculum K-12 shall ensure through course work and field experiences in a variety of settings that the candidate seeking endorsement in special education adapted curriculum has the special education core competencies and the specific competency requirements specified in this section. The candidate shall demonstrate the following competencies to prepare children and youth to acquire the functional, academic, and community living skills necessary to reach an appropriate level of independence and be assessed in progress toward an [ ~~adapted~~ aligned ] curriculum while participating in programs with nondisabled peers to the fullest extent possible:

## 1. Characteristics.

a. Demonstrate knowledge of the characteristics, learning and support needs of students with disabilities (K-12), whose cognitive impairments or adaptive skills require adaptations to the general curriculum, including, but not limited to, students with:

(1) Moderate to severe mental retardation or developmental delay;

(2) Autism;

(3) Multiple disabilities;

(4) Traumatic brain injury; and

(5) Sensory impairments as an additional disability to those referenced above.

b. Knowledge of characteristics shall include:

(1) Medical, sensory needs, and position and handling needs of children with multiple disabilities;

(2) Speech and language development and communication and impact on educational, behavioral and social interactions;

(3) Impact of disability on self-determination and self-advocacy skills; and

(4) Historical and legal perspectives, models, theories, philosophies, and trends related to specific student populations.

## 2. Individualized education program implementation.

a. Apply knowledge of assessment and evaluation throughout the K-12 grade levels to:

(1) Construct, use, and interpret a variety of standardized and nonstandardized data collection techniques, such as task analysis, observation, portfolio assessment and other curriculum-based measures;

(2) Make decisions about student progress, instruction, program, modifications, accommodations, placement, and teaching methodology;

(3) Demonstrate the use of assessment, evaluation, and other information to develop and implement individual educational planning and group instruction with students with disabilities in an [~~adapted~~ aligned] curriculum across the K-12 grade levels, including:

(a) Functional behavior assessment;

(b) behavioral intervention plans incorporating positive behavioral supports;

(c) Least restrictive environment and inclusion models;

(d) General education curriculum adaptation and modification;

(e) IEP implementation linking to standards of learning general curriculum;

(f) Transition between grade levels, settings, and environments;

(g) Communication methods and systems;

(h) Assistive technology applications and instruction;

(i) Community integration;

(j) Vocational skill development;

(k) Instructional strategies;

(l) Knowledge of community service systems; and

(m) Essential life skills for independent home and community living.

## 3. Transitioning.

a. Demonstrate the ability to prepare students and work with families to provide successful student transitions throughout the educational experience to include postsecondary training, employment, and independent living that addresses an understanding of long-term planning, career development, life skills, community experiences and resources, self-advocacy, and self-determination, guardianship and legal considerations.

(1) Skills in consultation, case management, and collaboration for students with varying degrees of disability severity.

(a) Coordinate service delivery with general educators, related service providers, and other providers;

(b) Awareness of community resources agencies and strategies to interface with community agencies when developing and planning IEPs;

(c) Knowledge of related services and accommodations that pertain to postsecondary transitions that increase student access to postsecondary education and community resources; and

(d) Ability to coordinate and facilitate meetings involving parents, students, outside agencies, and administrators.

(2) Understand the difference between entitlement and eligibility for agency services as students move to the adult world including a basic understanding of Social Security Income benefits planning, work incentive, Medicaid, and community independent living.

(3) Recognize uses of technology and seek out technology at postsecondary settings that shall aid the student in their education, work, and independent living.

(4) Recognize and plan for individual student potential and their capacity to meet high academic, behavioral, and

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social expectations and the impact of academic and social success on personal development.

(5) Knowledge of person-centered planning strategies to promote student involvement in planning.

(6) Knowledge of generic skills that lead to success in school, work and community, including time management, preparedness, social interactions, and communication skills.

(7) Understand social skill development and the unique social skills deficits and challenges associated with disabilities:

(a) Assesses social skill strengths and needs;

(b) Plans and uses specialized social skills strategies.

(8) Knowledge of use and implementation of vocational assessments to encourage and support students' self-advocacy and self-determination skills.

(9) Knowledge of legal issues surrounding age of majority and guardianship.

C. Completion of supervised classroom experiences with students with disabilities and an adapted curriculum K-12.

**[ 8VAC20-542-470. Special Education – speech language pathology assistants.**

[ A. The program in speech language pathology assistance shall ensure, through coursework and field experience in a variety of settings, that the candidate seeking an endorsement in speech language pathology assistance shall, under the direction and supervision of a speech language pathologist, provide speech language pathology support.

The candidate shall demonstrate the following competencies:

1. ~~Knowledge and understanding of normal processes of communication, oral and written, as defined in the Virginia Standards of Learning and how these are interrelated in forming a sound foundation for the understanding of speech and language acquisition.~~2. ~~Knowledge of the foundation for educating students with disabilities including:~~

a. ~~Historical perspectives, models, theories, philosophies, and trends that provide the basis for special education practice;~~

b. ~~Characteristics of children and youth with disabilities relative to age, varying levels of severity, and developmental differences manifested in cognitive, linguistic, physical, psychomotor, social, or emotional functioning;~~

e. ~~Normal patterns of development (i.e., physical, psychomotor, cognitive, linguistic, social, emotional~~

~~development and their relationship to the various disabilities);~~

d. ~~Medical aspects of disabilities;~~

e. ~~The dynamic influence of the family system and cultural/environmental milieu and related issues pertinent to the education of students with disabilities;~~

f. ~~Educational implications of the various disabilities; and Understanding of ethical issues and the practice of accepted standards of professional behavior.~~

3. ~~An understanding and application of the legal aspects and regulatory requirements associated with identification, education, and evaluation of students with disabilities including:~~

a. ~~Legislative and judicial mandates related to education and special education (e.g., the Individuals with Disabilities Education Improvement Act (IDEIA), Section 504 of the Rehabilitation Act 1973, and the Americans with Disabilities Act);~~

b. ~~Current regulations governing special education, e.g. individualized education program (IEP) development, disciplinary practices, policies, and procedures and alternative placements/programs in schools; and~~

e. ~~"Rights and responsibilities" of parents, students, teachers, and schools as they relate to individuals with disabilities and disability issues.~~

4. ~~An understanding and application of classroom management techniques and individual interventions, including techniques which:~~

a. ~~Promote emotional well being and which teach and maintain behavioral conduct and skills consistent with norms, standards, and rules of the educational environment;~~

b. ~~Address diverse approaches based upon behavioral, cognitive, affective, social and ecological theory and practice;~~

e. ~~Provide positive behavioral supports; and~~

d. ~~Are based on functional assessment of behavior.~~

5. ~~Understanding of the basic knowledge, skills, and processes of:~~

a. ~~Normal speech, language, communication, and hearing development;~~

b. ~~Language acquisition and reading to include: phonemic awareness, understanding of sound symbol relationships, phonics, syntax, semantics and comprehension of oral and written language~~

e. ~~Communication across the life span.~~

~~6. Understanding of the basic knowledge, skills, and processes of:~~

- ~~a. Various types of speech, language, voice and hearing classifications, causes and manifestations; and~~
- ~~b. Relationships among speech language, voice and hearing problems, especially multiple disabling conditions.~~

~~7. An understanding and application of service delivery practices including:~~

- ~~a. Professional issues and ethics for speech language assistants~~
- ~~b. Assisting the speech language pathologist in service delivery~~
- ~~c. Technical skills in speech and language disorders~~
- ~~d. Basic techniques in the provision of speech and language support services~~

~~8. An understanding and application of workplace behaviors including:~~

- ~~a. Relating to clients/patients in a supportive and professional manner~~
- ~~b. Following supervisor's instructions~~
- ~~c. Maintaining confidentiality~~
- ~~d. Communicating in oral and written formats~~
- ~~e. Following health and safety precautions~~

~~9. A basic understanding and application of cultural factors in communication including:~~

- ~~a. Language and culture~~
- ~~b. Nonverbal communication~~
- ~~c. Sign language and other manually coded systems~~
- ~~d. Bilingualism and multicultural issues~~

~~B. Completion of a minimum of 500 clock hours in supervised education experiences for the job responsibilities and workplace behaviors of the speech language pathology assistant. One half of these hours shall include observation experiences to include direct, on site observation of by a nationally certified speech language pathologist. One half of these hours shall include fieldwork experiences in a public school setting supervised by a nationally certified speech language pathologist.~~

~~C. Endorsement Requirements. The candidate shall have completed a baccalaureate degree in speech language pathology or communication disorders from an accredited institution.~~

**[ 8VAC20-542-480. Special education general curriculum K-12.**

A. The program in special education is designed to ensure through course work and field experiences in a variety of settings that the candidate has demonstrated the following core competencies to prepare children and youth for participation in the general education curriculum and within the community to the maximum extent possible. The candidate shall also complete the competencies in at least one of the endorsement areas of Special Education General Curriculum K-12, in addition to those required under professional studies, including reading and language acquisition.

1. Foundations. Characteristics, legal and medical aspects.

a. Knowledge of the foundation for educating students with disabilities, including:

(1) Historical perspectives, models, theories, philosophies, and trends that provide the basis for special education practice;

(2) Characteristics of children and youth with disabilities relative to age, varying levels of severity, and developmental differences manifested in cognitive, linguistic, physical, psychomotor, social, or emotional functioning;

(3) Normal patterns of development (i.e., physical, psychomotor, cognitive, linguistic, social, emotional development and their relationship to the various disabilities);

(4) Medical aspects of disabilities;

(5) The dynamic influence of the family system and cultural/environmental milieu and related issues pertinent to the education of students with disabilities;

(6) Educational implications of the various disabilities; and

(7) Understanding of ethical issues and the practice of accepted standards of professional behavior.

b. An understanding and application of the legal aspects, regulatory requirements, and expectations associated with identification, education, and evaluation of students with disabilities, including:

(1) Legislative and judicial mandates related to education and special education (e.g., the Individuals with Disabilities Education Act, §504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, the No Child Left Behind Act of 2001, etc.);

(2) Current regulations governing special education (e.g., individualized education program (IEP) development; disciplinary practices, policies, and procedures; and alternative placements/programs in schools); and

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(3) "Rights and responsibilities" of parents, students, teachers, and schools as they relate to individuals with disabilities and disability issues.

## 2. Assessments and management of instruction and behavior.

a. An understanding and application of the foundation of assessment and evaluation related to best special education practice, including:

(1) Ethical issues and responsibilities in the assessment of individuals with disabilities;

(2) Procedures for screening, prereferral, referral, and eligibility determinations;

(3) Factors that may influence assessment findings such as cultural, behavioral, and learning diversity;

(4) Administration, scoring, and interpretation of commonly used individual and group instruments, including norm-referenced, criterion-referenced, and curriculum-based measures as well as task analysis, observation, portfolio, and environmental assessments; and

(5) Synthesis and interpretation of assessment findings for eligibility, program planning, and program evaluation decisions.

b. An understanding and application of service delivery, curriculum, and instruction of students with disabilities, including:

(1) Classroom organization and curriculum development;

(2) Scope and sequence of the general education curriculum;

(3) Complex nature of language acquisition and reading (reading competencies in professional studies requirements): Reading, special education – language acquisition and reading: Skills in this area shall be designed to impart a thorough understanding of the complex nature of language acquisition and reading to include: phonemic awareness, an understanding of sound/symbol relationships, explicit phonics instruction, syllables, phonemes, morphemes, decoding skills, word attack skills, and a knowledge of how phonics, syntax, and semantics interact. Additional skills shall include proficiency in a wide variety of comprehension strategies, as well as the ability to foster appreciation of a variety of literature and independent reading;

(4) Complex nature of numeracy acquisition and the sequential nature of mathematics;

(5) Alternative ways to teach content material including curriculum adaptation and curriculum modifications;

(6) Procedures to develop, provide, and evaluate instruction consistent with students' individual needs;

(7) Strategies to promote successful integration of students with disabilities with their nondisabled peers;

(8) Use of technology to promote student learning; and

(9) Structure and organization of general education classrooms and other instructional settings representing the continuum of special education services (to include field experiences).

c. An understanding and application of classroom and behavior management techniques and individual interventions, including techniques that:

(1) Promote emotional well-being and teach and maintain behavioral conduct and skills consistent with norms, standards, and rules of the educational environment;

(2) Address diverse approaches based upon behavioral, cognitive, affective, social and ecological theory and practice;

(3) Provide positive behavioral supports; and

(4) Are based on functional assessment of behavior.

d. The ability to prepare students and work with families to promote successful student transitions throughout the educational experience to include postsecondary training, employment, and independent living that addresses an understanding of long-term planning, career development, life skills, community experiences and resources, self-advocacy and self-determination, guardianship, and legal considerations.

## 3. Collaboration.

a. Skills in consultation, case management, and collaboration, including:

(1) Coordination of service delivery with related service providers, general educators, and other professions in collaborative work environments to include:

(a) Understanding the Standards of Learning (SOL), the structure of the curriculum, and accountability systems across K-12;

(b) Understanding and assessing the organization and environment of general education classrooms across the K-12 setting;

(c) Implementation of collaborative models, including collaborative consultation, co-teaching, and student intervention teams;

(d) Procedures to collaboratively develop, provide, and evaluate instructional and behavioral plans consistent with students' individual needs;

(e) Understanding the roles and responsibilities of each member of the collaborative team; and

(f) Application of effective communication strategies with a variety of stakeholders in the collaborative environment;

b. Training, managing, and monitoring paraprofessionals;

c. Involvement of families in the education of their children with disabilities;

d. Understanding the standards of professionalism;

e. Cooperating with community agencies and other resource providers; and

f. Models and strategies for promoting students' self-advocacy skills.

B. The program in special education general curriculum K-12 shall ensure through course work and field experiences in a variety of settings that the candidate seeking endorsement in special education general curriculum has the special education core competencies and the specific competency requirements specified in this section.

### 1. Characteristics.

a. Demonstrate knowledge of definitions, characteristics, and learning and behavioral support needs of students with disabilities who are accessing the general education curriculum at the elementary, middle, and high school levels, including but not limited to, students with:

(1) Learning disabilities;

(2) Emotional disturbance;

(3) Mental retardation;

(4) Developmental delay;

(5) Autism;

(6) Other health impaired;

(7) Traumatic brain injury; and

(8) Multiple disabilities.

b. Knowledge of characteristics shall include:

(1) Age-span/developmental issues;

(2) Levels of severity;

(3) Cognitive functioning;

(4) Language development;

(5) Emotional and behavioral adjustment;

(6) Social development;

(7) Medical aspects; and

(8) Cultural/ethnic and socioeconomic factors.

### 2. Individualized education program implementation.

a. Apply knowledge of assessment and evaluation throughout the K-12 grade levels to:

(1) Construct, use, and interpret a variety of standardized and nonstandardized data collection techniques, such as task analysis, observation, portfolio assessment and other curriculum-based measures;

(2) Make decisions about student progress, instruction, program, accommodations, placement, and teaching methodology for students with disabilities who are accessing the general education curriculum and the standards of learning; and

(3) Demonstrate the use of assessment, evaluation, and other information to develop and implement individual educational planning and group instruction with students with disabilities who are accessing the general education curriculum across the K-12 grade levels, including:

(a) Identify and apply differentiated instructional methodologies including systematic instruction, multisensory approaches, learning cognitive strategies, study skills, diverse learning styles, and technology use;

(b) Teach skills and remediate deficits in academic areas at the elementary, middle, and secondary levels;

(c) Provide explicit instruction of reading and math at appropriate developmental/grade level in a systematic and cumulative manner to students with disabilities who are accessing the general education curriculum;

(d) Knowledge and understanding of the scope and sequence of the standards of learning at the elementary, middle, and secondary levels;

(e) Promote the potential and capacity of individual students to meet high academic, behavioral, and social expectations;

(f) Design alternative ways to teach content material including modifying curriculum in both directive and nondirective methodologies;

(g) Use assistive and instructional technology in order to access the general education curriculum;

(h) Implement and evaluate group management techniques and individual interventions that teach and maintain emotional, behavioral and social skills; and

(i) Implement and monitor IEP specified accommodations within the general education classroom.

### 3. Transitioning.

a. Demonstrate the ability to prepare students and work with families to provide successful student transitions throughout the educational experience to include postsecondary training, employment, and independent

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living that addresses an understanding of long-term planning, career development, life skills, community experiences and resources, self-advocacy, and self-determination, guardianship and legal considerations.

(1) Skills in consultation, case management, and collaboration for students with varying degrees of disability severity.

(a) Coordinate service delivery with general educators, related service providers, and other providers;

(b) Awareness of community resources agencies and strategies to interface with community agencies when developing and planning IEPs;

(c) Knowledge of related services and accommodations that pertain to postsecondary transitions that increase student access to postsecondary education and community resources;

(d) Ability to coordinate and facilitate meetings involving parents, students, outside agencies, and administrators.

(2) Understand the difference between entitlement and eligibility for agency services as students move to the adult world including a basic understanding of Social Security Income benefits planning, work incentive, Medicaid, and community independent living.

(3) Recognize uses of technology and seek out technology at postsecondary settings that shall aid the student in their education, work, and independent living.

(4) Recognize and plan for individual student potential and their capacity to meet high academic, behavioral, and social expectations and the impact of academic and social success on personal development:

(a) Knowledge of person-centered planning strategies to promote student involvement in planning;

(b) Knowledge of generic skills that lead to success in school, work and community, including time management, preparedness, social interactions, and communication skills.

(5) Understand social skill development and the unique social skills deficits and challenges associated with disabilities:

(a) Assesses social skill strengths and needs;

(b) Plans and uses specialized social skills strategies.

(6) Knowledge of use and implementation of vocational assessments to encourage and support students' self-advocacy and self-determination skills.

(7) Knowledge of legal issues surrounding age of majority and guardianship.

C. Completion of supervised classroom experiences with students with disabilities and the general curriculum K-12. ]

## **8VAC20-542-490. Special education visual impairments preK-12.**

The program in special education visual impairments preK-12 is designed to ensure through course work and field experiences in a variety of settings that the candidate has demonstrated the following competencies:

1. Understanding of the characteristics of individuals with disabilities, including:

a. Characteristics of children and youth with disabilities: developmental and cognitive;

b. Language development and the effects of disabling conditions and cultural diversity on language development; and

c. Characteristics of individuals with visual impairments, including impact of visual impairment on infants' and children's growth and development, child and adolescent emotional and social development, and family interaction patterns.

2. Understanding of the foundation of the legal aspects associated with students with disabilities and students with visual impairments, including:

a. Legislative and judicial mandates related to education and special education;

b. The Individuals with Disabilities Education Act (IDEA), §504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act;

c. Legal decisions related to persons with disabilities;

d. Current regulations and procedures governing special education, including individualized education program (IEP) development, individualized family service plan (IFSP), and transition services; and

e. Disciplinary practices, policies and procedures and alternative placements/programs in schools.

3. Understanding of the foundation of assessment and evaluation with an emphasis on individuals with visual impairments, including:

a. Administering, scoring, and interpreting assessments, including norm-referenced, criterion-referenced, and curriculum-based individual and group assessments;

b. Interpreting assessments for eligibility, placement, and program uses;

c. Techniques to collect, record and analyze information;

d. Diagnostic instruction using assessment data;

- e. Techniques for recognizing capacity and diversity and its influence on student assessment and evaluation;
- f. Using data from student program evaluation; and
- g. Low vision practices and procedures, that include assessment and instructional programming for functional vision.
- 4. Understanding of service delivery, classroom [ and behavior ] management, and instruction, including:
  - a. The application of current research;
  - b. Classroom organization and curriculum development;
  - c. Curriculum adaptations and accommodations;
  - d. The development of language/literacy skills;
  - e. The use of technology;
  - f. Classroom management, including behavior support systems and individual planning;
  - g. Methods and procedures for teaching students with visual impairments;
  - h. Instructional programming and modifications of curriculum to facilitate integration of students with disabilities programs and services with peers without disabilities;
  - i. Individual and group behavior management techniques;
  - j. Career and vocational aspects of individuals with disabilities, including persons with visual impairments, in society, including knowledge of careers, vocational opportunities, and transition from school to work; and
  - k. Social and recreational skills and resources for individuals with visual impairments, including methods and materials for assessing and teaching activities of daily living.
- 5. Understanding of consultation, case management, and collaboration including:
  - a. Coordinating service delivery with other professionals in collaborative work environments;
  - b. Training, managing, and monitoring paraprofessionals;
  - c. Involving families in the education of their children with disabilities; and
  - d. Interfacing with community agencies and resources.
- 6. Understanding of the foundations of Braille reading and writing, including:
  - a. Teaching reading and writing of grade 2 Braille on both a Braille writer and a "slate and stylus"; and
  - b. Knowledge of other codes, including Nemeth, music code, and computer Braille.

7. Understanding of anatomy, physiology, and diseases of the eye and the educational implications.

8. Understanding of the standards of professionalism.

9. Completion of supervised classroom experiences at the elementary and secondary levels with students who have visual impairments.

**8VAC20-542-500. Speech communication (add-on endorsement).**

The program in speech communication shall ensure that the candidate has demonstrated the following competencies:

1. Understanding and knowledge of oral communication, including language acquisition involving the processes of expressive and receptive language and voice production involving the aesthetics of speech;

2. Understanding and knowledge of common speech production patterns, including articulation, pronunciation, and dialectical variances as these relate to standard English patterns;

3. Understanding of and proficiency in effective communication, including interpersonal communication, the art of persuasion, oral interpretation, group discussion, mass communication, public speaking, and debate; and the ability to critique such communication interactions; and

4. Understanding of and proficiency in grammar, usage, and mechanics and their integration in writing.

**8VAC20-542-510. Theater arts preK-12.**

The program in theater arts preK-12 shall ensure that the candidate has demonstrated the following competencies:

1. Understanding of the knowledge, skills, and processes of the theater arts discipline as defined in the Virginia Standards of Learning and how these provide a necessary foundation integral to teaching theater arts.

2. Understanding of the knowledge, skills and processes for teaching theater arts to the developmental levels [ and academic needs ] of students in preK-12, including the following:

a. Experience in planning, developing, administering, and evaluating a program of theater arts education;

b. Knowledge and understanding for teaching theatre arts, including: performance and production, cultural context and theatre history, judgment and criticism, and aesthetics;

c. Directing;

d. Technical theater, including lighting, set design, stage craft, costuming, makeup, and safety;

e. Performance, including acting and acting styles;

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f. Dramatic literature;

g. The relationship of theater and culture and the influence of theater on past and present cultures, including the history of theater;

h. Knowledge and understanding of artistic copyright laws;

i. Knowledge and understanding of safety, including performance and studio;

j. Knowledge of assessment strategies to foster, support, and enhance student theatre arts learning;

k. Knowledge of related areas of theater arts, such as art, dance arts, music, and the visual arts; and

l. Observation and student teaching experiences at the elementary, middle and secondary levels.

3. Understanding of and proficiency in grammar, usage, and mechanics and their integration in writing.

## **8VAC20-542-520. Visual arts preK-12.**

The program in visual arts preK-12 shall ensure that the candidate has demonstrated the following competencies:

1. Understanding of the knowledge, skills, and processes of the visual arts discipline as defined in the Virginia Standards of Learning, and how they provide a necessary foundation for teaching the visual arts;

2. Understanding of the knowledge, skills, and processes for teaching art appropriate to the developmental levels [ and academic needs ] of students in preK-12 including the following areas:

a. Knowledge and experience in planning, developing, administering, and evaluating a program of visual arts education;

b. Two-dimensional media and concepts: basic and complex techniques and concepts in two-dimensional design, drawing, painting, printmaking, computer graphics and other electronic imagery;

c. Three-dimensional media and concepts: basic and complex techniques and concepts in three-dimensional design, sculpture, ceramics, fiber arts, and crafts;

d. Knowledge and understanding for teaching the visual arts, including: visual communication and production, cultural context and art history, judgment and criticism, and aesthetics;

e. The relationship of visual arts and culture and the influence of visual arts on past and present cultures;

f. Related areas of visual arts, such as architecture, dance arts, music, theater arts, photography, and other expressive arts;

g. Knowledge and understanding of technological and artistic copyright laws;

h. Knowledge and understanding of safety, including use of toxic art material in various aspects of studio and classroom work;

i. Knowledge of assessment strategies to foster, support, and enhance student visual arts learning; and

j. Observation and student teaching experiences at the elementary, middle and secondary levels.

3. Understanding of and proficiency in grammar, usage, and mechanics and their integration in writing.

## Article 4

Administration and Supervision and Personnel Support

## **8VAC20-542-530. Administration and supervision preK-12.**

[ ~~Approved program route to Level I administration and supervision preK-12 endorsement. To become eligible for a Level I endorsement license under this option, the candidate shall:~~

~~1. Hold a master's degree from a regionally accredited college or university;~~

~~2. Complete an approved program in administration and supervision from a regionally accredited college or university, or through an entity receiving accreditation through a process approved by the Board of Education, including; ]~~

[ 1. The program in administration and supervision preK-12 shall ensure that the candidate has demonstrated the following competencies: ]

a. Knowledge understanding, and application of planning, assessment, and instructional leadership that builds collective professional capacity, including:

(1) Principles of student motivation, growth, and development as a foundation for age- and grade-appropriate curriculum, instruction, and assessment;

(2) Collaborative leadership in gathering and analyzing data to identify needs to develop and implement a school improvement plan that results in increased student learning;

(3) Planning, implementation, and refinement of standards-based curriculum aligned with instruction and assessment;

(4) Collaborative planning and implementation of a variety of assessment techniques, including examination of student work, that yield individual, class, grade level, and school level data as a foundation for identifying

existing competencies and targeting areas in need of further attention;

(5) Incorporation of differentiated and effective instruction that responds to individual learner needs including appropriate response to cultural, ethnic, and linguistic diversity;

(6) Integration of technology in curriculum and instruction to enhance learner understanding;

(7) Identification, analysis, and resolution of problems using effective problem-solving techniques;

(8) Communication of a clear vision of excellence, linked to mission and core beliefs that promotes continuous improvement consistent with the goals of the school division.

b. Knowledge understanding, and application of systems and organizations, including:

(1) Systems theory and the change process of systems, organizations and individuals, using appropriate and effective adult learning models;

(2) Aligning organizational practice, division mission, and core beliefs for developing and implementing strategic plans;

(3) Information sources and processing, including data collection and data analysis strategies;

(4) Using data as a part of ongoing program evaluation to inform and lead change;

(5) Developing a change management strategy for improved student outcomes;

(6) Developing empowerment strategies to create personalized learning environments for diverse schools;

(7) Effective communication skills including consensus building, negotiation, and mediation skills.

c. Knowledge understanding and application of management and leadership skills that achieve effective and efficient organizational operations, including:

(1) Alignment of curriculum and instruction and assessment of the educational program to achieve high academic success at the school and division/district level;

(2) Principles and issues of supervising and leading others to ensure a working and learning climate that is safe, secure, and respectful of a diverse school community;

(3) Management decisions that ensure successful teaching and learning including, human resources management and development, theories of motivation, change in school culture, innovation and creativity,

conflict resolution, adult learning and professional development models;

(4) Principles and issues related to fiscal operations of school management;

(5) Principles and issues related to school facilities and use of space and time;

(6) Legal issues impacting school operations and management;

(7) Technologies that support management functions;

(8) Application of data-driven decision making to initiate and continue improvement in school and classroom practices and student achievement.

d. Knowledge understanding and application of the conditions and dynamics impacting a diverse school community, including:

(1) Emerging issues and trends within school/community relations;

(2) Working collaboratively with staff, families, and community members to secure resources and to support the success of a diverse population;

(3) Developing appropriate public relations and public engagement strategies and processes;

(4) Principles of effective two-way communication, including consensus building and negotiation skills;

(5) Integration of technology to support communication efforts.

e. Knowledge understanding and application of the purpose of education and the role of professionalism in advancing educational goals, including:

(1) Historically and philosophically grounded philosophy of education that reflects commitment to principles of honesty, fairness, caring, and equity in day-to-day professional behavior;

(2) Integration of high quality, content rich, job-embedded professional learning that respects the contribution of all faculty and staff members in building a diverse professional learning community;

(3) Reflective understanding of theories of leadership and their application to decision-making in the school setting;

(4) Intentional and purposeful effort to model professional, moral, and ethical standards as well as personal integrity in all interactions;

(5) Intentional and purposeful effort to model continuous professional learning and to work collegially and collaboratively with all members of the school community to support the school's goals and enhance its collective capacity.

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f. Knowledge understanding and application of basic leadership theories and influences that impact schools including:

(1) Concepts of leadership including systems theory, change theory, learning organizations and current leadership theory;

(2) Historical leadership theories including organizational theory, motivational theory, political and social systems theory to practical situations;

(3) Identify and respond to internal and external forces and influences on a school;

(4) Identify and apply the processes of educational policy development at the state, local, and school level; and

(5) Identify and demonstrate ways to influence educational policy development at the state, local, and school level.

g. Embedded learning strategies for improved student learning totaling at least 120 clock hours including:

(1) Experiential activities that complement, implement, and parallel the university curriculum;

(2) Activities that emphasize student work with practical application that shall take place in the internship, the practicum field experience, as well as throughout the university program.

[ 3- 2. ] Complete [ ~~440 clock hours, with~~ ] a minimum of 320 clock hours of a deliberately structured and supervised internship that provides exposure to multiple sites (elementary, middle, high, central office, agency) with diverse student populations. These experiences shall be an integral component of a Virginia Board of Education approved preparation program. The internship shall be focused on learning for all students and shall occur in a public school or accredit nonpublic school; and

[ 4- 3. ] Satisfy the requirements for the school leaders licensure assessment prescribed by the Board of Education (Individuals seeking an initial administration and supervision endorsement who are interested in serving as central office instructional personnel are not required to take and pass the school leaders assessment prescribed by the Board of Education.)

## **8VAC20-542-540. Mathematics specialist for elementary and middle education.**

A. A mathematics specialist is a teacher in the elementary or middle grades who has interest and special preparation in mathematics content, scientifically based research in the teaching and learning of mathematics, diagnostic and assessment methods, and leadership skills. The school-based mathematics specialist shall serve as a resource in professional development, instructing children who have

learning difficulties in mathematics, curriculum development and implementation, mentoring new teachers, and parent and community education.

B. The mathematics specialist program shall ensure that the candidate has completed at least three years of successful classroom teaching experience in which the teaching of mathematics was an important responsibility and demonstrated the following competencies:

1. Understanding of the knowledge, skills, and processes of the Virginia Mathematics Standards of Learning and how curriculum may be organized to teach these standards to diverse learners;

2. Understanding of a core knowledge base of concepts and procedures within the discipline of mathematics, including the following strands: number systems and number theory; geometry and measurement; statistics and probability; and functions and algebra;

3. Understanding of the sequential nature of mathematics and the mathematical structures inherent in the content strands;

4. Understanding of the connections among mathematical concepts and procedures and their practical applications;

5. Understanding of and the ability to use the five processes – becoming mathematical problem solvers, reasoning mathematically, communicating mathematically, making mathematical connections, and using mathematical representations – at different levels of complexity;

6. Understanding of the history of mathematics, including the contributions of different individuals and cultures toward the development of mathematics and the role of mathematics in culture and society;

7. Understanding of major current curriculum studies and trends in mathematics;

8. Understanding of the role of technology and the ability to use graphing utilities and computers in the teaching and learning of mathematics;

9. Understanding of and the ability to select, adapt, evaluate and use instructional materials and resources, including professional journals and technology;

10. Understanding of and the ability to use strategies for managing, assessing, and monitoring student learning, including diagnosing student errors;

11. Understanding of and the ability to use strategies to teach mathematics to diverse learners;

12. Understanding of leadership skills needed to improve mathematics programs at the school and division levels, including the needs of high and low-achieving students and of strategies to challenge them at appropriate levels; child psychology, including personality and learning behaviors;

educational measurement and evaluation; and effective professional development approaches; and

13. Understanding of and proficiency in grammar, usage, and mechanics and their integration in writing.

## **8VAC20-542-550. Reading specialist.**

The reading specialist program shall ensure that the candidate has demonstrated the following competencies:

1. Assessment and diagnostic teaching. The candidate shall:

a. Demonstrate expertise in the use of formal and informal screening, diagnostic and progress monitoring assessment for language proficiency, concepts of print, phoneme awareness, letter recognition, decoding, fluency, vocabulary, reading levels, comprehension; and

b. Demonstrate expertise in the ability to use diagnostic data to tailor instruction for acceleration, intervention, remediation, and flexible skill-level groupings.

2. Oral communication. The candidate shall:

a. Demonstrate expertise in the knowledge, skills, and processes necessary for teaching oral language (speaking and listening);

b. Demonstrate expertise in developing students' phonological awareness skills;

c. Demonstrate effective strategies for facilitating the learning of standard English by speakers of other languages and dialects;

d. Demonstrate an understanding of the unique needs of students with language differences and delays; and

e. Demonstrate the ability to promote creative thinking and expression, as through storytelling, drama, choral/oral reading, etc.

3. Reading/literature. The candidate shall:

a. Demonstrate expertise in explicit phonics instruction, including an understanding of sound/symbol relationships, syllables, phonemes, morphemes, decoding skills, and word attack skills;

b. Demonstrate expertise in the morphology of English including inflections, prefixes, suffixes, roots, and word relationships;

c. Demonstrate expertise in strategies to increase vocabulary;

d. Demonstrate expertise in the structure of the English language, including and understanding of syntax, semantics, and vocabulary development;

e. Demonstrate expertise in reading comprehension strategies, including a repertoire of questioning

strategies, understanding the dimensions of word meanings, teaching predicting, summarizing, clarifying, and associating the unknown with what is known;

f. Demonstrate expertise in the ability to teach strategies in literal, interpretive, critical, and evaluative comprehension;

g. Demonstrate the ability to develop comprehension skills in all content areas;

h. Demonstrate the ability to foster appreciation of a variety of literature; and

i. Understand the importance of promoting independent reading and reading reflectively by selecting quality literature, including fiction and nonfiction, at appropriate reading levels.

4. Writing. The candidate shall:

a. Demonstrate expertise in the knowledge, skills, and processes necessary for teaching writing, including the domains of composing, written expression, and usage and mechanics and the writing process of planning, drafting, revising, editing, and sharing;

b. Demonstrate expertise in systematic spelling instruction, including awareness of the purpose and limitations of "invented spelling," orthographic patterns, and strategies for promoting generalization of spelling study to writing; and

c. Demonstrate expertise to teach the writing process: plan draft, revise, edit, and share in the narrative, descriptive, and explanative modes.

5. Technology. The candidate shall demonstrate expertise in their use of technology for both process and product as they work to guide students with reading, writing, and research.

6. Leadership and specialization. The candidate shall:

a. Demonstrate an understanding of child psychology, including personality and learning behaviors;

b. Demonstrate an understanding of the needs of high achieving students and of strategies to challenge them at appropriate levels;

c. Demonstrate an understanding of the significance of cultural contexts upon language;

d. Demonstrate an understanding of varying degrees of learning disabilities;

e. Demonstrate expertise with educational measurement and evaluation including validity, reliability, and normative comparisons in test design and selections;

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f. Demonstrate expertise to interpret grade equivalents, percentile ranks, normal curve equivalents, and standards scores;

g. Demonstrate the ability to instruct and advise teachers in the skills necessary to differentiate reading instruction for both low and high achieving readers;

h. Demonstrate the ability to organize and supervise the reading program within the classroom, school, or division;

i. Demonstrate effective communication skills in working with a variety of groups, including parents, teachers, administrators, community leaders, etc.; and

j. Demonstrate knowledge of current research and exemplary practices in English/reading.

## **8VAC20-542-560. School counselor preK-12.**

The school counselor preK-12 program shall ensure that the candidate has demonstrated the following competencies:

1. The ability to support students by cooperatively working with parents/guardians and teachers.

2. Understanding of the principles and theories of human growth and development throughout the lifespan and their implications for school guidance and counseling.

3. Understanding of the social and cultural foundations of education and their implications for school guidance and counseling programs.

4. Understanding of lifespan career development.

5. Understanding of the skills and processes for counseling students to include:

a. Individual and group counseling for academic development;

b. Individual and group counseling for career development; and

c. Individual and group counseling for personal/social development.

6. Understanding of the knowledge, skills, and processes for providing developmental group guidance, including:

a. Academic development;

b. Career development; and

c. Personal/social development.

7. Understanding of the skills and processes related to the school counseling program at the elementary, middle, and secondary levels, including:

a. Characteristics of learners at the elementary, middle, and secondary levels;

b. Program planning;

c. Coordination;

d. Consultation; and

e. Staffing patterns.

8. Understanding of the knowledge, skills, and processes of student appraisal and assessment relative to school guidance and counseling programs, including:

a. Individual assessment; and

b. Group assessment.

9. Understanding of the counseling professional, including:

a. Legal considerations;

b. Ethical considerations; and

c. Professional issues and standards.

10. Understanding of the skills and processes of research and evaluation aimed at improving school guidance and counseling programs.

## **8VAC20-542-570. School psychology.**

The school psychology program shall ensure that the candidate has demonstrated the following competencies:

1. Knowledge, skills, and processes for assessing students' cognitive abilities, academic performance, interpersonal emotional/social functioning, and sensory-motor functioning.

2. Understanding of the knowledge, skills, and processes for direct and indirect intervention, including:

a. Counseling on an individual, group, or family basis;

b. Consulting with administrators, teachers, parents, and other professionals about student problems and appropriate change strategies; and

c. Designing and implementing behavior change programs.

3. Psychological foundations of human functioning (biological bases of behavior; cultural diversity; infant, child, and adolescent development; personality theory; human learning; and social bases of behavior) to ensure student academic achievement and student growth and development.

4. Educational foundations of schooling (education of exceptional learners, instructional and remedial techniques, and organization and operations of schools) to ensure effective collaboration with other school professionals.

5. Statistics and research design.

6. School psychology profession, including:

a. History and foundations of school psychology;

b. Legal and ethical issues;

- c. Professional issues and standards; and
- d. Role and function of the school psychologist.

## **8VAC20-542-580. School social worker.**

The school social worker program shall ensure that the candidate has demonstrated the following competencies:

1. Understanding of the knowledge, skills, and processes for direct and indirect intervention, including:
  - a. Counseling on an individual, group, or family basis;
  - b. Consulting with administrators, teachers, parents, and other professionals about student problems and appropriate change strategies; and
  - c. Networking with school programs and community agencies to provide essential services for families and children.
2. Understanding of child development, psychopathology, social and environmental conditioning, cultural diversity and family systems.
3. Understanding of the knowledge, skills, and processes for effective casework practice.
4. Understanding of the organization and operations of school systems.
5. Understanding of the knowledge, skills, and processes involved with assessing and programming for exceptional students.
6. Understanding of the school social work profession, including:
  - a. History and foundations of school psychology;
  - b. Legal and ethical issues;
  - c. Professional issues and standards; and
  - d. The role and function of the school social worker.

## **8VAC20-542-590. Special education speech-language disorders preK-12.**

A. The program in special education speech-language disorders preK-12 shall ensure that the candidate has demonstrated the following competencies:

1. Understanding of the knowledge, skills, and processes of communication, oral and written, as defined in the Virginia Standards of Learning and how these are interrelated in forming a sound foundation for the understanding of speech and language acquisition.
2. Understanding of the knowledge, skills and processes of:
  - a. Normal development and the use of speech, voice, hearing, and language;

b. Basic sciences (biology and physics) and the basic communication sciences (acoustics, physiological processes of speech, hearing and linguistics); and

c. Language acquisition and reading to include: phonemic awareness understanding of sound symbol relationships, phonics, syntax, semantics and comprehension of oral and written language.

3. Understanding of current principles, procedures, techniques, and instruments in:

- a. The evaluation of speech, language, voice and hearing;
- b. Psycho-educational assessments; and
- c. Research design.

4. Understanding of the knowledge, skills, and processes of:

- a. Various types of disorders of speech, language, voice and hearing classifications, causes, and manifestations; and
- b. Relationships among speech, language, voice and hearing problems, especially multiple disabling conditions.

5. Understanding of the knowledge, skills, and processes for the use of:

- a. Augmentation in the habilitation, prevention and rehabilitation of disorders of articulation.
- b. The selection and use of evidenced based practices in the language, fluency, voice, resonance, and hearing.

6. Understanding of the knowledge, skills, and processes of the evaluation and treatment of disorders of the oral and pharyngeal mechanisms as they relate to communication, including but not limited to dysphasia.

7. A level of knowledge and skill in the use of:

- a. Augmentative and alternative communication devices;
- b. Modes of communication; and
- c. Strategies and techniques that promote or facilitate communication.

8. Understanding of the knowledge, skills, and processes of service delivery and instruction, including:

- a. Organization and administration of public school programs to provide services for persons with speech-language disorders; and
- b. Services available from related fields for those with communication disorders.

9. Understanding of the knowledge, skills, and processes for educating special populations, including:

- a. Historical perspective;

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b. Characteristics of learners: developmental and cognitive;

c. Medical aspects;

d. Linguistic/multicultural aspects;

e. Family aspects; and

f. Program evaluation.

10. Understanding of the knowledge, skills, and processes involved in the legal aspects associated with students with disabilities, including:

a. Legislative and judicial mandates related to special education;

b. Legal decisions related to persons with disabilities;

c. Advocacy and self-determination;

d. Guardianship;

e. Behavior management; and

f. Disciplinary practices, policies and procedures, and alternative placements/programs in schools.

11. The ability to understand and manage behavior, including:

a. Behavior support systems;

b. Individual planning; and

c. Research in current practice.

12. Understanding of the current knowledge and scope of the profession and sensitivity to issues of diversity.

B. Completion of 375 clock hours of direct client contact, of which 100 shall be in a supervised educational setting and a minimum of 200 clock hours shall be in speech-language pathology. These clinical clock hours shall be distributed in each of the following areas: diagnosis, management of language disorders, management of voice disorders, management of articulation disorders, management of fluency disorders, and audio logy.

## **8VAC20-542-600. Vocational evaluator.**

The vocational evaluator program shall ensure that the candidate has demonstrated the following competencies:

1. Understanding of the foundations of vocational evaluation and career assessment, including philosophy and process of vocational evaluation/assessment, use of occupational and labor market information, and functional aspects of disability.

2. Understanding of the basic concepts and skills of planning for and delivering vocational evaluation and career assessment services, including the use of vocational interviewing, individualized service planning, report

development and communication, and use of modifications and accommodations.

3. Understanding of the content, processes, and skills necessary to administer and report findings of standardized testing, including knowledge of tests and measurements and selection and use of appropriate instruments.

4. Understanding and knowledge of specific assessment techniques and skills and the processes for conducting vocational evaluation and career assessment, including:

a. Job and training analysis;

b. Work samples and systems;

c. Situational and community-based assessment;

d. Behavioral observation; and

e. Learning and functional skills assessment.

VA.R. Doc. No. R05-143; Filed Aug 1, 2007, 9:56 a.m.

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## TITLE 9. ENVIRONMENT

### STATE WATER CONTROL BOARD

#### Proposed Regulation

**REGISTRAR'S NOTICE:** The following regulation filed by the State Water Control Board is exempt from the Administrative Process Act in accordance with §2.2-4006 A 9 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.), Chapter 24 (§62.1-242 et seq.) of Title 62.1 and Chapter 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, (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit, (iii) provides notice and receives oral and written comment as provided in §2.2-4007.03, and (iv) conducts at least one public hearing on the proposed general permit.

**Title of Regulation: 9VAC25-120. General Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation for Discharges from Petroleum Contaminated Sites, Groundwater Remediation and Hydrostatic Tests (amending 9VAC25-120-10, 9VAC25-120-20, 9VAC25-120-50, 9VAC25-120-60, 9VAC25-120-70, 9VAC25-120-80).**

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

## Public Hearing Information:

October 3, 2007 - 10 a.m. - Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA

Public Comments: Public comments may be submitted until 5 p.m. on October 19, 2007.

Public Participation: In addition to any other comments, the board is seeking comments on the costs and benefits of the proposal, the potential impacts on the regulated community and on any impacts of the regulation on farm and forest land preservation. Also, the board is seeking information on impacts on small businesses as defined in §2.2-4007.1 of the Code of Virginia. Information may include (i) projected reporting, recordkeeping and other administrative costs, (ii) probable effect of the regulation on affected small businesses, and (iii) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so at the public hearing or by mail, email or fax to the contact person identified below. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall website at [www.townhall.virginia.gov](http://www.townhall.virginia.gov). Written comments must include the name and address of the commenter. In order to be considered comments must be received by 5 p.m. on October 19, 2007.

Agency Contact: James Barnett, State Lead Program Manager, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4289, FAX (804) 698-4266, or email [jsbarnett@deq.virginia.gov](mailto:jsbarnett@deq.virginia.gov).

Substance: The proposed changes to the regulation are as follows:

1. The Technical Advisory Committee (TAC) for the re-issuance of this permit regulation recommends expanding the scope of the regulation to allow discharges to waters listed as public water supplies.

Discharges of petroleum contaminated wastewater to surface waters listed as a source for public water supplies are not allowed under the present general permit regulation. Persons cleaning up petroleum releases and DEQ staff have found that not being able to cover this type of discharge under a general permit causes delays and sometimes results in less effective clean up of petroleum as other remedial approaches must be found to deal with petroleum-contaminated wastewater.

Persons serving on the Technical Advisory Committee (TAC) for this regulation re-issuance believe that the primary concern of allowing discharges to waters listed as sources for public water supplies is the perception that

allowing this type of discharge is not sufficiently protective of human health.

The Water Quality Standards for Public Water Supplies generally are more restrictive than aquatic toxicity-based values. The effluent limits recommended for discharges to waters listed as sources for public water supplies are based upon either the Water Quality Standard for Public Water Supplies or an aquatic toxicity-based value, whichever is more restrictive.

The TAC recommends using a higher monitoring frequency for wastewater discharges into surface waters listed as sources for public water supplies than the monitoring frequency required for discharges to nonpublic water supplies. This increased monitoring frequency will allow the permittee to identify treatment problems more quickly and take steps to correct their wastewater treatment system so that effluent limits can be maintained. Also, this permit does not allow discharges within five miles of a public water supply intake. The TAC members believe that effluent limits for discharges to public water supplies and the minimum five-mile distance from public water supply intakes are protective of human health.

Another advantage of permitting discharges to public water supplies is cost. Costs for most petroleum cleanups are paid for by the Virginia Petroleum Storage Tank Fund (VPSTF). When discharges from petroleum cleanup operations cannot be covered under this general permit, persons conducting the cleanup must manage the petroleum contaminated wastewater by other means including obtaining an individual VPDES permit to discharge that wastewater, re-infiltrating the wastewater through infiltration galleries at the site, or hauling the wastewater to an offsite treatment facility. All of these options typically are more expensive than discharging under a general permit and use of VPSTF monies for these extra costs is a poor use of a limited funding source.

Persons wishing to discharge under this general permit benefit by not having to pay permit fees that they would have to pay to obtain an Individual VPDES Permit. Persons also may obtain coverage under a general permit within a few weeks. By contrast, obtaining coverage under an individual permit often takes more than six months. This savings in time is of great benefit to persons having time-critical projects.

2. A second major amendment that has been proposed is to allow the coverage of discharges of chlorinated hydrocarbon solvent-contaminated wastewater under this general permit. Chlorinated hydrocarbon solvents are common ground water contaminants. At the present time, persons wishing to clean up sites contaminated with these constituents must recover them and take them to an offsite treatment facility or receive coverage under an individual VPDES Permit. The cost of hauling wastewater to an

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offsite facility and the costs and time involved to apply for and receive an Individual VPDES Permit are barriers to cleanup, reuse, and economic redevelopment of brownfields.

Reasons to include wastewater discharges containing by chlorinated hydrocarbons in this general permit regulation include:

1. There is, at present, no expeditious method to permit discharges involving these constituents. Lack of an expeditious method to permit these discharges may tempt persons to "take their chances" and proceed with a discharge without obtaining a permit for that discharge. Having these constituents addressed under a general permit would benefit those who want to abide by the rules and obtain a permit for their discharge while, at the same time, allow DEQ to have increased control over this type of discharge;
2. Combining petroleum and solvent discharges within the same general permit is not a new concept. Several other states have "groundwater remediation general permits" that cover discharges from both petroleum and solvent cleanups;
3. The treatment systems used to remove chlorinated hydrocarbon solvents from wastewater are the same as or very similar to those used to remove petroleum (especially gasoline) constituents from wastewater;
4. Covering chlorinated hydrocarbon solvents under a general permit would be "Voluntary Remediation and Brownfield friendly;" by providing a more timely and cost-effective way of dealing with wastewater generated from cleanups at certain brownfield-type sites; and
5. The effluent limits derived by the TAC are based on the most conservative values identified (usually public water supply standards) and are believed to be very protective of human health and the aquatic environment.

Disadvantages to including chlorinated hydrocarbon solvent constituents in this permit regulation may include:

1. Many chlorinated compounds are highly toxic and it is felt by one member of the TAC that we have had insufficient time to evaluate the proposed effluent limits;
2. Adding chlorinated solvents to this permit regulation increases the complexity and scope of the regulation; and
3. Regional Storage Tank Program staff review permit applications (registration statements) and issue coverage under this particular general permit. Storage Tank Program staff are funded by the Virginia Petroleum Storage Tank Fund (VPSTF). Work related to issuing coverage for wastewater contaminated by chlorinated hydrocarbon solvents will need to be resolved between the Storage Tank and Water Permit Program staff.

The TAC members believe that a separate, nonpetroleum compound general permit would be the best way to deal with discharges of chlorinated compounds. The TAC members also realize that the development of such a general permit is highly unlikely, especially in the near term. The majority of TAC members as well as DEQ management support expanding the scope of this general permit to include chlorinated solvents. We feel that including chlorinated solvents in this general permit would encourage those who want to do the right thing and follow the rules to obtain coverage for their discharge. Likewise, DEQ would have increased control over these discharges and could ensure, to the extent practicable, that the discharges were as protective of human health and the environment as possible.

3. The TAC for this general permit regulation recommends adding several constituents to the list of parameters to be monitored during discharge operations. These recommendations are based upon the increased use of ethanol and better understanding of lead scavenger compounds used in leaded gasoline.

- a. Ethanol. One of the constituents that the Technical Advisory Committee (TAC) has recommended adding to the list of parameters to be monitored is ethanol. Both ethanol and MTBE are additives in "reformulated" automotive gasolines (RFG). The Federal Energy Policy Act of 2005 altered the RFG program including the removal of the oxygenate mandate for RFG and set forth a national renewable fuel standard (RFS). Removal of the RFG oxygenate standard and implementation of the new RFS encouraged increased ethanol usage and discouraged MTBE usage. In the Spring of 2006, many RFG marketers in Virginia began being supplied with gasoline containing up to 10% ethanol (E10) in order to replace the MTBE.

Vehicles that can use gasoline containing variable amounts of ethanol already are available. These "flexible fuel vehicles" can operate on gasoline containing up to 85% ethanol (E85). At the present time, most "flexible fuel vehicles" and E85 fueling operations in Virginia are operated by the government at various levels or other entities that operate large vehicle fleets. Retail E85 operations exist in other states and it is possible that E85 fueling operations may become more common in Virginia.

According to EPA, ethanol biodegrades rapidly and is a short-lived compound in surface waters and subsurface aquifers. Human health risks from exposure to ethanol appear to be minimal, especially when compared with the risks posed by other gasoline constituents. Likewise, aquatic toxicity levels for ethanol are quite high. Based upon these factors, the TAC does not believe that effluent limits for ethanol are needed for the discharge of waters

associated with petroleum products containing up to 10% ethanol.

Ethanol concentrations in discharges of petroleum products containing greater than 10% ethanol may pose risks to aquatic organisms. The TAC, therefore, proposes an effluent limit for ethanol when the wastewater was contaminated by a gasoline containing greater than 10% ethanol.

b. Ethylene Dibromide (EDB). Ethylene dibromide (a.k.a. 1,2 dibromoethane, CAS Number: 106-93-4) is a compound added to leaded gasolines to remove lead from the combustion chamber and prevent lead oxide and lead sulfide deposits from forming within an internal combustion engine. Lead scavengers such as ethylene dibromide (EDB) are persistent in ground water and, in combination with the BTEX constituents can be good indicators of a leaded gasoline release. EDB can persist at low concentrations within ground water and is very toxic to humans. Based upon the toxicity and persistence of this constituent, the TAC has recommended an effluent limit for EDB when wastewater has been contaminated by leaded gasoline.

c. 1,2-Dichloroethane (1,2 DCA). Another compound commonly added to leaded gasoline as a lead scavenger is 1,2-Dichloroethane (1,2 DCA, CAS Number: 107-06-20). Like EDB, 1,2 DCA can persist a low concentrations within ground water and is quite toxic to humans. Based upon the toxicity and persistence of this constituent, the TAC has recommended an effluent limit for 1,2 DCA when wastewater has been contaminated by leaded gasoline.

4. The TAC proposes removing the monitoring requirement for volatile organics (VOCs), semi-volatile organics (SVOCs), and dissolved metals when the wastewater has been contaminated by used oil.

The present general permit requires permit holders to test their effluent for VOCs, SVOCs, and dissolved metals when the wastewater has been contaminated by used oil. These analyses are required once per year and no effluent limits have been established for them.

Used oil may contain many types of impurities or be contaminated by solvents or other chemicals. The original purpose for evaluating VOCs, SVOCs, and dissolved metals under this general permit was to determine if the wastewater at a site was a hazardous waste. The TAC evaluated this monitoring requirement and believes that this data is not needed as part of an ongoing monitoring regime. The value of analyzing water for these constituents is found prior to the discharge to determine if the discharge should be covered under this general permit. The TAC recommends addressing this issue through guidance and requiring these analyses as part of the permit

registration process so that staff may determine if the discharge is eligible to receive coverage under this general permit.

5. The TAC proposes modifying existing effluent limits for total recoverable lead, xylenes, and naphthalene.

Aquatic toxicity data available through EPA are constantly updated as new studies are performed and existing data are further reviewed and evaluated. Effluent limits for some constituents in the current General Permit have been amended to reflect aquatic toxicology data that were not available during the last re-issuance of this general permit regulation. Constituents for which the TAC has recommended effluent changes based upon updated aquatic toxicity data are xylenes and naphthalene.

The effluent limit for total recoverable lead in the present general permit regulation is based on the equation:

$$\text{Effluent limit for total recoverable lead} = \frac{e^{(1.273(\ln \text{ hardness}))} - 4.705}{4.705}$$

This equation came from the Water Quality Standard regulation. The Water Quality Standard for lead has been updated and the current Water Quality Standard for lead is:

$$\text{Effluent limit for total recoverable lead} = \frac{e^{(1.273(\ln \text{ hardness}))} - 3.259}{3.259}$$

The TAC recommends that the effluent limit for lead be changed to reflect the current, promulgated Virginia Water Quality Standard for total recoverable lead.

#### Summary:

*The General Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation for Discharges from Petroleum Contaminated Sites, Ground Water Remediation, and Hydrostatic Tests has existed since 1992. This general permit establishes limitations and monitoring requirements for discharges of petroleum-contaminated wastewater, chlorinated hydrocarbon contaminated wastewater, and wastewater from hydrostatic tests. The major changes proposed to the existing regulation are to permit discharges to state waters listed as public water supplies and to permit discharges of wastewater contaminated by chlorinated hydrocarbon solvents. Effluent limits for some constituents in the current general permit have been amended to reflect aquatic toxicology data that was not available during the last reissuance period for this regulation.*

*Similar to VPDES permit, the effluent limits in the general permit are set to protect the quality of the waters receiving the discharges.*

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## CHAPTER 120

### GENERAL VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM (VPDES) PERMIT REGULATION FOR DISCHARGES FROM PETROLEUM CONTAMINATED SITES, GROUNDWATER REMEDICATION AND HYDROSTATIC TESTS

#### **9VAC25-120-10. Definitions.**

The words and terms used in this chapter shall have the meanings defined in the State Water Control Law and 9VAC25-31-10 et seq. (VPDES permit regulation) unless the context clearly indicates otherwise, except that for the purposes of this chapter:

"Central wastewater treatment facilities" means any facility that treats (for disposal, recycling, or recovery of materials) or recycles hazardous or nonhazardous waste, hazardous or nonhazardous industrial wastewater, or used material from offsite. This includes both a facility that treats waste received from off-site exclusively, and a facility that treats waste generated on-site as well as waste received from off site.

"Chlorinated hydrocarbon solvents" means solvents containing carbon, hydrogen, and chlorine atoms and the constituents resulting from the degradation of these chlorinated hydrocarbon solvents.

"Petroleum products" means petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents and used oils. "Petroleum products" does not include hazardous waste as defined by the Virginia Hazardous Waste Regulations (9VAC20-60).

#### **9VAC25-120-20. Purpose.**

This general permit regulation governs the discharge of wastewaters from sites contaminated by petroleum products, chlorinated hydrocarbon solvents, and the hydrostatic testing of petroleum and natural gas storage tanks and pipelines. These wastewaters may be discharged from the following activities: excavation dewatering, ~~bailing~~ purging groundwater monitoring wells, conducting aquifer tests to characterize site conditions, hydrostatic tests of natural gas and petroleum storage tanks or pipelines, hydrostatic tests of underground and above ground storage tanks, pumping contaminated groundwater to remove free product from the ground, or discharges resulting from another petroleum product or chlorinated hydrocarbon solvent cleanup activity approved by the department. Discharges not associated with petroleum-contaminated water, water contaminated by chlorinated hydrocarbon solvents, or hydrostatic tests are not covered under this general permit.

#### **9VAC25-120-50. Effective date of the permit.**

This general permit will become effective on February 26, ~~2003~~ 2008. This general permit will expire five years from the effective date. This general permit is effective as to any covered owner upon compliance with all the provisions of 9VAC25-120-60 and the receipt of this general permit.

#### **9VAC25-120-60. Authorization to discharge.**

A. Any owner governed by this general permit is hereby authorized to discharge to surface waters within the Commonwealth of Virginia provided that the owner files and receives acceptance by the board of the registration statement of 9VAC25-120-70 and complies with the applicable effluent limitations and other requirements of 9VAC25-120-80, and provided that:

1. Individual permit. The owner has not been required to obtain an individual permit according to 9VAC25-31-170 B;

2. Prohibited discharge locations. The owner shall not be authorized by this general permit to discharge within five miles upstream of a public water supply intake or to state waters ~~designated as public water supplies~~ or specifically named in other board regulations or policies which prohibit such discharges; and

3. Central wastewater treatment facilities. The owner shall not be authorized by this general permit to discharge to surface waters where there are permitted central wastewater treatment facilities reasonably available, as determined by the board.

B. Receipt of this general permit does not relieve any owner of the responsibility to comply with any other appropriate federal, state or local statute, ordinance or regulation.

#### **9VAC25-120-70. Registration statement.**

The owner shall file a complete VPDES general permit registration statement for discharges from petroleum contaminated sites, ground water remediation, and hydrostatic tests. Any owner proposing a new discharge shall file a complete registration statement at least 30 days prior to the date planned for commencing operation of the new discharge. Any owner of an existing discharge covered by an individual VPDES permit who is proposing to be covered by this general permit shall file the registration statement at least 180 days prior to the expiration date of the individual VPDES permit. Any owner of an existing discharge not currently covered by a VPDES permit who is proposing to be covered by this general permit shall file a complete registration statement. The required registration statement shall contain the following information:

1. Legal name of facility;
2. Location of facility, address, and telephone number;
3. Facility owner name, address, and telephone number;

4. Nature of business conducted at the facility;
5. Type of petroleum or natural gas products causing or that caused the contamination;
6. Identification of activities that will result in a point source discharge from the contaminated site;
7. Whether a site characterization report for the site has been submitted to the Department of Environmental Quality;
8. Characterization or description of the wastewater or nature of contamination including analytical data;
9. The location of the discharge point and identification of the waterbody into which the discharge will occur;
- 9-10. The frequency with which the discharge will occur (i.e., daily, monthly, continuously);
- 10-11. An estimate of how long each discharge will last;
- 11-12. An estimate of the total volume of wastewater to be discharged;
- 12-13. An estimate of the flow rate of the discharge;
- 13-14. A diagram of the proposed wastewater treatment system identifying the individual treatment units;
- 14-15. A topographic map or other map that indicates the receiving waterbody name, the discharge point or points, the property boundaries, as well as springs, other surface waterbodies, drinking water wells, and public water supplies that are identified in the public record or are otherwise known to the applicant within a 1/2 mile radius of the proposed discharge or discharges.
- 15-16. Whether central wastewater facilities are available to the site, and if so, whether the option of discharging to the central wastewater facility has been evaluated and the results of that evaluation;
- 16-17. Whether the facility currently has a permit issued by the board, and if so, the permit number;
- 17-18. Any applicable pollution complaint number;
- 18-19. A statement as to whether the material being treated or discharged is certified as a hazardous waste under the Virginia Hazardous Waste Regulation (9VAC20-60);
- 19-20. The following certification:  

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and

belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations. I do also hereby grant duly authorized agents of the Department of Environmental Quality, upon presentation of credentials, permission to enter the property for the purpose of determining the suitability of the general permit.

The registration statement shall be signed in accordance with 9VAC25-31-110.

**9VAC25-120-80. General permit.**

Any owner whose request for coverage under this general permit is accepted by the board shall comply with the requirements of the general permit and be subject to all requirements of 9VAC25-31-170 B of the VPDES permit regulation. Not all pages of Part I A of the general permit will apply to every permittee. The determination of which pages apply will be based on the type of contamination at the individual site and the nature of the waters receiving the discharge. Part I B and all pages of Part II apply to all permittees.

General Permit No.: VAG83

Effective Date: February 26, ~~2003~~ 2008

Expiration Date: February 25, ~~2008~~ 2013

**GENERAL VPDES PERMIT FOR DISCHARGES FROM  
 PETROLEUM CONTAMINATED SITES,  
GROUNDWATER REMEDIATION, AND  
 HYDROSTATIC TESTS**

**AUTHORIZATION TO DISCHARGE UNDER THE  
 VIRGINIA POLLUTANT DISCHARGE ELIMINATION  
 SYSTEM PERMIT PROGRAM AND THE VIRGINIA  
 STATE WATER CONTROL LAW**

In compliance with the provisions of the Clean Water Act, as amended, the State Water Control Law and regulations adopted pursuant thereto, the owner is authorized to discharge to surface waters at the locations identified in the accepted registration statement within the boundaries of the Commonwealth of Virginia, except to designated public water supplies or waters specifically named in other board regulations or policies which prohibit such discharges.

The authorized discharge shall be in accordance with this cover page, Part I—Effluent Limitations and Monitoring Requirements and Part II—Conditions Applicable to All VPDES Permits, as set forth herein.

If there is any conflict between the requirements of a Department of Environmental Quality approved cleanup plan and this permit, the requirements of this permit shall govern.

# Regulations

## Part I

### A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

#### 1. GASOLINE CONTAMINATION—FRESHWATER RECEIVING WATERS NOT LISTED AS PUBLIC WATER SUPPLIES.

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge to freshwater receiving waterbodies from outfall serial number XXXX. Samples taken in compliance with the monitoring requirements specified below shall be taken at the following location: outfall from the final treatment unit prior to mixing with any other waters.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Instantaneous Maximum	Instantaneous Minimum	Frequency	Sample Type
Flow (MGD)	NA	NA	1/Month	Estimate
Benzene (µg/l) <sup>1</sup>	NA	<del>50</del> 50.0	1/Month	Grab <sup>*</sup>
Toluene (µg/l) <sup>1</sup>	NA	<del>175</del> 175.0	1/Month	Grab <sup>*</sup>
Ethylbenzene (µg/l) <sup>1</sup>	NA	<del>320</del> 320.0	1/Month	Grab <sup>*</sup>
Total Xylenes (µg/l) <sup>1</sup>	NA	<del>82</del> 33.0	1/Month	Grab <sup>*</sup>
MTBE (methyl tert-butyl ether) (µg/l) <sup>1</sup>	NA	<del>11</del> 1,840.0	1/Month	Grab <sup>*</sup>
pH (standard units)	6.0	9.0	1/Month	Grab
Total Recoverable Lead (µg/l) <sup>2</sup>	NA	e <sup>(1.273(In hardness))</sup> <del>4.70</del> 53.259	1/Month	Grab <sup>***</sup>
Hardness (mg/l CaCO <sub>3</sub> ) <sup>2</sup>	NL	NA	1/Month	Grab <sup>***</sup>
Ethylene Dibromide (µg/l) <sup>2</sup>	NA	5.3	1/Month	Grab
1,2 Dichloroethane (µg/l) <sup>2</sup>	NA	990.0	1/Month	Grab
Ethanol (µg/l) <sup>3</sup>	NA	4100.0	1/Month	Grab

NL = No limitation, monitoring required

NA = Not applicable

<sup>\*</sup>1-Benzene, Toluene, Ethylbenzene, Total Xylenes and MTBE shall be analyzed according to a current and appropriate EPA Wastewater Method 602 (40 CFR ~~at~~ Part 136, 1996) or EPA SW 846 Method 8021B (1998).

<sup>\*\*</sup>pH may be determined in the field using EPA Method 150.1 (EPA 600/4-87-020) or EPA SW 846 method 9040B.

<sup>\*\*\*</sup>2-Monitoring for this parameter is required only when contamination results from leaded fuel. Lead analysis shall be analyzed according to a current and appropriate EPA Wastewater Method (40 CFR Part 136, 1996) or EPA SW 846 method 9040B. The minimum hardness concentration that will be used to determine the lead effluent limit is 25 mg/l. 1,2 dichloroethane and EDB shall be analyzed by a current and appropriate EPA SW 846 Method or EPA Wastewater Method from 40 CFR Part 136 (1996).

<sup>3</sup>Monitoring for ethanol is only required for discharges of water contaminated by gasoline containing greater than 10% ethanol. Ethanol shall be analyzed according to EPA SW 846 Method 8015B or EPA SW 846 Method 8260B. Monitoring frequency shall be 1/month in the first year of permit coverage. If the first year results demonstrate full compliance with the effluent limitations, the permittee may request that the monitoring frequency for ethanol be reduced from monthly to 1/quarter. The written request shall be sent to the appropriate regional office for review. Upon written notification from the DEQ regional

office, monitoring frequency shall be reduced to 1/quarter. Should the permittee be issued a warning letter related to violation of effluent limitations, a notice of violation, or be the subject of an active enforcement action, monitoring frequency for ethanol shall revert to 1/month, upon issuance of the letter or notice or initiation of the enforcement action and remain in effect until the permit's expiration date. Reports of quarterly monitoring shall be submitted to the DEQ regional office no later than the 10th day of April, July, October and January.

## Part I

### A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

#### 2. GASOLINE CONTAMINATION—FRESHWATER RECEIVING WATERS LISTED AS PUBLIC WATER SUPPLIES.

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge to freshwater receiving waterbodies from outfall serial number xxxx. Samples taken in compliance with the monitoring requirements specified below shall be taken at the following location: outfall from the final treatment unit prior to mixing with any other waters.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Instantaneous Maximum	Instantaneous Minimum	Frequency	Sample Type
Flow (MGD)	NA	NL	2/Month <sup>4</sup>	Estimate
Benzene (µg/l) <sup>1</sup>	NA	12.0	2/Month <sup>4</sup>	Grab
Toluene (µg/l) <sup>1</sup>	NA	175.0	2/Month <sup>4</sup>	Grab
Ethylbenzene (µg/l) <sup>1</sup>	NA	320.0	2/Month <sup>4</sup>	Grab
Total Xylenes (µg/l) <sup>1</sup>	NA	33.0	2/Month <sup>4</sup>	Grab
MTBE (methyl tert-butyl ether) (µg/l) <sup>1</sup>	NA	15.0	2/Month <sup>4</sup>	Grab
pH (standard units)	6.0	9.0	2/Month <sup>4</sup>	Grab
Total Recoverable Lead (µg/l) <sup>2</sup>	NA	Lower of $e^{(1.273(\ln \text{hardness})) - 3.259}$ or 15	2/Month <sup>4</sup>	Grab
Hardness (mg/l CaCO <sub>3</sub> ) <sup>2</sup>	NL	NL	2/Month <sup>4</sup>	Grab
Ethylene Dibromide (µg/l) <sup>2</sup>	NA	.169	2/Month <sup>4</sup>	Grab
1,2 Dichloroethane (µg/l) <sup>2</sup>	NA	3.8	2/Month <sup>4</sup>	Grab
Ethanol (µg/l) <sup>3</sup>	NA	4100.0	2/Month <sup>4</sup>	Grab

NL = No limitation, monitoring required

NA = Not applicable

<sup>1</sup>Benzene, Toluene, Ethylbenzene, Total Xylenes and MTBE shall be analyzed according to a current and appropriate EPA Method (40 CFR art 136, 1996) or EPA SW 846 Method 8021B (1998).

<sup>2</sup>Monitoring for this parameter is required only when contamination results from leaded fuel. Lead shall be analyzed according to a current and appropriate EPA Wastewater Method (40 CFR 136, 1996). The minimum hardness concentration that will be used to determine the lead effluent limit is 25 mg/l. EPA SW 846 Method 8011 or EPA Drinking Water Method 504.1 shall be used to analyze ethylene dibromide (EDB) in wastewaters discharged to public water supplies. 1,2 dichloroethane and EDB shall be analyzed by a current and appropriate EPA SW 846 Method or EPA Wastewater Method from 40 CFR Part 136 (1996).

<sup>3</sup>Monitoring for ethanol is only required for discharges of water contaminated by gasoline containing greater than 10% ethanol. Ethanol shall be analyzed according to EPA SW 846 Method 8015B or EPA SW 846 Method 8260B.

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<sup>4</sup>Monitoring frequency shall be 2/month in the first year of permit coverage. If the first year results demonstrate full compliance with the effluent limitations, the permittee may request that the monitoring frequency be reduced from 2/month to 1/month. The written request shall be sent to the appropriate regional office for review. Upon written notification from the DEQ regional office, monitoring frequency shall be reduced to 1/month. Should the permittee be issued a warning letter related to violation of effluent limitations, a notice of violation, or be the subject of an active enforcement action, monitoring frequency for ethanol shall revert to 2/month, upon issuance of the letter or notice or initiation of the enforcement action and remain in effect until the permit's expiration date. Reports of quarterly monitoring shall be submitted to the DEQ regional office no later than the 10<sup>th</sup> day of April, July, October and January.

## Part I

### A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

#### 2.3. CONTAMINATION BY PETROLEUM PRODUCTS OTHER THAN GASOLINE—FRESHWATER RECEIVING WATERS NOT LISTED AS PUBLIC WATER SUPPLIES.

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge to freshwater receiving waterbodies from outfall serial number xxxx. Samples taken in compliance with the monitoring requirements specified below shall be taken at the following location: outfall from the final treatment unit prior to mixing with any other waters.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Instantaneous Maximum	Instantaneous Minimum	Frequency	Sample Type
Flow (MGD)	NA	NL	1/Month	Estimate
Naphthalene (µg/l) <sup>1</sup>	NA	<del>6</del> 10.0	1/Month	Grab*
Total Petroleum Hydrocarbons (mg/l) <sup>2</sup>	NA	<del>15</del> 15.0	1/Month	Grab**
pH (standard units)	6.0	9.0	1/Month	Grab
<del>Semi-volatile organics***</del>	NA	NL	<del>1/Year****</del>	Grab
<del>Volatiale organics***</del>	NA	NL	<del>1/Year****</del>	Grab
<del>Dissolved metals***</del>	NA	NL	<del>1/Year****</del>	Grab

NL = No limitation, monitoring required

NA = Not applicable

<sup>1</sup>Naphthalene shall be analyzed by ~~one of the following methods: EPA Method 610 or 625 (40 CFR Part 136, 1996 or EPA SW 846 Method 8100 or 8270C (1998) a current and appropriate EPA Wastewater Method from 40 CFR Part 135 (1996) or a current and appropriate EPA SW 846 Method.~~

<sup>2</sup>TPH shall be analyzed using ~~the Wisconsin Department of Natural Resources modified Diesel Range Organics test method as specified in Wisconsin Publication SW 141 (1995), or by EPA SW 846 Method 8015B for diesel range organics, or by EPA SW 846 Method 8270C. If method 8270C is used, the lab must report the total of diesel range organics and polynuclear aromatic hydrocarbons.~~

\*\*\*pH may be determined in the field by EPA method 150.1 (EPA 600/4-87-020) or EPA SW 846 method 9040B.

\*\*\*Monitoring for these parameters is required only when contamination is from used oil. The permittee shall report concentrations of all compounds or elements detected by the following analytical methods: Semi-volatile organics according to EPA Method 1625 (40 CFR Part 136, 1996) or EPA SW 846 Method 8270C (1998); Volatile organics according to EPA Method 1624 (40 CFR Part 136, 1996) or EPA SW 846 Method 8260B (1998); Dissolved metals according to EPA Method 200.7 (40 CFR Part 136, 1996) or EPA SW 846 (Method 6010B (1998) or other equivalent EPA 40 CFR Part 136 methods with comparable detection limits and target analyte specificity.

\*\*\*\*The first annual sample shall be collected within 72 hours of commencement of the discharge.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

4. CONTAMINATION BY PETROLEUM PRODUCTS OTHER THAN GASOLINE—FRESHWATER RECEIVING WATERS LISTED AS PUBLIC WATER SUPPLIES.

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge to freshwater receiving waterbodies from outfall serial number xxxx. Samples taken in compliance with the monitoring requirements specified below shall be taken at the following location: outfall from the final treatment unit prior to mixing with any other waters.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Instantaneous Maximum	Instantaneous Minimum	Frequency	Sample Type
Flow (MGD)	NA	NL	2/Month <sup>4</sup>	Estimate
Naphthalene (µg/l) <sup>1</sup>	NA	10.0	2/Month <sup>4</sup>	Grab
Benzene (µg/l) <sup>2</sup>	NA	12.0	2/Month <sup>4</sup>	Grab
MTBE (methyl tert-butyl ether)(µg/l) <sup>2</sup>	NA	15.0	2/Month <sup>4</sup>	Grab
Total Petroleum Hydrocarbons (mg/l) <sup>3</sup>	NA	15.0	2/Month <sup>4</sup>	Grab
pH (standard units)	6.0	9.0	2/Month <sup>4</sup>	Grab

NL = No limitation, monitoring required

NA = Not applicable

<sup>1</sup>Naphthalene shall be analyzed by a current and appropriate EPA Wastewater Method from 40 CFR Part 135 (1996) or a current and appropriate EPA SW 846 Method.

<sup>2</sup>Benzene and MTBE shall be analyzed according to a current and appropriate EPA Wastewater Method (40 CFR 136,1996) or EPA SW 846 Method.

<sup>3</sup>TPH shall be analyzed using EPA SW 846 Method 8015B for diesel range organics, or by EPA SW 846 Method 8270C. If Method 8270C is used, the lab must report the total of diesel range organics and polynuclear aromatic hydrocarbons.

<sup>4</sup>Monitoring frequency shall be 2/month in the first year of permit coverage. If the first year results demonstrate full compliance with the effluent limitations, the permittee may request that the monitoring frequency be reduced from 2/month to 1/month. The written request shall be sent to the appropriate regional office for review. Upon written notification from the DEQ regional office, monitoring frequency shall be reduced to 1/month. Should the permittee be issued a warning letter related to violation of effluent limitations, a notice of violation, or be the subject of an active enforcement action, monitoring frequency for ethanol shall revert to 2/month, upon issuance of the letter or notice or initiation of the enforcement action and remain in effect until the permit's expiration date. Reports of quarterly monitoring shall be submitted to the DEQ regional office no later than the 10<sup>th</sup> day of April, July, October and January.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

3-5. DISCHARGES OF HYDROSTATIC TEST WATERS - ALL RECEIVING WATERS

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge to receiving waterbodies from outfall serial number xxxx. Samples taken in compliance with the monitoring requirements specified below shall be taken at the following location: Outfall from the final treatment unit prior to mixing with any other waters.

Such discharges shall be limited and monitored by the permittee as specified below:

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EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Instantaneous Maximum	Instantaneous Minimum	Frequency	Sample Type
Flow (MGD)	NA	NL	1/discharge	Estimate
pH (standard units)*	6.0	9.0	1/discharge	Grab
Total Petroleum Hydrocarbons (mg/l)**1	NA	15.0	1/discharge	Grab
Total Organic Carbon (TOC, mg/l)	NA	NL	1/discharge	Grab
Total Residual Chlorine	NA	0.011	1/discharge	Grab
Total Suspended Solids (TSS)	NA	NL	1/discharge	Grab

NL = No limitation, monitoring required

NA = Not applicable

\*pH may be determine in the field by EPA method 150.1 (EPA 600/4-87-020) or EPA SW 846 method 9040B.

\*\*1TPH shall be nalyzed by the Wisconsin Department of Natural Resources modified Diesel Range Organics test method as specified in Wisconsin publication SW 141 (1995), or is the sum of individual gasoline range organics or TPH-GRO and TPH-DRO to be measured by EPA SW 846 Method 8015B (1996) for gasoline and diesel range organics, or by EPA SW Method 846 Methods 8260B and 8270C. If the combination of Methods 8260B and 82670C is used, the lab must report the combination total of gasoline range organics, diesel range organics and polynuclear aromatic hydrocarbons.

## Part I

### A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

#### 4.6. GASOLINE CONTAMINATION—SALTWATER RECEIVING WATERS.

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge to saltwater receiving waterbodies from outfall serial number xxxx. Samples taken in compliance with the monitoring requirements specified below shall be taken at the following location: outfall from the final treatment unit prior to mixing with any other waters.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Instantaneous Maximum	Instantaneous Minimum	Frequency	Sample Type
Flow (MGD)	NA	NL	1/Month	Estimate
Benzene (µg/l) <sup>1</sup>	NA	<del>50</del> 50.0	1/Month	Grab*
Toluene (µg/l) <sup>1</sup>	NA	<del>500</del> 500.0	1/Month	Grab*
Ethylbenzene (µg/l) <sup>1</sup>	NA	4.3	1/Month	Grab*
Total Xylenes (µg/l) <sup>1</sup>	NA	<del>74</del> 74.0	1/Month	Grab*
MTBE (methyl tert-butyl ether) (µg/l) <sup>1</sup>	NA	<del>440</del> 440.0	1/Month	Grab*
pH (standard units)	6.0	9.0	1/Month	Grab
Total Recoverable Lead (µg/l) <sup>2</sup>	NA	8.5	1/Month	Grab**
Ethylene Dibromide (µg/l) <sup>2</sup>	NA	5.3	1/Month	Grab
1,2 Dichloroethane (µg/l) <sup>2</sup>	NA	990.0	1/Month	Grab

Ethanol ( $\mu\text{g/l}$ ) <sup>3</sup>	NA	4100.0	1/Month <sup>3</sup>	Grab
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NL = No limitation, monitoring required

NA = Not applicable

<sup>1</sup>Benzene, Toluene, Ethylbenzene, Total Xylenes and MTBE shall be analyzed according to a current and appropriate EPA Wastewater Method 602(40 CFR art 136, 1996) or EPA SW 846 Method 8021B (1998).

~~\*\* pH may be determine in the field by EPA method 150.1 (EPA 600/4 87 020) or EPA SW 846 method 9040B.~~

~~\*\*\*<sup>2</sup>Monitoring for this parameter is required only when contamination results from leaded fuel. Lead analysis shall be analyzed according to a current and appropriate EPA Wastewater Method 239.2 (40 CFR 136, 1996) or EPA SW 846 Method 7421 (1998). 1,2 dichloroethane and EDB (surface waters that are not public water supplies) should be analyzed by a current and appropriate EPA SW 846 Method or EPA Wastewater Method from 40 CFR Part 136 (1996).~~

<sup>3</sup>Monitoring for ethanol is only required for discharges of water contaminated by gasoline containing greater than 10% ethanol. Ethanol shall be analyzed according to EPA SW 846 Method 8015B or EPA SW 846 Method 8260B. Monitoring frequency shall be 1/month in the first year of permit coverage. If the first year results demonstrate full compliance with the effluent limitations, the permittee may request that the monitoring frequency be reduced from monthly to 1/quarter. The written request shall be sent to the appropriate regional office for review. Upon written notification from the DEQ regional office, monitoring frequency shall be reduced to 1/quarter. Should the permittee be issued a warning letter related to violation of effluent limitations, a notice of violation, or be the subject of an active enforcement action, monitoring frequency for ethanol shall revert to 1/month, upon issuance of the letter or notice or initiation of the enforcement action and remain in effect until the permit's expiration date. Reports of quarterly monitoring shall be submitted to the DEQ regional office no later than the 10th day of April, July, October and January.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

~~5-7.~~ CONTAMINATION BY PETROLEUM PRODUCTS OTHER THAN GASOLINE—SALTWATER RECEIVING WATERS.

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge to saltwater receiving waterbodies from outfall serial number xxxx. Samples taken in compliance with the monitoring requirements specified below shall be taken at the following location: outfall from the final treatment unit prior to mixing with any other waters.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Instantaneous Maximum	Instantaneous Minimum	Frequency	Sample Type
Flow (MGD)	NA	NL	1/Month	Estimate
Naphthalene ( $\mu\text{g/l}$ ) <sup>1</sup>	NA	<del>23.58.9</del>	1/Month	Grab*
Total Petroleum Hydrocarbons (mg/l) <sup>2</sup>	NA	<del>1515.0</del>	1/Month	Grab**
pH (standard units)	6.0	9.0	1/Month	Grab
<del>Semi-volatile organics***</del>	NA	NL	<del>1/Year****</del>	<del>Grab</del>
<del>Volatiale organics***</del>	NA	NL	<del>1/Year****</del>	<del>Grab</del>
<del>Dissolved metals***</del>	NA	NL	<del>1/Year****</del>	<del>Grab</del>

NL = No limitation, monitoring required

NA = Not applicable

# Regulations

\*<sup>1</sup>Naphthalene shall be analyzed by ~~one of the following methods: EPA Method 610 or 625 a current and appropriate EPA Wastewater Method from (40 CFR Part 136, 1996 or a current and appropriate EPA SW 846 Methods 8100 or 8270C (1998)Method.~~

\*<sup>2</sup>TPH shall be analyzed using ~~either the Wisconsin Department of Natural Resources modified Diesel Range Organics test method as specified in Wisconsin Publication SW 141 (1995), or by EPA method SW 846 Method 8270C (1998). EPA SW 846 Method 8015B for diesel range organics or EPA SW 846 Method 8270C. If Method 8270C is used, the lab must report the combination total of diesel range organics and polynuclear aromatic hydrocarbons.~~

\*\*\*pH may be determined in the field by EPA method 150.1 (EPA 600/4-87-020) or EPA SW 846 method 9040B.

\*\*\*Monitoring for these parameters is required only when contamination is from used oils. The permittee shall report concentrations of all compounds or elements detected by the following analytical methods: Semi-volatile organics according to EPA Method 1625 (40 CFR Part 136, 1996) or EPA SW 846 Method 8270C (1998); Volatile organics according to EPA Method 1624 (40 CFR Part 136, 1996) or EPA SW 846 Method 8260B (1998); Dissolved metals according to EPA Method 200.7 (40 CFR Part 136, 1996) or EPA SW 846 (Method 6010B (1998) or other equivalent EPA 40 CFR Part 136 methods with comparable detection limits and target analyte specificity.

\*\*\*The first annual sample shall be collected within 72 hours of commencement of the discharge.

## Part I

### A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.

#### 8. CONTAMINATION BY CHLORINATED HYDROCARBON SOLVENTS - ALL RECEIVING WATERS.

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge to freshwater receiving waterbodies from outfall serial number xxxx. Samples taken in compliance with the monitoring requirements specified below shall be taken at the following location: outfall from the final treatment unit prior to mixing with any other waters.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Instantaneous Maximum	Instantaneous Minimum	Frequency	Sample Type
Flow (MGD)	NA	NL	1/Month	Estimate
Chloroform (CAS # 67663), (µg/l) <sup>1</sup>	NA	100.0	1/Month 2/Month if public water supply <sup>2</sup>	Grab Grab
1,1 Dichloroethane (CAS # 75343) (µg/l) <sup>1</sup>	NA	4.0	1/Month 2/Month if public water supply <sup>2</sup>	Grab Grab
1,2 Dichloroethane (CAS # 107062) (µg/l) <sup>1</sup>	NA	3.8	1/Month 2/Month if public water supply <sup>2</sup>	Grab Grab
1,1 Dichloroethane (CAS # 75354) (µg/l) <sup>1</sup>	NA	7.0	1/Month 2/Month if public water supply <sup>2</sup>	Grab Grab
cis-1,2 Dichloroethylene (CAS # 159592) (µg/l) <sup>1</sup>	NA	70.0	1/Month 2/Month if public water supply <sup>2</sup>	Grab Grab

## Regulations

<u>Trans 1,2 Dichloroethylene (CAS # 156605) (µg/l)<sup>1</sup></u>	<u>NA</u>	<u>100.0</u>	<u>1/Month</u> <u>2/Month if public water supply<sup>2</sup></u>	<u>Grab</u> <u>Grab</u>
<u>Methylene Chloride (CAS # 75092) (µg/l)<sup>1</sup></u>	<u>NA</u>	<u>5.0</u>	<u>1/Month</u> <u>2/Month if public water supply<sup>2</sup></u>	<u>Grab</u> <u>Grab</u>
<u>Tetrachloroethylene (CAS # 127184) (µg/l)<sup>1</sup></u>	<u>NA</u>	<u>5.0</u>	<u>1/Month</u> <u>2/Month if public water supply<sup>2</sup></u>	<u>Grab</u> <u>Grab</u>
<u>1,1,1 Trichloroethane (CAS # 71556) (µg/l)<sup>1</sup></u>	<u>NA</u>	<u>112.0</u>	<u>1/Month</u> <u>2/Month if public water supply<sup>2</sup></u>	<u>Grab</u> <u>Grab</u>
<u>1,1,2 Trichloroethane (CAS # 79005) (µg/l)<sup>1</sup></u>	<u>NA</u>	<u>5.0</u>	<u>1/Month</u> <u>2/Month if public water supply<sup>2</sup></u>	<u>Grab</u> <u>Grab</u>
<u>Trichloroethylene (CAS # 79016) (µg/l)<sup>1</sup></u>	<u>NA</u>	<u>5.0</u>	<u>1/Month</u> <u>2/Month if public water supply<sup>2</sup></u>	<u>Grab</u> <u>Grab</u>
<u>Vinyl Chloride (CAS # 79016) (µg/l)<sup>1</sup></u>	<u>NA</u>	<u>2.0</u>	<u>1/Month</u> <u>2/Month if public water supply<sup>2</sup></u>	<u>Grab</u> <u>Grab</u>
<u>Carbon Tetrachloride (CAS # 56235) (µg/l)<sup>1</sup></u>	<u>NA</u>	<u>2.5</u>	<u>1/Month</u> <u>2/Month if public water supply<sup>2</sup></u>	<u>Grab</u> <u>Grab</u>
<u>1,2 Dichlorobenzene (CAS # 95501) (µg/l)<sup>1</sup></u>	<u>NA</u>	<u>15.8</u>	<u>1/Month</u> <u>2/Month if public water supply<sup>2</sup></u>	<u>Grab</u> <u>Grab</u>
<u>Chlorobenzene (CAS # 108907) (µg/l)<sup>1</sup></u>	<u>NA</u>	<u>3.0</u>	<u>1/Month</u> <u>2/Month if public water supply<sup>2</sup></u>	<u>Grab</u> <u>Grab</u>
<u>Trichlorofluoromethane (CAS # 75694) (µg/l)<sup>1</sup></u>	<u>NA</u>	<u>5.0</u>	<u>1/Month</u> <u>2/Month if public water supply<sup>2</sup></u>	<u>Grab</u> <u>Grab</u>
<u>Chloroethane (CAS # 75003) (µg/l)<sup>1</sup></u>	<u>NA</u>	<u>3.6</u>	<u>1/Month</u> <u>2/Month if public water supply<sup>2</sup></u>	<u>Grab</u> <u>Grab</u>
<u>pH (standard units)</u>	<u>6.0</u>	<u>9.0</u>	<u>1/Month</u> <u>2/Month if public water supply<sup>2</sup></u>	<u>Grab</u> <u>Grab</u>

NL = No limitation, monitoring required

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# Regulations

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NA = Not applicable

<sup>1</sup>This constituent shall be analyzed by a current and appropriate gas chromatograph/mass spectroscopy method from EPA SW 846 or the EPA Wastewater Method series from 40 CFR Part 135 (1996).

<sup>2</sup>Monitoring frequency shall be 2/month in the first year of permit coverage. If the first year results demonstrate full compliance with the effluent limitations, the permittee may request that the monitoring frequency be reduced from 2/month to 1/month. The written request shall be sent to the appropriate regional office for review. Upon written notification from the DEQ regional office, monitoring frequency shall be reduced to 1/month. Should the permittee be issued a warning letter related to violation of effluent limitations, a notice of violation, or be the subject of an active enforcement action, monitoring frequency for ethanol shall revert to 2/month, upon issuance of the letter or notice or initiation of the enforcement action and remain in effect until the permit's expiration date.

## Part I

### B. Special conditions.

1. There shall be no discharge of floating solids or visible foam in other than trace amounts.

2. The permittee shall sample each permitted outfall each calendar month in which a discharge occurs. When no discharge occurs from an outfall during a calendar month, the discharge monitoring report for that outfall shall be submitted indicating "No Discharge."

3. O & M Manual. If the permitted discharge is through a treatment works, within 30 days of coverage under this general permit, the permittee shall develop and maintain on site, an Operations and Maintenance (O & M) Manual for the treatment works permitted herein. This manual shall detail practices and procedures which will be followed to ensure compliance with the requirements of this permit. The permittee shall operate the treatment works in accordance with the O & M Manual. The manual shall be made available to the department upon request.

4. Operation schedule. The permittee shall construct, install and begin operating the treatment works described in the registration statement prior to discharging to surface waters. The permittee shall notify the department's regional office within five days after the completion of installation and commencement of operation.

5. Materials storage. Except as expressly authorized by this permit or another permit issued by the board, no product, materials, industrial wastes, or other wastes resulting from the purchase, sale, mining, extraction, transport, preparation, or storage of raw or intermediate materials, final product, by-product or wastes, shall be handled, disposed of, or stored so as to permit a discharge of such product, materials, industrial wastes, or other wastes to state waters.

6. If the permittee discharges to surface waters through a municipal separate storm sewer system, the permittee shall, within 30 days of coverage under this general permit, notify the owner of the municipal separate storm sewer system of the existence of the discharge and provide the following information: the name and location of the facility, a contact

person and telephone number; the nature of the discharge; and the number of outfalls.

7. Termination of coverage. Provided that the department agrees that the discharge covered under this general permit is no longer needed, the permittee may request termination of coverage under the general permit, for the entire facility or for specific outfalls, by submitting a request for termination of coverage. This request for termination of coverage shall be sent to the department's regional office with appropriate documentation or references to documentation already in the department's possession. Upon the permittee's receipt of the regional director's approval, coverage under this general permit will be terminated. Termination of coverage under this general permit does not relieve the permittee of responsibilities under other board regulations or directives.

## Part II

### Conditions Applicable To All VPDES Permits

#### A. Monitoring.

1. Samples and measurements taken as required by this permit shall be representative of the monitored activity.

2. Monitoring shall be conducted according to procedures approved under 40 CFR Part 136 or alternative methods approved by the U.S. Environmental Protection Agency, unless other procedures have been specified in this permit.

3. The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will ensure accuracy of measurements.

#### B. Records.

1. Records of monitoring information shall include:

a. The date, exact place, and time of sampling or measurements;

b. The individuals who performed the sampling or measurements;

c. The dates and times analyses were performed;

d. The individual or individuals who performed the analyses;

- e. The analytical techniques or methods used; and
- f. The results of such analyses.

2. Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years, the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation; copies of all reports required by this permit; and records of all data used to complete the registration statement for this permit for a period of at least three years from the date of the sample, measurement, report or request for coverage. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the board.

C. Reporting monitoring results.

1. The permittee shall submit the results of the monitoring required by this permit not later than the 10th day of the month after monitoring takes place unless another reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the department's regional office.

2. Monitoring results shall be reported on a Discharge Monitoring Report (DMR) or on forms provided, approved or specified by the department.

3. If the permittee monitors any pollutant specifically addressed by this permit more frequently than required by this permit using test procedures approved under 40 CFR Part 136 or using other test procedures approved by the U.S. Environmental Protection Agency or using procedures specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or reporting form specified by the department.

4. Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this permit.

D. Duty to provide information. The permittee shall furnish to the department, within a reasonable time, any information which the board may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The board may require the permittee to furnish, upon request, such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from his discharge on the quality of state waters or such other information as may be necessary to accomplish the purposes of the State Water Control Law. The permittee shall also furnish to the department upon request copies of records required to be kept by this permit.

E. Compliance schedule reports. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

F. Unauthorized discharges. Except in compliance with this permit or another permit issued by the board, it shall be unlawful for any person to:

- 1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or
- 2. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, to animal or aquatic life, to the use of such waters for domestic or industrial consumption, for recreation, or for other uses.

G. Reports of unauthorized discharges. Any permittee who discharges or causes or allows a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or upon state waters in violation of Part II F or who discharges or causes or allows a discharge that may reasonably be expected to enter state waters in violation of Part II F shall notify the department of the discharge immediately upon discovery of the discharge, but in no case later than 24 hours after the discovery. A written report of the unauthorized discharge shall be submitted to the department within five days of discovery of the discharge. The written report shall contain:

- 1. A description of the nature and location of the discharge;
- 2. The cause of the discharge;
- 3. The date on which the discharge occurred;
- 4. The length of time that the discharge continued;
- 5. The volume of the discharge;
- 6. If the discharge is continuing, how long it is expected to continue;
- 7. If the discharge is continuing, what the expected total volume of the discharge will be; and
- 8. Any steps planned or taken to reduce, eliminate and prevent a recurrence of the present discharge or any future discharges not authorized by this permit.

Discharges reportable to the department under the immediate reporting requirements of other regulations are exempted from this requirement.

H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge including a bypass or upset should occur from a treatment works and the discharge enters or could be expected to enter state waters, the permittee shall promptly notify, in no case later than 24 hours, the department by telephone after the discovery of the discharge.

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This notification shall provide all available details of the incident, including any adverse effects on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit the report to the department ~~in writing~~ within five days of discovery of the discharge in accordance with Part II I 2. Unusual and extraordinary discharges include but are not limited to any discharge resulting from:

1. Unusual spillage of materials resulting directly or indirectly from processing operations;
2. Breakdown of processing or accessory equipment;
3. Failure or taking out of service some or all of the treatment works; and
4. Flooding or other acts of nature.

I. Reports of noncompliance. The permittee shall report any noncompliance which may adversely affect state waters or may endanger public health as follows:

1. An oral report shall be provided within 24 hours from the time the permittee becomes aware of the circumstances. The following shall be included as information which shall be reported within 24 hours under this subsection:

- a. Any unanticipated bypass; and
- b. Any upset which causes a discharge to surface waters.

2. A written report shall be submitted within five days and shall contain:

- a. A description of the noncompliance and its cause;
- b. The period of noncompliance including exact dates and times and, if the noncompliance has not been corrected, the anticipated time it is expected to continue; and
- c. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

The board may waive the written report on a case-by-case basis for reports of noncompliance under Part II I if the oral report has been received within 24 hours and no adverse impact on state waters has been reported.

3. The permittee shall report all instances of noncompliance not reported under Part II I 1 or 2, in writing, at the time the next monitoring reports are submitted. The reports shall contain the information listed in Part II I 2.

NOTE: The immediate (within 24 hours) reports required in Part II G, H and I may be made to the department's regional office. Reports may be made by telephone or by FAX. For reports outside normal working hours, leave a message and this shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Services maintains a 24-hour telephone service at 1-800-468-8892.

J. Notice of planned changes.

1. The permittee shall give notice to the department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

a. The permittee plans an alteration or addition to any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

(1) After promulgation of standards of performance under §306 of the Clean Water Act which are applicable to such source; or

(2) After proposal of standards of performance in accordance with §306 of the Clean Water Act which are applicable to such source, but only if the standards are promulgated in accordance with §306 of the Act within 120 days of their proposal;

b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations nor to notification requirements specified elsewhere in this permit; or

c. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.

2. The permittee shall give advance notice to the department of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

K. Signatory requirements.

1. Registration statement. All registration statements shall be signed as follows:

a. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a public agency includes (i) the chief executive officer of the agency or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

2. Reports. All reports required by permits, and other information requested by the board shall be signed by a person described in Part II K 1, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described in Part II K 1;

b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. A duly authorized representative thus may be either a named individual or any individual occupying a named position; and

c. The written authorization is submitted to the department.

3. Changes to authorization. If an authorization under Part II K 2 is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part II K 2 shall be submitted to the department prior to or together with any reports or information to be signed by an authorized representative.

4. Certification. Any person signing a document under Parts II K 1 or 2 shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to ensure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

L. Duty to comply. The permittee shall comply with all conditions of this permit. Any permit noncompliance

constitutes a violation of the State Water Control Law and the Clean Water Act, except that noncompliance with certain provisions of this permit may constitute a violation of the State Water Control Law but not the Clean Water Act. Permit noncompliance is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

The permittee shall comply with effluent standards or prohibitions established under §307(a) of the Clean Water Act for toxic pollutants and with standards for sewage sludge use or disposal established under §405(d) of the Clean Water Act within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if this permit has not yet been modified to incorporate the requirement.

M. Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall submit a new registration statement at least 180 days before the expiration date of the existing permit, unless permission for a later date has been granted by the board. The board shall not grant permission for registration statements to be submitted later than the expiration date of the existing permit.

N. Effect of a permit. This permit does not convey any property rights in either real or personal property or any exclusive privileges, nor does it authorize any injury to private property or invasion of personal rights, or any infringement of federal, state or local law or regulations.

O. State law. Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any other state law or regulation or under authority preserved by §510 of the Clean Water Act. Except as provided in permit conditions on ~~bypass~~ "bypassing" (Part II U) and ~~upset~~ "upset" (Part II V), nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

P. Oil and hazardous substance liability. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Article 11 (§62.1-44.34:14 et seq.) of the State Water Control Law.

Q. Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision

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requires the operation of back-up or auxiliary facilities or similar systems which are installed by the permittee only when the operation is necessary to achieve compliance with the conditions of this permit.

R. Disposal of solids or sludges. Solids, sludges or other pollutants removed in the course of treatment or management of pollutants shall be disposed of in a manner so as to prevent any pollutant from such materials from entering state waters.

S. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

T. Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

U. Bypass.

1. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to ~~ensure~~ assure efficient operation. These bypasses are not subject to the provisions of Part II U 2 and 3.

2. Notice.

a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, prior notice shall be submitted, if possible, at least 10 days before the date of the bypass.

b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in Part II I.

3. Prohibition of bypass.

a. Bypass is prohibited, and the board may take enforcement action against a permittee for bypass, unless:

(1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(3) The permittee submitted notices as required under Part II U 2.

b. The board may approve an anticipated bypass, after considering its adverse effects, if the board determines that it will meet the three conditions listed above in Part II U 3 a.

V. Upset.

1. An upset constitutes an affirmative defense to an action brought for noncompliance with technology-based permit effluent limitations if the requirements of Part II V 2 are met. A determination made during administrative review of claims that noncompliance was caused by upset and before an action for noncompliance is not a final administrative action subject to judicial review.

2. A permittee who wishes to establish the affirmative defense of upset shall demonstrate through properly signed, contemporaneous operating logs or other relevant evidence that:

a. An upset occurred and that the permittee can identify the cause or causes of the upset;

b. The permitted facility was at the time being properly operated;

c. The permittee submitted notice of the upset as required in Part II I; and

d. The permittee complied with any remedial measures required under Part II S.

3. In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

W. Inspection and entry. The permittee shall allow the director or an authorized representative, upon presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted or where records must be kept under the conditions of this permit;

2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

4. Sample or monitor at reasonable times, for the purposes of ensuring permit compliance or as otherwise authorized by the Clean Water Act and the State Water Control Law any substances or parameters at any location.

For purposes of this section, the time for inspection shall be deemed reasonable during regular business hours, and whenever the facility is discharging. Nothing contained herein shall make an inspection unreasonable during an emergency.

X. Permit actions. Permits may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

Y. Transfer of permits.

1. Permits are not transferable to any person except after notice to the department. Except as provided in Part II Y 2, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued, or a minor modification made, to identify the new permittee and incorporate such other requirements as may be necessary under the State Water Control Law and the Clean Water Act.

2. As an alternative to transfers under Part II Y 1, this permit may be automatically transferred to a new permittee if:

- a. The current permittee notifies the department at least 30 days in advance of the proposed transfer of the title to the facility or property;
- b. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and
- c. The board does not notify the existing permittee and the proposed new permittee of its intent to modify or revoke and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part II Y 2 b.

Z. Severability. The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

DOCUMENTS INCORPORATED BY REFERENCE

~~Wisconsin Publication SW 141 (1995).~~

Method Cite

- 150.1 EPA 600/4-87-020
- 200.7 EPA 600/R-94-111; 40 CFR 136, App D, 1996
- 239.2 EPA 600/4-79-020; 40 CFR 136, App D, 1996
- 602 40 CFR 136, 1996
- 610 40 CFR 136, 1996
- 625 40 CFR 136, 1996
- 1624 40 CFR 136, 1996
- 1625 40 CFR 136, 1996
- 6010B EPA SW 846, Ch. 3.3, (1998)

- 7421 EPA SW 846, Ch. 3.3, (1998)
- 8015B EPA SW 846, Ch. 4.3.1, (1998)
- 8021B EPA SW 846, Ch. 4.3.1, (1998)
- 8100 EPA SW 846, Ch. 4.3.1, (1998)
- 8260B EPA SW 846, Ch. 4.3.2, (1998)
- 8270C EPA SW 846, Ch. 4.3.2, (1998)
- 9040B EPA SW 846, Ch. 8.2, (1998)

VA.R. Doc. No. R07-21; Filed Aug 1, 2007, 10:33 a.m.

**Proposed Regulation**

**REGISTRAR'S NOTICE:** The following regulation filed by the State Water Control Board is exempt from the Administrative Process Act in accordance with §2.2-4006 A 9 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.), Chapter 24 (§62.1-242 et seq.) of Title 62.1 and Chapter 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, (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit, (iii) provides notice and receives oral and written comment as provided in §2.2-4007.03, and (iv) conducts at least one public hearing on the proposed general permit.

**Title of Regulation:** **9VAC25-196. General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Noncontact Cooling Water Discharges of 50,000 Gallons Per Day or Less (amending 9VAC25-196-20, 9VAC25-196-40, 9VAC25-196-60, 9VAC25-196-70).**

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

**Public Hearing Information:**

October 3, 2007 - 10:00 a.m. - Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA

**Public Comments:** Public comments may be submitted until 5 p.m. on October 19, 2007.

**Public Participation:** In addition to any other comments, the board is seeking comments on the costs and benefits of the proposal, the potential impacts on the regulated community and on any impacts of the regulation on farm and forest land preservation. Also, the board is seeking information on impacts on small businesses as defined in §2.2-4007.1 of the Code of Virginia. Information may include (i) projected reporting, recordkeeping and other administrative costs, (ii)

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probable effect of the regulation on affected small businesses, and (iii) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so at the public hearing or by mail, email or fax to the agency contact identified below. Comments may also be submitted through the public forum feature of the Virginia Regulatory Town Hall website at: [www.townhall.virginia.gov](http://www.townhall.virginia.gov). Written comments must include the name and address of the commenter. In order to be considered comments must be received by 5 p.m. on Friday, October 19, 2007.

**Agency Contact:** Burton R. Tuxford, Department of Environmental Quality, P.O. Box 1105, 629 East Main Street, Richmond, VA 23218, telephone (804) 698-4086, FAX (804) 698-4032, or email [brtuxford@deq.virginia.gov](mailto:brtuxford@deq.virginia.gov).

**Summary:**

*This regulation will reissue the existing VPDES cooling water general permit that expires on March 1, 2008. The general permit will establish limitations and monitoring requirements for point source discharges of noncontact cooling water. The significant changes to the regulation are as follows:*

- 1. The title of the regulation will be "General Virginia Pollutant Discharge Elimination System (VPDES) Permit For Noncontact Cooling Water Discharges of 50,000 Gallons Per Day or Less" to indicate the coverage restrictions.*
- 2. The Registration Statement item #6 and permit Special Condition #3 will require either an engineering analysis or a technical evaluation of the active ingredients of the chemical additives proposed to be used to determine the concentration in the discharge. Previously the regulation only required an estimate of the concentration in the discharge.*
- 3. Footnote #3 of the permit Part I, Effluent Limitations and Monitoring Requirements section is clarified to indicate that the ammonia monitoring only applies where the source of the cooling water is disinfected using chloramines.*
- 4. Permit Special Condition item #7 is added to allow a permittee to apply for reduced monitoring if they have a geothermal system using groundwater and no chemical additives, and their monitoring data shows they are in full compliance with their effluent limitations. The department must authorize the reduced monitoring, and any subsequent enforcement action will require the permittee to resume the full permit monitoring requirements.*

## CHAPTER 196

### GENERAL VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM (VPDES) PERMIT FOR NONCONTACT COOLING WATER DISCHARGES OF 50,000 GALLONS PER DAY OR LESS

**9VAC25-196-20. Purpose.**

This general permit regulation governs ~~the~~ point source ~~discharge~~ discharges of noncontact cooling water of 50,000 gallons per day or less to surface waters.

**9VAC25-196-40. Effective date of the permit.**

This general permit will become effective on March 2, ~~2003~~ 2008. This general permit will expire five years from the effective date. This general permit is effective as to any covered owner upon compliance with all the provisions of 9VAC25-196-50 and the receipt of this general permit.

**9VAC25-196-60. Registration statement.**

The owner shall file a complete general VPDES permit registration statement for cooling water discharges. Any owner proposing a new discharge shall file a complete registration statement at least 30 days prior to the date planned for commencing operation of the new discharge. Any owner of an existing discharge covered by an individual VPDES permit who is proposing to be covered by this general permit shall file the registration statement at least 180 days prior to the expiration date of the individual VPDES permit. Any owner of an existing discharge not currently covered by a VPDES permit who is proposing to be covered by this general permit shall file a complete registration statement. The required registration statement shall contain the following information:

1. Facility name and address, owner name and mailing address and telephone number;
2. Operator name, mailing address, and telephone number if different from owner;
3. Does the facility currently have a VPDES permit? Permit Number if yes;
4. Listing of point source discharges that are not composed entirely of cooling water;
5. Listing of type and size (tons) of cooling equipment or noncontact cooling water processes;
6. The following information if any chemical or nonchemical treatment, or both, is employed in each of the cooling water systems:
  - a. Description of the chemical or nonchemical treatment, or both, to be employed and its purpose; ~~For~~ for chemical additives other than chlorine, provide the information prescribed in subdivisions 6 b, c, and d below, e and f;
  - b. Name and manufacturer of each additive used;

- c. List of active ingredients and percent composition;
- d. Proposed schedule and quantity of chemical usage, and estimate of either an engineering analysis, or a technical evaluation of the active ingredients, to determine the concentration in the discharge;
- e. Available aquatic toxicity information for each proposed additive used; and
- f. Any other information such as product or constituent degradation, fate, transport, synergies, bioavailability, etc., that will aid the board with the toxicity evaluation of the discharge.

7. Description of any type of treatment or retention being provided to the wastewater before discharge (i.e. retention ponds, settling ponds, etc.)

8. A schematic drawing of the cooling water equipment that shows the source of the cooling water, its flow through the facility, and each cooling water discharge point.

9. For cooling waters with a direct discharge to surface waters, a topographic map extending to at least one mile beyond the property boundary. The map must show the outline of the facility and the location of each of its existing and proposed intake and discharge points, and must include all springs, rivers and other surface water bodies.

10. The following discharge information:

- a. A listing of all cooling water discharges by a unique number;
- b. The source of cooling water for each discharge;
- c. An estimate of the maximum daily flow in gallons per day for each discharge;
- d. The name of the waterbody receiving direct discharge or discharge through the municipal separate storm sewer system;
- e. The duration and frequency of the discharge for each separate discharge point; continuous, intermittent, or seasonal;
- f. The name and contact information of the owner of the municipal separate storm sewer system that receives the discharge, if applicable.

11. The following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I

am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations.

The registration statement shall be signed in accordance with 9VAC25-31-110.

**9VAC25-196-70. General permit.**

Any owner whose registration statement is accepted by the board will receive the following permit and shall comply with the requirements therein and be subject to all requirements of 9VAC25-31.

General Permit No: VAG25

Effective Date: March 2, ~~2003~~ 2008

Expiration Date: March 1, ~~2008~~ 2013

**GENERAL PERMIT FOR NONCONTACT COOLING WATER DISCHARGES**

**OF 50,000 GALLONS PER DAY OR LESS**

**AUTHORIZATION TO DISCHARGE UNDER THE VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM AND THE VIRGINIA STATE WATER CONTROL LAW**

In compliance with the provisions of the Clean Water Act, as amended, and pursuant to the State Water Control Law and regulations adopted pursuant thereto, owners of noncontact cooling water discharges of 50,000 gallons per day or less are authorized to discharge to surface waters within the boundaries of the Commonwealth of Virginia, except Class V stockable trout waters, Class VI natural trout waters, and those specifically named in board regulations or policies which prohibit such discharges. Chlorine or any other halogen compounds shall not be used for disinfection or other treatment purposes, including biocide applications, for any discharges to waters containing endangered or threatened species as identified in 9VAC25-260-110 C of the Water Quality Standards.

The authorized discharge shall be in accordance with this cover page, Part I—Effluent Limitations and Monitoring Requirements, and Part II—Conditions Applicable to all VPDES Permits, as set forth herein.

Part I

**A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS.**

During the period beginning on the permit's effective date and lasting until the permit's expiration date, the permittee is authorized to discharge non-contact cooling water. Samples taken in compliance with the monitoring requirements specified below shall be taken at the following location(s):  
outfall(s): \_\_\_\_\_.

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Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Maximum	Minimum	Frequency	Sample Type
Flow (MGD)	0.05	NA	1/3 Months	Estimate
Temperature (°C)	<sup>(1)</sup>	NA	1/3 Months	Immersion Stabilization
pH (SU)	9 <sup>(2)</sup>	6 <sup>(2)</sup>	1/3 Months	Grab
Ammonia-N <sup>(3)</sup> (mg/l)	NL	NA	1/3 Months	Grab
Total Residual Chlorine <sup>(3)</sup> (mg/l)	Nondetectable	NA	1/3 Months	Grab
Hardness (mg/l CaCO <sub>3</sub> )	NL	NA	1/3 Months	Grab
Total Dissolved Copper <sup>(4)</sup> (µg/l)	NL	NA	1/3 Months	Grab
Total Dissolved Zinc <sup>(4)</sup> (µg/l)	NL	NA	1/3 Months	Grab
Total Dissolved Silver <sup>(4), (5)</sup> (µg/l)	NL	NA	1/3 Months	Grab
Total Phosphorus <sup>(6)</sup> (mg/l)	NL	NA	1/3 Months	Grab

NL = No limitation, monitoring required

NA = Not applicable

<sup>(1)</sup> The effluent temperature shall not exceed a maximum 32°C for discharges to nontidal coastal and piedmont waters, or 31°C for mountain and upper piedmont waters. No maximum temperature limit, only monitoring, applies to discharges to estuarine waters.

The effluent shall not cause an increase in temperature of the receiving stream of more than 3°C above the natural water temperature. The effluent shall not cause the temperature in the receiving stream to change more than 2°C per hour. Natural temperature is defined as that temperature of a body of water (measured as the arithmetic average over one hour) due solely to natural conditions without the influence of any point-source discharge.

<sup>(2)</sup> Where the Water Quality Standards (9VAC25-260-5 et seq.) establish alternate standards for pH in the waters receiving the discharge, those standards shall be the maximum and minimum effluent limitations.

<sup>(3)</sup> Chlorine limitation of nondetectable (<0.1 mg/l) and chlorine ~~and ammonia~~ monitoring only ~~apply~~ applies to outfalls directly discharging to surface waters where the source of cooling water is chlorinated ~~or contains chloramines~~. Ammonia monitoring only applies where the source of cooling water is disinfected using chloramines.

<sup>(4)</sup> A specific analysis is not specified for these materials. An appropriate analysis shall be selected from the following list of EPA methods to achieve a quantification level that is less than the target level for the material under consideration:

Material	EPA Method	Target Level (µg/l)
Copper	220.1, 220.2, 200.7, 200.8, 200.9, 1638, 1640	9.2
Zinc	289.1, 289.2, 200.7, 200.8, 1638, 1639	65.0
Silver	272.1, 272.2, 200.7, 200.8, 200.9, 1638	1.2

Quality control/assurance information shall be submitted to document that the required quantification level has been attained.

<sup>(5)</sup> Silver monitoring is only required where Cu/Ag anode is used.

<sup>(6)</sup> Phosphorous monitoring is only required where additive containing phosphorous is used.

## B. Special conditions.

1. There shall be no discharge of floating solids or visible foam in other than trace amounts.
2. No discharges other than cooling water, as defined, are permitted under this general permit.
3. The use of any chemical additives not identified in the registration statement, except chlorine, without prior approval is prohibited under this general permit. Prior approval shall be obtained from the DEQ before any

changes are made to the chemical and/or nonchemical treatment technology employed in the cooling water system. Requests for approval of the change shall be made in writing and shall include the following information:

- a. Describe the chemical and/or nonchemical treatment to be employed and its purpose; if chemical additives are used, provide the information prescribed in subdivisions 3 b, c, d ~~and~~ e and f;
- b. Provide the name and manufacturer of each additive used;
- c. Provide a list of active ingredients and percentage of composition;
- d. Give the proposed schedule and quantity of chemical usage, and ~~estimate~~ provide either an engineering analysis, or a technical evaluation of the active ingredients, to determine the concentration in the discharge; ~~and~~
- e. Attach available aquatic toxicity information for each additive proposed for use- ~~;~~ and
- f. Attach any other information such as product or constituent degradation, fate, transport, synergies, bioavailability, etc., that will aid the board with the toxicity evaluation for the discharge.

4. Where cooling water is discharged through a municipal storm sewer system to surface waters, the permittee shall, within 30 days of coverage under this general permit, notify the owner of the municipal separate storm sewer system of the existence of the discharge and provide the following information: the name of the facility, a contact person and phone number, nature of the discharge, number of the outfalls, and the location of the discharge. A copy of such notification shall be provided to the department.

5. The permittee shall at all times properly operate and maintain all cooling water systems. Inspection shall be conducted for each cooling water unit by the plant personnel at least once per year with reports maintained on site.

6. The permittee shall notify the department as soon as they know or have reason to believe:

- a. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in this permit, if that discharge will exceed the highest of the following notification levels:

- (1) One hundred micrograms per liter (100 µg/l);
- (2) Two hundred micrograms per liter (200 µg/l) for acrolein and acrylonitrile; 500 micrograms per liter (500 µg/l) for 2,4-dinitrophenol and for

2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;

(3) Five times the maximum concentration value reported for that pollutant in the permit application; or

(4) The level established by the board in accordance with 9VAC25-31-220 F.

b. That any activity has occurred or will occur which would result in any discharge, on a nonroutine or infrequent basis, of a toxic pollutant which is not limited in this permit, if that discharge will exceed the highest of the following notification levels:

- (1) Five hundred micrograms per liter (500 µg/l);
- (2) One milligram per liter (1 mg/l) for antimony;
- (3) Ten times the maximum concentration value reported for that pollutant in the permit application; or
- (4) The level established by the board in accordance with 9VAC25-31-220 F.

7. Geothermal systems using groundwater and no chemical additives. Geothermal systems using groundwater and no chemical additives may be eligible for reduced monitoring requirements.

If a geothermal system was covered by the previous cooling water general permit, and the monitoring results from the previous permit term demonstrate full compliance with the effluent limitations, the permittee may request authorization from the department to reduce the monitoring to once in the first monitoring quarter of the first year of this permit term.

Owners of new geothermal systems, and previously unpermitted geothermal systems that receive coverage under this permit shall submit monitoring results to the department for the first four monitoring quarters after coverage begins. If the monitoring results demonstrate full compliance with the effluent limitations, the permittee may request authorization from the department to suspend monitoring for the remainder of the permit term.

Should the permittee be issued a warning letter related to violation of effluent limitations, a notice of violation, or be the subject of an active enforcement action, upon issuance of the letter or notice, or initiation of the enforcement action the monitoring frequency shall revert to 1/3 months and remain in effect until the permit's expiration date.

Part II

Condition Conditions Applicable to All VPDES Permits

A. Monitoring.

1. Samples and measurements taken as required by this permit shall be representative of the monitored activity.

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2. Monitoring shall be conducted according to procedures approved under 40 CFR Part 136 or alternative methods approved by the U.S. Environmental Protection Agency, unless other procedures have been specified in this permit.

3. The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will ensure accuracy of measurements.

## B. Records.

1. Records of monitoring information shall include:

- a. The date, exact place and time of sampling or measurements;
- b. The individual(s) who performed the sampling or measurements;
- c. The date(s) and time(s) analyses were performed;
- d. The individual(s) who performed the analyses;
- e. The analytical techniques or methods used; and
- f. The results of such analyses.

2. Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years, the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the registration statement for this permit, for a period of at least three years from the date of the sample, measurement, report or request for coverage. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee or as requested by the board.

## C. Reporting monitoring results.

1. The permittee shall submit the results of the monitoring required by this permit not later than the 10th day of the month after monitoring takes place, unless another reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the department's regional office.

2. Monitoring results shall be reported on a Discharge Monitoring Report (DMR) or on forms provided, approved or specified by the department.

3. If the permittee monitors any pollutant specifically addressed by this permit more frequently than required by this permit using test procedures approved under 40 CFR Part 136 or using other test procedures approved by the U.S. Environmental Protection Agency or using procedures

specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or reporting form specified by the department.

4. Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this permit.

D. Duty to provide information. The permittee shall furnish to the department, within a reasonable time, any information which the board may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The board may require the permittee to furnish, upon request, such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from his discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of the State Water Control Law. The permittee shall also furnish to the department upon request copies of records required to be kept by this permit.

E. Compliance schedule reports. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

F. Unauthorized discharges. Except in compliance with this permit or another permit issued by the board, it shall be unlawful for any person to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or
2. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, to animal or aquatic life, to the use of such waters for domestic or industrial consumption, for recreation, or for other uses.

G. Reports of unauthorized discharges. Any permittee who discharges or causes or allows a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or upon state waters in violation of Part II F, or who discharges or causes or allows a discharge that may reasonably be expected to enter state waters in violation of Part II F, shall notify the department of the discharge immediately upon discovery of the discharge, but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted to the department within five days of discovery of the discharge. The written report shall contain:

1. A description of the nature and location of the discharge;
2. The cause of the discharge;
3. The date on which the discharge occurred;

4. The length of time that the discharge continued;
5. The volume of the discharge;
6. If the discharge is continuing, how long it is expected to continue;
7. If the discharge is continuing, what the expected total volume of the discharge will be; and
8. Any steps planned or taken to reduce, eliminate and prevent a recurrence of the present discharge or any future discharges not authorized by this permit.

Discharges reportable to the department under the immediate reporting requirements of other regulations are exempted from this requirement.

H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge including a bypass or upset should occur from a treatment works and the discharge enters or could be expected to enter state waters, the permittee shall promptly notify, in no case later than 24 hours, the department by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse affects on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit it to the department within five days of discovery of the discharge in accordance with Part II I 2. Unusual and extraordinary discharges include but are not limited to any discharge resulting from:

1. Unusual spillage of materials resulting directly or indirectly from processing operations;
2. Breakdown of processing or accessory equipment;
3. Failure or taking out of service some or all of the treatment works; and
4. Flooding or other acts of nature.

I. Reports of noncompliance. The permittee shall report any noncompliance which may adversely affect state waters or may endanger public health.

1. An oral report shall be provided within 24 hours from the time the permittee becomes aware of the circumstances. The following shall be included as information which shall be reported within 24 hours under this subsection:
  - a. Any unanticipated bypass; and
  - b. Any upset which causes a discharge to surface waters.
2. A written report shall be submitted within five days and shall contain:
  - a. A description of the noncompliance and its cause;
  - b. The period of noncompliance, including exact dates and times, and if the noncompliance has not been

corrected, the anticipated time it is expected to continue; and

- c. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

The board may waive the written report on a case-by-case basis for reports of noncompliance under Part II I if the oral report has been received within 24 hours and no adverse impact on state waters has been reported.

3. The permittee shall report all instances of noncompliance not reported under Part II I 1 or 2, in writing, at the time the next monitoring reports are submitted. The reports shall contain the information listed in Part II I 2.

NOTE: The immediate (within 24 hours) reports required in Parts II G, H and I may be made to the department's regional office by telephone or by fax. For reports outside normal working hours, leave a message and this shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Services maintains a 24-hour telephone service at 1-800-468-8892.

J. Notice of planned changes.

1. The permittee shall give notice to the department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

- a. The permittee plans alteration or addition to any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

- (1) After promulgation of standards of performance under §306 of Clean Water Act which are applicable to such source; or

- (2) After proposal of standards of performance in accordance with §306 of Clean Water Act which are applicable to such source, but only if the standards are promulgated in accordance with §306 within 120 days of their proposal;

- b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations nor to notification requirements specified elsewhere in this permit; or

- c. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the

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permit application process or not reported pursuant to an approved land application plan.

2. The permittee shall give advance notice to the department of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

## K. Signatory requirements.

1. Registration statements. All registration statements shall be signed as follows:

a. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a public agency includes: (i) the chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

2. Reports, etc. All reports required by permits, and other information requested by the board shall be signed by a person described in Part II K 1, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described in Part II K 1;

b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or

an individual or position having overall responsibility for environmental matters for the company (a duly authorized representative may thus be either a named individual or any individual occupying a named position); and

c. The written authorization is submitted to the department.

3. Changes to authorization. If an authorization under Part II K 2 is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part II K 2 shall be submitted to the department prior to or together with any reports or information to be signed by an authorized representative.

4. Certification. Any person signing a document under Part II K 1 or 2 shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

L. Duty to comply. The permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the State Water Control Law and the Clean Water Act, except that noncompliance with certain provisions of this permit may constitute a violation of the State Water Control Law but not the Clean Water Act. Permit noncompliance is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

The permittee shall comply with effluent standards or prohibitions established under §307(a) of the Clean Water Act for toxic pollutants and with standards for sewage sludge use or disposal established under §405(d) of the Clean Water Act within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if this permit has not yet been modified to incorporate the requirement.

M. Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall apply for and obtain a new permit. All permittees with a currently effective permit shall submit a new registration statement at least ~~180~~ 90 days before the expiration date of the existing permit, unless permission for a later date has been granted by the board. The

board shall not grant permission for registration statements to be submitted later than the expiration date of the existing permit.

N. Effect of a permit. This permit does not convey any property rights in either real or personal property or any exclusive privileges, nor does it authorize any injury to private property or invasion of personal rights, or any infringement of federal, state or local law or regulations.

O. State law. Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any other state law or regulation or under authority preserved by §510 of the Clean Water Act. Except as provided in permit conditions on bypass (Part II U) and upset (Part II V), nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

P. Oil and hazardous substance liability. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under §§62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

Q. Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by the permittee only when the operation is necessary to achieve compliance with the conditions of this permit.

R. Disposal of solids or sludges. Solids, sludges or other pollutants removed in the course of treatment or management of pollutants shall be disposed of in a manner so as to prevent any pollutant from such materials from entering state waters.

S. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

T. Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

U. Bypass.

1. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to ensure efficient operation. These bypasses are not subject to the provisions of Part II U 2 and U 3.

2. Notice.

a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, prior notice shall be submitted, if possible at least 10 days before the date of the bypass.

b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in Part II I.

3. Prohibition of bypass.

a. Bypass is prohibited, and the board may take enforcement action against a permittee for bypass, unless:

(1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(3) The permittee submitted notices as required under Part II U 2.

b. The board may approve an anticipated bypass, after considering its adverse effects, if the board determines that it will meet the three conditions listed in Part II U 3 a.

V. Upset.

1. An upset constitutes an affirmative defense to an action brought for noncompliance with technology based permit effluent limitations if the requirements of Part II V 2 are met. A determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is not a final administrative action subject to judicial review.

2. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

a. An upset occurred and that the permittee can identify the cause(s) of the upset;

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b. The permitted facility was at the time being properly operated;

c. The permittee submitted notice of the upset as required in Part II I; and

d. The permittee complied with any remedial measures required under Part II S.

3. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

W. Inspection and entry. The permittee shall allow the director, or an authorized representative, upon presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act and the State Water Control Law, any substances or parameters at any location.

For purposes of this subsection, the time for inspection shall be deemed reasonable during regular business hours, and whenever the facility is discharging. Nothing contained herein shall make an inspection unreasonable during an emergency.

X. Permit actions. Permits may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

Y. Transfer of permits.

1. Permits are not transferable to any person except after notice to the department. Except as provided in Part II Y 2, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued, or a minor modification made, to identify the new permittee and incorporate such other requirements as may be necessary under the State Water Control Law and the Clean Water Act.

2. As an alternative to transfers under Part II Y 1, this permit may be automatically transferred to a new permittee if:

a. The current permittee notifies the department at least 30 days in advance of the proposed transfer of the title to the facility or property;

b. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and

c. The board does not notify the existing permittee and the proposed new permittee of its intent to modify or revoke and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part II Y 2 b.

Z. Severability. The provisions of this permit are severable. If any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances and the remainder of this permit shall not be affected thereby.

VA.R. Doc. No. R07-06; Filed Aug 1, 2007, 10:32 a.m.



## TITLE 12. HEALTH

### STATE BOARD OF HEALTH

#### Final Regulation

Title of Regulation: **12VAC5-585. Biosolids Use Regulations (adding 12VAC5-585-760 through 12VAC5-585-830).**

Statutory Authority: §32.1-164 of the Code of Virginia.

Effective Date: October 1, 2007.

Agency Contact: Cal Sawyer, Department of Health, 109 Governor St., Richmond, VA 23219, telephone (804) 864-7463, FAX (804) 864-7475, or email [cal.sawyer@vdh.virginia.gov](mailto:cal.sawyer@vdh.virginia.gov).

Summary:

*The amendment provides regulations and standards for training, testing, and certification of persons who land apply Class B sewage sludge (biosolids) in the Commonwealth, and for revoking, suspending or denying such certification from any person for cause. The amended regulations are to include standards and criteria for the approval of instructional programs to be taught by governmental entities and by the private sector for the purpose of certifying biosolids land applicators.*

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.

## **12VAC5-585-760. Certificate requirements for land applicators.**

A. No person shall land apply biosolids pursuant to a permit issued in accordance with this chapter unless an individual holding a valid certificate of competence as specified in this chapter (certified land applicator) is onsite at all times during such land application. Certified land applicators may be considered to be onsite if they are at the site permitted for land application and, if it is necessary to leave the site, they are available within 30 minutes to return to the site to verify and ensure that land application of biosolids is in compliance with the issued permit. Certified land applicators shall possess the site specific permit information necessary to conduct land application on the site in accordance with the issued permit and make available at the land application site proper identification, including their certificate number issued by VDH.

Monthly reports submitted in accordance with the requirements of 12VAC5-585-370 B shall bear the name and certificate number of the certified land applicators with an approved statement attesting that they were onsite at the times of the reported operations and that those operations were in compliance with the permit. The following parts of this chapter apply to any individual seeking a certificate of competence as required in §32.1-164.6 of the Code of Virginia.

B. Certificates of competence shall be issued by the department to certified land applicators. The department may issue such certification based on specified areas of training, experience and level of knowledge as demonstrated through successful completion of examinations as acceptable to the department.

## **12VAC5-585-770. Eligibility requirements.**

A. Certification may be obtained by satisfying all of the following requirements:

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 scheduled examination date set by the department. The application shall request information relating to the person's education, work experience, knowledge of land application of biosolids and applicable regulations, and willingness to abide by the requirements of this chapter.

2. Supplying proof of meeting one of the following:

a. A copy of a transcript or similar documentation indicating completion of a high school or higher degree or equivalent education level, with work experience in an agriculturally related area including farming, and three

months of practical experience related to land application of biosolids acceptable to the department.

b. A combination of training acceptable to the department that may include soil science or nutrient management or farming practice related educational training and a minimum of six months of practical experience related to land application of biosolids, or

c. Evidence of prior supervisory level experience with land application of biosolids of two or more years that is acceptable to the department.

3. Obtaining a passing score on each part of the land applicators certification examination administered by the department; and

4. Submitting the required certification fee by check or money order to the department.

B. Certificates shall be valid upon notification by the department and for two years following each renewal from the established renewal date and will expire on the last day of the expiration month. Certified land applicators or applicants shall notify the department of any change in mailing address within 30 days of such change in address.

C. The department, upon review, may accept or approve land applicator certification programs of other states as satisfying partial requirements for certification.

Individuals certified as land application operators in other states under certification or licensing programs acceptable to the department 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 12VAC5-585-790, the attainment of a passing score on a Virginia specific examination component that shall include at a minimum the elements listed in 12VAC5-585-790 C 1 and C 6.

## **12VAC5-585-780. Fees.**

A. Fees shall be collected for certification and recertification to defray the administrative cost for the certification program.

B. A fee may be charged to supply training materials and present education and training programs, including continuing education, that support the certification program.

C. Fees are nonrefundable and shall not be prorated.

D. The certification fee of \$100 for the initial certification period shall be due with the application for certification. If an applicant is unsuccessful in achieving a passing score on the examination, the applicant is eligible to retake the examination at a scheduled time as offered by the department. Applicants may retake the examination one time with no additional charge by resubmitting the application for certification. Eligibility for any additional examinations

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beyond the initial retaking will require the submittal of an application and appropriate fees.

E. The certificate of competence renewal fee is \$100.

F. All fees collected by the department shall be used exclusively for the operation of the Land Applicator Training and Certification Program.

## **12VAC5-585-790. Examination.**

A. The department may offer the land applicator certification examinations on request and will schedule an examination at least once per year. The examinations shall require a demonstration of the ability to ensure that biosolids will be land applied in compliance with the requirements of this chapter. The department may limit the number of applicants taking the examination based upon available examination space.

B. Applicants for a certificate of competence shall achieve a passing score on each part of the land applicator certification examination to become eligible for certification. If applicants receive a passing score on any part of the examination they will only be retested on the remaining parts.

C. The examinations for qualified applicants for a certificate of competence in accordance with this chapter shall address the following elements:

1. General understanding of biosolids treatment processes and biosolids characteristics;
2. Basic principles of soils, agriculture, and silviculture;
3. Public health protection concepts;
4. Land application concepts and site management and operations;
5. Occupational safety and health protection concepts; and
6. Land application training and certification regulatory requirements, and requirements of other land application related laws, regulations, and incentive programs.

D. An individual who is unable to take an examination at the scheduled time shall notify the department at least five days prior to the date of the examination; such individual may reapply for an examination. The department may consider accepting notice of less than five days due to individual hardship situations on a case-by-case basis. Failure to notify the department may require the individual to submit a new application and payment of fees in accordance with 12VAC5-585-780.

E. The department shall establish acceptable passing scores for the examinations based on the department's determination of the level of examination performance required to show minimal acceptable competence.

F. All applicants shall be notified of results in writing within 60 days of the completion of the examinations.

G. A certificate renewal date will be established and provided to the certified land applicator.

## **12VAC5-585-800. Training.**

A. The department shall provide training sessions on the various topics essential to ensure that land application of biosolids complies with state and federal laws and regulations at least annually.

B. The department may provide a training course on concepts supporting and relating to land application of biosolids that may include biosolids use regulation, basic soil and crop science, soil fertility, environmental management, and other relevant topics.

## **12VAC5-585-810. Certificate renewal.**

A. The department may not renew a certificate if a proceeding to deny certification under 12VAC5-585-830 has begun, or if the department has found that the applicant violated any requirements of this chapter. A certificate is to be renewed every two years and may be renewed on or before the expiration of a certificate by complying with all of the following requirements:

1. Submittal of a renewal application on the form the department requires;
2. Payment of the renewal fee to the department;
3. Submittal of proof of satisfactory completion of at least four hours of continuing education course work within the past two years. The completed course work must be approved by the department as providing satisfactory training. Requests for pre-approval of continuing education courses should be received at least 60 days prior to the expected course date(s) and must include a detailed syllabus indicating time to be spent on each topic area covered. Continuing education course work must be in subject matter consistent with 12VAC5-585-790.

B. Department personnel may attend continuing education sessions to verify that the requirements are met. Proof of attendance must be verified by the course provider. The department may accept continuing education units obtained in other states if such continuing education units are specifically for the purpose of recertification in the state land application operator certification program.

## **12VAC5-585-820. Certificate expiration.**

A. Certificates issued under this chapter shall expire two years from the last day of the month in which they were issued, as indicated on the certificate, if any of the requirements of 12VAC5-585-810 are not met.

B. Following the expiration of a certificate, reinstatement may be accomplished only by reapplication and compliance with all requirements of 12VAC5-585-770 A, including the examination requirements.

C. It is the responsibility of the certified land applicators to accumulate the required continuing education requirements prior to expiration of the certificate of competence they hold. The department will attempt to notify the certified land applicators of any continuing education needs and other requirements as necessary for certificate renewal 90 days or more prior to certificate expiration.

**12VAC5-585-830. Compliance with regulations and disciplinary action.**

A. If the department finds that a certified land applicator or an applicant for certification violated any applicable requirements of this chapter, including the procedural violations listed in subsection B of this section, the department may deny, suspend or revoke certification, following the informal fact-finding procedures of the Virginia Administrative Process Act (§2.2-4019 et seq. of the Code of Virginia).

B. Certification procedural violations include:

1. Providing misleading, false, or fraudulent information in applying for a certificate;
2. Providing the department with any misleading, false, or fraudulent report;
3. Failing to ensure that land application of biosolids complies with permit requirements in accordance with 12VAC5-585-490 through 12VAC5-585-510 due to negligence of responsibilities by the certified land applicator;
4. Failing to promptly and accurately record observed permit noncompliance or, failure to promptly notify the permittee of observed permit noncompliance or, preventing access to inspect any land application site or, failure to provide required field records upon request, in accordance with this chapter; and
5. Conviction of a felony related in any way to the responsibilities of a certified land applicator.

VA.R. Doc. No. R05-69; Filed July 30, 2007, 10:12 a.m.

**DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES**

**Final Regulation**

**Title of Regulation: 12VAC35-115. Rules and Regulations to Assure the Rights of Individuals Receiving Services From Providers Licensed, Funded, or Operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services (adding 12VAC35-115-145, 12VAC35-115-146; amending 12VAC35-115-10 through 12VAC35-115-250; repealing 12VAC35-115-160).**

Statutory Authority: §§37.2-203 and 37.2-400 of the Code of Virginia.

Effective Date: September 19, 2007.

Agency Contact: Margaret Walsh, Director, Office of Human Rights, Department of Mental Health, Mental Retardation and Substance Abuse Services, P.O. Box 1797, 1220 Bank St., Richmond, VA 23218, telephone (804) 786-3988, FAX (804) 786-2308, or email margaret.walsh@co.dmhmr.sas.virginia.gov.

Summary:

*The amendments conform the regulations to applicable state and federal law, including the federal regulations pursuant to the Health Insurance Portability and Accountability Act (HIPAA) and the recodification of Title 37.1 of the Code of Virginia, which became effective October 1, 2005. The regulations have been substantially reorganized and rewritten to promote clarity. Some administrative processes, such as the process to address complaints and obtain consent for services, have been expedited and simplified.*

*Since the publication of the proposed regulations, the agency made some minor language and editorial changes for clarity in response to public comments. Provisions are revised to make clear that the voluntary use protective equipment is not considered a restraint under these regulations. The list of providers subject to these regulations is updated to exclude providers of services under Part C of the Individuals with Disabilities Education Act (IDEA) that are governed by federal IDEA regulations. Provisions are added, consistent with the recent revisions to Virginia law, to describe the conditions under which a provider may disclose specific information about an individual receiving services to a law-enforcement official. The title of the regulations has been simplified.*

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.

CHAPTER 115

RULES AND REGULATIONS TO ASSURE THE RIGHTS OF INDIVIDUALS RECEIVING SERVICES FROM PROVIDERS [ ~~OF MENTAL HEALTH, MENTAL RETARDATION, ] AND [ ~~OR SUBSTANCE ABUSE SERVICES LICENSED, FUNDED, OR OPERATED BY THE DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES ]~~~~

Part I

General Provisions

**12VAC35-115-10. Authority and applicability.**

A. The Code of Virginia authorizes these regulations to further define and ~~to~~ protect the rights of individuals

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receiving services from providers of mental health, mental retardation ~~and~~ or substance abuse services in the Commonwealth of Virginia. The regulations require providers of services to take specific actions to protect the rights of each individual. The regulations establish remedies when rights are violated or in dispute, and provide a structure for support of these rights.

B. Providers subject to these regulations include:

1. Facilities operated by the department under ~~Article 4 (§37.1-1 et seq.) of Chapter 1 of Title 37.1 Chapters 3 (§37.2-300 et seq.) and 7 (§37.2-700 et seq.) of Title 37.2~~ of the Code of Virginia;
2. Sexually violent predator programs ~~created~~ established under ~~§37.1-70.10~~ §37.2-909 of the Code of Virginia;
3. Community services boards that provide services under ~~Chapter 10 (§37.1-194 et seq.) of Title 37.1~~ 5 (§37.2-500 et seq.) of Title 37.2 of the Code of Virginia;
4. Behavioral health authorities that provide services under ~~Chapter 15 (§37.1-242 et seq.) of Title 37.1~~ 6 (§37.2-600 et seq.) of Title 37.2 of the Code of Virginia;
5. ~~Providers~~; Public or private; providers that operate programs or facilities licensed by the department under ~~Chapter 8 (§37.1-179 et seq.) of Title 37.1 Article 2 (§37.2-403 et seq.) of Chapter 4 of Title 37.2~~ of the Code of Virginia except those operated by the Department of Corrections; and
6. Any other providers receiving funding from ~~or through~~ the department. [ Providers of services under Part C of the Individuals with Disabilities Education Act (IDEA), 20 §§USC 1431-1444, that are subject to these regulations solely by receipt of Part C funds from or through the department shall comply with all applicable IDEA regulations found in 34 CFR Part 303 in lieu of these regulations. ]

C. Unless another law takes ~~priority, and to the extent that they are not preempted by the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereto~~ precedence, these regulations apply to all individuals who are receiving services from a public or private provider of services operated, licensed or funded by the Department of Mental Health, Mental Retardation and Substance Abuse Services, except those operated by the Department of Corrections.

D. These regulations apply to individuals under forensic status and individuals committed to the custody of the ~~commissioner~~ department as sexually violent predators, except to the extent that the commissioner may determine these regulations are not applicable to them. The exemption must be in writing and based solely on the need to protect individuals receiving services, employees, or the general public. ~~Thereafter,~~ The commissioner shall ~~submit~~ give the

State Human Rights Committee (SHRC) chairperson prior notice of all exemptions and provide the written exemption to the State Human Rights Committee (SHRC) SHRC for its information. The commissioner shall give the SHRC chairperson prior notice regarding all exemptions. Such These exemptions shall be time limited and services shall not be compromised.

## **12VAC35-115-20. Policy.**

A. Each individual who receives services shall be assured:

1. Protection to exercise his legal, civil, and human rights related to the receipt of those services;
2. Respect for basic human dignity; and
3. Services that are provided consistent with sound therapeutic practice.

B. Providers shall not deny any ~~person~~ individual his legal rights, ~~privileges or benefits~~ solely because he has been voluntarily or involuntarily admitted, certified for admission or committed to services. These legal rights include, ~~but are not limited to,~~ the right to:

1. Acquire, retain, and dispose of property;
2. Sign legal documents;
3. Buy or sell;
4. Enter into contracts;
5. Register and vote;
6. Get married, separated, divorced, or have a marriage annulled;
7. Hold a professional, occupational, or vehicle operator's license;
8. Make a will and execute an advance directive; and
9. Have access to lawyers and the courts.

## **12VAC35-115-30. Definitions.**

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

"Abuse" means any act or failure to act by an employee or other person responsible for the care of an individual in a facility or program operated, licensed, or funded by the department, excluding those operated by the Department of Corrections, that was performed or was failed to be performed knowingly, recklessly, or intentionally, and that caused or might have caused physical or psychological harm, injury, or death to an individual receiving services a person receiving care or treatment for mental illness, mental retardation, or substance abuse. Examples of abuse include ~~but are not limited to the following acts such as:~~

1. Rape, sexual assault, or other criminal sexual behavior;

2. Assault or battery;
3. Use of language that demeans, threatens, intimidates or humiliates the person;
4. Misuse or misappropriation of the person's assets, goods or property;
5. Use of excessive force when placing a person in physical or mechanical restraint;
6. Use ~~on a person~~ of physical or mechanical restraints on a person that is not in compliance with federal and state laws, regulations, and policies, professionally accepted standards of practice, or the person's individualized services plan; and
7. Use of more restrictive or intensive services or denial of services to punish the person or that is not consistent with his individualized services plan. See ~~§37.1-4~~ §37.2-100 of the Code of Virginia.

"Advance directive" means a document voluntarily executed in accordance with §54.1-2983 of the Code of Virginia or the laws of another state where executed ([ ref. ] §54.1-2993 of the Code of Virginia). This may include a wellness recovery action plan (WRAP) or similar document as long as it is executed in accordance with §54.1-2983 of the Code of Virginia or the laws of another state. A WRAP or similar document may identify the health care agent who is authorized to act as the individual's substitute decision maker.

"Authorization" means a document signed by the individual receiving services or that individual's authorized representative that authorizes the provider to disclose identifying information about the individual. An authorization must be voluntary. To be voluntary, the authorization must be given by the individual receiving services or his authorized representative freely and without undue inducement, any element of force, fraud, deceit, or duress, or any form of constraint or coercion.

"Authorized representative" means a person permitted by law or these regulations to authorize the disclosure of information or to consent to treatment and services or participation in human research. The decision-making authority of an authorized representative recognized or designated under these regulations is [ specific to the limited to decisions pertaining to the ] designating provider. Legal guardians, attorneys-in-fact, or health care agents appointed pursuant to §54.1-2983 of the Code of Virginia may have decision-making authority beyond [ any specific such ] provider.

"Behavior [ management intervention ]" means those principles and methods employed by a provider to help an individual receiving services to achieve a positive outcome and to address and correct inappropriate [ challenging ] behavior in a constructive and safe manner. Behavior

management principles and methods must be employed in accordance with the individualized ~~service~~ services plan and written policies and procedures governing service expectations, treatment goals, safety, and security.

"Behavioral treatment ~~program plan, functional plan, or behavioral support plan~~" means any set of documented procedures that are an integral part of the ~~interdisciplinary treatment~~ individualized services plan and are developed on the basis of a [ ~~systemic~~ systematic ] data collection, such as a functional assessment, for the purpose of assisting an individual ~~receiving services~~ to achieve ~~any or all of~~ the following:

1. Improved behavioral functioning and effectiveness;
2. Alleviation of symptoms of psychopathology; or
3. Reduction of [ ~~serious~~ challenging ] behaviors.

A behavioral treatment program can also be referred to as a behavioral treatment plan or behavioral support plan.

"Board" means the State Mental Health, Mental Retardation and Substance Abuse Services Board.

"Caregiver" means an employee or contractor who provides care and support services; medical services; or other treatment, rehabilitation, or habilitation services.

"Commissioner" means the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services.

"Community services board ( " or "CSB)" means ~~a citizens' board~~ the public body established pursuant to §37.1-195 §37.2-501 of the Code of Virginia that provides ~~or arranges for the provision of~~ mental health, mental retardation, and substance abuse ~~programs and services to [ consumers individuals ] within the political subdivision or subdivisions establishing each city and county that established it. For the purpose of these regulations, community services board also includes a behavioral health authority established pursuant to~~ §37.2-602 of the Code of Virginia.

"Complaint" is ~~means~~ an expression of dissatisfaction, grievance, or concern by, or on behalf of, an individual receiving services that has been brought to the attention of the provider, an employee of the provider, a human rights advocate, or the protection and advocacy agency, and alleges ~~a violation or potential allegation of~~ a violation of these regulations or ~~program~~ a provider's policies and procedures related to these regulations. A complaint is "informal" when a resolution is pursued prior to contact with the human rights advocate. See 12VAC35-115-160.

"Consent" means the voluntary ~~and expressed~~ agreement of an individual, or that individual's ~~legally~~ authorized representative ~~if the individual has one~~ to specific services. Informed consent is needed to disclose information that identifies an individual receiving services. Informed consent

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is also needed before a provider may provide treatment to an individual which poses risk of harm greater than that ordinarily encountered in daily life or during the performance of routine physical or psychological examinations, tests, or treatments, or before an individual participates in human research. Informed consent is required for surgery, aversive treatment, electroconvulsive treatment, and use of psychoactive medications. Consent to any action for which consent is required under these regulations must be voluntary. To be voluntary, the consent must be given by the individual receiving services, or his legally authorized representative, so situated as to be able to exercise free power of choice without undue inducement or any element of force, fraud, deceit, duress, or any form of constraint or coercion. To be informed, consent must be based on disclosure and understanding by the individual or legally authorized representative, as applicable, of the following kinds of information:

1. A fair and reasonable explanation of the proposed action to be taken by the provider and the purpose of the action. If the action involves research, the provider shall describe the research and its purpose, and shall explain how the results of the research will be disseminated and how the identity of the individual will be protected;
2. A description of any adverse consequences and risks to be expected and, particularly where research is involved, an indication whether there may be other significant risks not yet identified;
3. A description of any benefits that may reasonably be expected;
4. Disclosure of any alternative procedures that might be equally advantageous for the individual together with their side effects, risks, and benefits;
5. An offer to answer any inquiries by the individual, or his legally authorized representative;
6. Notification that the individual is free to refuse or withdraw his consent and to discontinue participation in any prospective service requiring his consent at any time without fear of reprisal against or prejudice to him;
7. A description of the ways in which the resident or his legally authorized representative can raise concerns and ask questions about the service to which consent is given;
8. When the provider proposes human research, an explanation of any compensation or medical care that is available if an injury occurs;
9. Where the provider action involves disclosure of records, documentation must include:
  - a. The name of the organization and the name and title of the person to whom the disclosure is made;
  - b. A description of the nature of the information to be disclosed, the purpose of the disclosure, and an indication

whether the consent extends to information placed in the individual's record after the consent was given but before it expires;

e. A statement of when the consent will expire, specifying a date, event, or condition upon which it will expire; and

d. An indication of the effective date of the consent.

Consent must be given freely and without undue inducement, any element of force, fraud, deceit, or duress, or any form of constraint or coercion. Consent may be expressed through any means appropriate for the individual, including verbally, through physical gestures or behaviors, in Braille or American Sign Language, in writing, or through other methods.

"Department" means the Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS).

"Director" means the chief executive officer of any program provider delivering services. [ In organizations that also include services not covered by these regulations, the director is the chief executive officer of the services or services licensed, funded, or operated by the department. ]

"Discharge plan" means the written plan that establishes the criteria for an individual's discharge from a service and identifies and coordinates planning for aftercare delivery of any services needed after discharge.

"Disclosure" means the release by a provider of information identifying an individual [ by a provider ].

"Emergency" means a situation that requires a person to take immediate action to avoid harm, injury, or death to an individual receiving services or to others, or to avoid substantial property damage.

"Exploitation" means the misuse or misappropriation of the individual's assets, goods, or property. Exploitation is a type of abuse. (See §37.1-4 §37.2-100 of the Code of Virginia.) Exploitation also includes the use of a position of authority to extract personal gain from an individual receiving services. Exploitation includes but is not limited to violations of 12VAC35-115-120 (Work) and 12VAC35-115-130 (Research). Exploitation does not include the billing of an individual's third party payer for services. Exploitation also does not include instances of use or appropriation of an individual's assets, goods or property when permission is given by the individual or his legally authorized representative:

1. With full knowledge of the consequences;
2. With no inducements; ~~or~~ and
3. Without force, misrepresentation, fraud, deceit, duress of any form, constraint, or coercion.

"Governing body of the provider" means the person or group of persons ~~who have with~~ final authority to [ ~~set establish~~ ] policy [ ~~and hire and fire directors~~ ]. [ ~~For the purpose of these regulations, the governing body of a CSB means the public body established according to Chapter 5 (§37.2-500 et seq.) or Chapter 6 (§37.2-600 et seq.) of Title 37.2 of the Code of Virginia, and shall include administrative policy community services boards, operating community services boards, local government departments with policy-advisory boards, and the board of a behavioral health authority. ]~~

"Habilitation" ~~refers to~~ means the provision of [ ~~individualized~~ ] services [ ~~conforming to current acceptable professional practice~~ ] that enhance the strengths of, teach functional skills to, or reduce or eliminate [ ~~problematic challenging~~ ] behaviors of an individual ~~receiving services~~. These services occur in an environment that suits the individual's needs, responds to his preferences, and promotes social interaction and adaptive behaviors. [ ~~In order to be considered sound and therapeutic, habilitation must conform to current acceptable professional practice. ]~~

"Health care operations" means any activities of the provider to the extent that the activities are related to its provision of health care services. Examples include:

1. Conducting quality assessment and improvement activities, case management and care coordination, contacting of health care providers and patients with information about treatment alternatives, and related functions that do not include treatment;
2. Reviewing the competence or qualifications of health care professionals, evaluating practitioner and provider performance, and training, licensing or credentialing activities;
3. Conducting or arranging for medical review, legal services, and auditing functions, including fraud and abuse detection and compliance programs; and
4. Other activities contained within the definition of health care operations in the Standards for Privacy of Individually Identifiable Health Information, 45 CFR 164.501.

"Health plan" means an individual or group plan that provides or pays the cost of medical care, including any entity that meets the definition of "health plan" in the Standards for Privacy of Individually Identifiable Health Information, 45 CFR 160.103.

"Historical research" means the review of information that identifies individuals receiving services for the purpose of evaluating or otherwise collecting data of general historical significance. See 12VAC35-115-80 C-2; B (Confidentiality).

"Human research" means any systematic investigation that uses human participants who may be exposed to potential physical or psychological injury if they participate and which departs from established and accepted therapeutic methods

~~appropriate to meet the participants' needs, including research development, testing, and evaluation, utilizing human subjects, that is designed to develop or contribute to generalized knowledge. Human research shall not [ be ] conducted in compliance with §§32.1-162.16 through 32.1-162.20 and 37.1-24.01 of the Code of Virginia, and 12VAC35-180-110 et seq., or any applicable federal policies and regulations [ deemed to ] include research exempt from federal research regulations pursuant to 45 CFR 46.101(b).~~

"Human rights advocate" means a person employed by the commissioner upon recommendation of the State Human Rights Director to help individuals receiving services exercise their rights under this chapter. See 12VAC35-115-250 C.

"Individual" means a person who is receiving services. This term includes the terms "consumer," "patient," "resident," "recipient," and "client."

"Individualized services plan" or "ISP" means a comprehensive and regularly updated written plan [ ~~of action to meet the needs and preferences of an individual. An ISP describes measurable goals and objectives and expected outcomes of services and is designed to meet the needs of a specific individual. The term ISP includes treatment plan, functional plan, habilitation plan, or plan of care that describes the individual's needs, the measurable goals and objectives to address those needs, and strategies to reach the individual's goals. An ISP is person-centered, empowers the individual, and is designed to meet the needs and preferences of the individual. The ISP is developed through a partnership between the individual and the provider and includes an individual's treatment plan, habilitation plan, person-centered plan, or plan of care ].~~

"Informed consent" means the voluntary written agreement of an individual, or that individual's authorized representative to surgery, electroconvulsive treatment, use of [ ~~psychotropic psychotropic~~ ] medications, or any other treatment or service that poses a risk of harm greater than that ordinarily encountered in daily life or for participation in human research. To be voluntary, informed consent must be given freely and without undue inducement, any element of force, fraud, deceit, or duress, or any form of constraint or coercion.

"Inspector general" means a person appointed by the Governor to provide oversight by inspecting, monitoring, and reviewing the quality of services that providers deliver.

"Investigating authority" means any person or entity that is approved by the provider to conduct investigations of abuse and neglect.

~~"Legally authorized representative" means a person permitted by law or these regulations to give informed consent for disclosure of information and give informed consent to treatment, including medical treatment, and~~

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participation in human research for an individual who lacks the mental capacity to make these decisions.

"Licensed professional" means a physician, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker, licensed or certified substance abuse treatment practitioner, or certified psychiatric nurse specialist.

"Local Human Rights Committee ( ~~"~~ or "LHRC)" means a group of at least five people appointed by the State Human Rights Committee. See 12VAC35-115-250 D for membership and duties.

~~[ "Mechanical restraint" means the use of any mechanical device that restricts the freedom of movement or voluntary functioning of an individual's limb or a portion of his body when the individual does not have the option to remove the device. ]~~

"Neglect" means the failure by ~~an individual~~ a person, program, or facility operated, licensed, or funded by the department, excluding those operated by the Department of Corrections, responsible for providing services to ~~provide do so, including~~ nourishment, treatment, care, goods, or services necessary to the health, safety, or welfare of a person receiving care or treatment for mental illness, mental retardation, or substance abuse. See ~~§37.1-4~~ §37.2-100 of the Code of Virginia.

"Next friend" means a person ~~whom a provider may appoint designated~~ [ ~~by a director~~ ] in accordance with 12VAC35-115-70 B 9 e [ 12VAC35-115-146 12VAC35-115-146 B ] to serve as the legally authorized representative of an individual who has been determined to lack capacity to ~~give consent or authorize the disclosure of identifying information,~~ when required under these regulations.

"Peer-on-peer [ ~~harm~~ aggression ] " means a physical act [ ~~or~~ ] verbal [ ~~threat or demeaning~~ ] expression by an individual against or to another individual that [ ~~results in~~ causes physical or emotional ] harm to [ ~~the that~~ ] individual. [ ~~Harm includes~~ Examples include ] hitting, [ kicking, scratching, ] and [ other ] threatening behavior [ ~~with the means to carry out the threat~~ ], [ ~~Incidents of harm shall be investigated as~~ Such instances may constitute ] potential neglect [ ~~pursuant to~~ 12VAC35-115-50 D 3 ].

[ "Person centered" means focusing on the needs and preferences of the individual, empowering and supporting the individual in defining the direction for his life, and promoting self-determination, community involvement, and recovery. ]

"Program rules" means the operational rules and expectations that providers establish to promote the general safety and well-being of all individuals in the program and [ ~~that~~ ] to set standards for how individuals will interact with one another in the program. Program rules include any expectation that produces a consequence for the individual within the program. Program rules may be included in a

handbook or policies [ and shall be available to the individual ].

"Protection and advocacy agency" means the state agency designated under the federal Protection and Advocacy for Individuals with Mental Illness (PAIMI) Act and the Developmental Disabilities (DD) Act. The protection and advocacy agency is the ~~Department for the Rights of Virginians with Disabilities (DRVD)~~ Virginia Office for Protection and Advocacy.

"Provider" means any person, entity, or organization offering services that is licensed, funded, or operated by the department.

"Psychotherapy notes" means comments recorded in any medium by a health care provider who is a mental health professional documenting and analyzing an individual or a group, joint, or family counseling session that are separated from the rest of the individual's health record. Psychotherapy notes shall not include annotations relating to medication and prescription monitoring, counseling session start and stop times, treatment modalities and frequencies, clinical test results, or any summary of any symptoms, diagnosis, prognosis, functional status, treatment plan, or the individual's progress to date.

"Research review committee" or "institutional review board" means a committee of professionals [ ~~to provide that~~ provides ] complete and adequate review of research activities. The committee shall be sufficiently qualified through maturity, experience, and diversity of its members, including consideration of race, gender, and cultural background, to promote respect for its advice and counsel in safeguarding the rights and welfare of participants in human research. (See ~~§37-1-24.01~~ §37.2-402 of the Code of Virginia and ~~12VAC35-180-110 et seq~~ 12VAC35-180.)

~~"Residential setting" means a place where an individual lives and services are available from a provider on a 24-hour basis. This includes hospital settings.~~

"Restraint" means the use of [ ~~an approved a~~ ] mechanical device, medication, physical intervention [  ~~]~~ or hands-on hold, ~~or pharmacological agent~~ to involuntarily prevent an individual ~~receiving services~~ from moving his body to engage in a behavior that places him or others at [ imminent ] risk. ~~The term includes restraints used for behavioral, medical, or protective purposes. There are three kinds of restraints:~~

1. Mechanical restraint means the use of [ ~~an approved a~~ ] mechanical device that cannot be removed by the individual to restrict the freedom of movement or functioning of a limb or a portion of an individual's body [ ~~when that behavior places him or others at imminent risk~~ ].

2. Pharmacological restraint means the use of a medication that is administered involuntarily for the emergency

control of an individual's behavior when [ that individual's behavior places him or others at imminent risk and ] the administered medication is not a standard treatment for the individual's medical or psychiatric condition.

3. Physical restraint, also referred to as manual hold, means the use of a physical intervention or hands-on hold to prevent an individual from moving his body [ when that individual's behavior places him or others at imminent risk ].

[ Restraints may be used for the following behavioral, medical, or protective purposes:

1. ] A restraint used for [ "Behavioral" purposes means ] the use of an approved [ using a physical hold; ] a [ psychotropic medication, or ] a [ mechanical device ] that is used for the purpose of controlling [ to control behavior or involuntarily ] restricting [ restrict the freedom of movement of ] the [ an individual in an instance when all of the following conditions are met: (i) ] in which there is an imminent risk of an individual harming himself or others, including staff; [ there is an emergency, (ii) ] when [ nonphysical interventions are not viable ] ; [ , and (iii) ] when [ safety issues require an immediate response.

2. ] A restraint used for "medical" [ Medical purposes means ] the use of an approved mechanical or [ using a physical hold, medication or mechanical device to limit the mobility of the individual for medical, diagnostic, or surgical purposes, such as routine dental care or radiological procedures and related post procedure care processes, when ] the [ use of ] such device [ the restraint is not ] a standard [ the accepted clinical practice for the individual's condition.

3. ] A restraint used for "protective" [ Protective purposes means ] the use of [ 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 ] (e.g., bed rail or gerichair) [ or it may create a passive barrier, such as a helmet, to protect the individual ] (e.g., helmet).

4. A "mechanical restraint" means the use of an approved mechanical device that involuntarily restricts the freedom of movement or voluntary functioning of a limb or a portion of a person's body as a means to control his physical activities when the individual receiving services does not have the ability to remove the device.

5. A "pharmacological restraint" means a drug that is given involuntarily for the emergency control of behavior when it is not a standard treatment for the individual's medical or psychiatric condition.

6. A "physical restraint" (also referred to "manual hold") means the use of approved physical interventions or "hands on" holds to prevent an individual from moving his body to engage in a behavior that places him or others at risk of physical harm. Physical restraint does not include the use of "hands on" approaches that occur for extremely brief periods of time and never exceed more than a few seconds duration and are used for the following purposes:

a. To intervene in or redirect a potentially dangerous encounter in which the individual may voluntarily move away from the situation or hands on approach; or

b. To quickly de-escalate a dangerous situation that could cause harm to the individual or others.

[ "Restraints for behavioral purposes" means using a physical hold, medication, or a mechanical device to control behavior or involuntarily restrict the freedom of movement of an individual in an instance when all of the following conditions are met: (i) there is an emergency, (ii) nonphysical interventions are not viable, and (iii) safety issues require an immediate response.

"Restraints for medical purposes" means using a physical hold, medication, or mechanical device to limit the mobility of an individual for medical, diagnostic, or surgical purposes, such as routine dental care or radiological procedures and related postprocedure care processes, when use of the restraint is not the accepted clinical practice for treating the individual's condition.

"Restraints for protective purposes" means using a mechanical device to compensate for a physical or cognitive deficit when the individual does not have the option to remove the device. The device may limit an individual's movement, for example, bed rails or a gerichair, and prevent possible harm to the individual or it may create a passive barrier, such as a helmet to protect the individual. ]

"Restriction" means anything that limits or prevents an individual from freely exercising his rights and privileges.

"Seclusion" means the involuntary placement of an individual receiving services alone; in a locked room or secured an area from which he is physically prevented from leaving secured by a door that is locked or held shut by a staff person, by physically blocking the door, or by any other physical or verbal means, so that the individual cannot leave it.

"Serious injury" means any injury resulting in bodily hurt, damage, harm, or loss that requires medical attention by a licensed physician.

"Services" means [ mental health, mental retardation and substance abuse care; treatment; training; habilitation; or other supports, including medical care, delivered by a provider care, treatment, training, habilitation, interventions,

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or other supports, including medical care, delivered by a provider licensed, operated or funded by the department ].

~~"Services plan" means a plan that defines and describes measurable goals and objectives and expected outcomes of service and is designed to meet the needs of a specific individual. The term "services plan" also includes, but is not limited to, individualized services plan, treatment plan, habilitation plan or plan of care.~~

"Services record" means all written [ and electronic ] information [ that ] a provider keeps about an individual who receives services.

"State Human Rights Committee ( " or "SHRC )" means a committee of nine members appointed by the board that is accountable for the duties prescribed in ~~12VAC35-115-230~~ 12VAC35-115-250 E. See 12VAC35-115-250 E for membership and duties.

"State Human Rights Director" means the person employed by and reporting to the commissioner who is responsible for carrying out the functions prescribed in 12VAC35-115-250 F.

~~"Time out" means assisting an individual to regain emotional control by removing the individual from his immediate environment to a different, open location until he is calm or the problem behavior has subsided~~ the involuntary removal of an individual by a staff person from a source of reinforcement to a different, open location for a specified period of time or until the problem behavior has subsided to discontinue or reduce the frequency of problematic behavior.

"Treatment" means the individually planned, sound, and therapeutic interventions that are intended to improve or maintain functioning of an individual ~~receiving services [ in those areas that show impairment as the result of mental receiving services delivered by providers licensed, funded, or operated by the department ]~~ disability, substance addiction [ illness, mental retardation, substance use (alcohol or other drug dependence or abuse) disorders, or physical impairment.] In order to be considered sound and therapeutic, the treatment must conform to current acceptable professional practice.

## Part II

### Assurance of Rights

#### **12VAC35-115-40. Assurance of rights.**

A. These regulations protect the rights established in ~~§37.1-84.1~~ §37.2-400 of the Code of Virginia.

B. Individuals are entitled to know what their rights are under these regulations; therefore, providers shall take the following actions:

1. Display, in areas most likely to be noticed by the individual, a document listing the rights of individuals under these regulations and how individuals can contact a

human rights advocate. [ The document shall be presented in the manner, format, and languages most frequently understood by the individual receiving services. ]

2. Notify each individual and his authorized representative, ~~as applicable~~, about these rights and how to file a complaint. The notice shall be in writing and in any other form most easily understood by the individual. The notice shall [ ~~tell an individual how he can contact~~ provide the name and phone number of ] the human rights advocate and give a short description of the human rights advocate's role. The provider shall give this notice [ to and discuss it with the individual ] at the time [ ~~an individual begins~~ ] services [ begin ] and every year thereafter.

3. Ask the individual or legally his authorized representative ~~as applicable~~ to sign the notice of rights. File the signed notice in the individual's services record. If the individual or legally his authorized representative cannot or will not sign the notice, the person who gave the notice shall document that fact in the individual's services record.

4. Give a complete copy of these regulations to anyone who asks for one.

5. Display and provide information as requested by the protection and advocacy agency director that informs individuals of their right to contact the protection and advocacy agency.

[ ~~6. Display and provide written notice of rights in the most frequently used languages.~~ ]

C. Every individual ~~receiving services~~ has a right to seek ~~informal~~ resolution [ of his complaint ] and [ file make ] a human rights complaint. Any individual ~~receiving services~~ or anyone acting on his behalf who thinks that a provider has violated any of his rights under these regulations may [ file make ] a complaint and get help in [ filing making ] the complaint in ~~Part IV~~ accordance with Part V (12VAC35-115-150 et seq.) of this chapter.

D. Other rights and remedies may be available. These regulations shall not prevent any individual from pursuing any other legal right or remedy to which he may be entitled under federal or state law.

## Part III

### Explanation of Individual Rights and Provider Duties

#### **12VAC35-115-50. Dignity.**

A. Each individual ~~receiving services~~ has a right to exercise his legal, civil, and human rights, including constitutional rights, statutory rights, and the rights contained in these regulations, except as specifically limited herein. [ Each individual has a right to have services that he receives respond to his needs and preferences and be person-centered. ] Each individual also has the right to be protected, respected, and supported in exercising these rights. Providers

shall not partially or totally take away or limit these rights solely because an individual has a mental illness, mental retardation, or substance ~~abuse problem~~ use disorder and is receiving services for these conditions or has any physical or sensory condition that may pose a barrier to communication or mobility.

B. In receiving all services, each individual has the right to:

1. Use his preferred or legal name. The use of an individual's preferred name may be limited when a licensed professional makes the determination that the use of the name will result in demonstrable harm or have significant negative impact on the program itself or the individual's treatment, progress, and recovery. The director [ or his designee ] shall [ ~~inform~~ discuss the issue with ] the individual and [ ~~inform the~~ ] human rights advocate of the reasons for any restriction prior to implementation and the reasons for the restriction shall be documented in the individual's services record. The need for the restriction shall be reviewed by the [ ~~treatment~~ ] team every month and documented in the services record.
2. Be protected from harm including abuse, neglect, and exploitation.
3. Have help in learning about, applying for, and fully using any public service or benefit to which he may be entitled. These services and benefits include ~~but are not limited to~~ educational or vocational services, housing assistance, services or benefits under Titles II, XVI, XVIII, and XIX of the Social Security Act, United States Veterans Benefits, and services from legal and advocacy agencies.
4. Have opportunities to communicate in private with lawyers, judges, legislators, clergy, licensed health care practitioners, ~~legally~~ authorized representatives, advocates, the inspector general, and employees of the protection and advocacy agency.
5. Be provided with general information about program services [ ~~and~~ ], policies [ ~~,~~ and rules in writing and ] in [ ~~a~~ the ] manner [ ~~,~~ format and language ] easily understood by the individual.

C. In services provided in residential and inpatient settings, each individual has the right to:

1. Have sufficient and suitable clothing for his exclusive use.
2. Receive [ ~~a~~ ] nutritionally adequate, varied, and appetizing [ ~~diet meals that are~~ ] prepared and served under sanitary conditions [ ~~and~~ , are ] served at appropriate times and temperatures [ ~~,~~ and are consistent with any individualized diet program ].
3. Live in a [ humane, ] safe, sanitary [ ~~,~~ and humane physical ] environment that gives each individual, at a minimum:

- a. Reasonable privacy and private storage space;
- b. An adequate number [ ~~and design~~ ] of private, operating toilets, sinks, showers, and tubs [ that are designed to accommodate individuals' physical needs ] ;
- c. Direct outside air provided by a window that opens or by an air conditioner;
- d. Windows or skylights in all major areas used by individuals;
- e. Clean air, free of bad odors; and
- f. Room temperatures that are comfortable year round and compatible with health requirements.

4. Practice a religion and participate in religious services subject to their availability, provided that such services are not dangerous to ~~self~~ the individual or others and do not infringe on the freedom of others.

a. Religious services or practices that present a danger of bodily injury to any individual or interfere with another individual's religious beliefs or practices may be limited. [ The director or his designee shall discuss the issue with the individual and inform the human rights advocate of the reasons for any restriction prior to implementation. The reasons for the restriction shall be documented in the individual's services record. ]

b. Participation in religious services or practices may be reasonably limited by the provider in accordance with other general rules limiting privileges or times or places of activities.

5. Have paper, pencil and stamps provided free of charge for at least one letter every day upon request. [ ~~If~~ However, if ] an individual has funds [ ~~for clothing and~~ ] to buy paper, pencils, and stamps to send a letter every day, the provider does not have to pay for them.

6. Communicate privately with any person by mail and have help in writing or reading mail as needed.

a. An individual's access to mail may be limited [ only ] if the provider has reasonable cause to believe that the mail contains illegal material or anything dangerous. If so, the director [ or his designee ] may open the mail, but not read it, in the presence of the individual.

b. An individual's ability to communicate by mail may be limited if, in the judgment of a licensed professional, the individual's communication with another person or persons will result in demonstrable harm to the individual's mental health.

c. The director [ or his designee ] shall [ ~~inform~~ discuss the issue with ] the individual and [ ~~inform the~~ ] human rights advocate of the reasons for any restriction prior to implementation and the reasons for the restriction shall be documented in the individual's services record. The

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need for the restriction shall be reviewed by the [ ~~treatment~~ ] team every month and documented in the services record.

7. Communicate privately with any person by ~~mail~~ or telephone and ~~get~~ have help in doing so. Use of the telephone may be limited to certain times and places to make sure that other individuals have equal access to the telephone and that they can eat, sleep, or participate in an activity without being disturbed.

a. An individual's access to the telephone may be limited [ only ] if, in the judgment of a licensed professional, communication with another person or persons will result in demonstrable harm to the individual or significantly affect his treatment.

b. The director [ or his designee ] shall [ ~~inform~~ discuss the issue with ] the individual and [ ~~inform~~ ] the human rights advocate of the reasons for any restriction prior to implementation and the reasons for the restriction shall be documented in the individual's services record. The need for the restriction shall be reviewed by the [ ~~treatment~~ ] team every month and documented in the individual's services record.

c. Residential substance abuse services providers [ that are not inpatient hospital settings or crisis stabilization programs ] may develop policies and procedures that limit the use of the telephone during the initial phase of treatment when sound therapeutic practice requires restriction, subject to the following conditions:

(1) Prior to implementation and when it proposes any changes or revisions, the provider shall submit policies and procedures, program handbooks, or program rules to the LHRC and the human rights advocate for review and approval.

(2) When an individual applies for admission, the provider shall notify him of these restrictions.

8. Have or refuse visitors.

a. An individual's access to visitors may be limited or supervised [ only ] when, in the judgment of a licensed professional, the visits result in demonstrable harm to the individual or significantly affect the individual's treatment or when the visitors are suspected of bringing contraband or threatening harm to the individual in any other way.

b. The director [ ~~shall inform~~ or his designee shall discuss the issue with ] the individual and [ ~~inform~~ ] the human rights advocate of the reasons for any restriction prior to implementation and the restriction shall be documented in the individual's services record. The need for the restriction shall be reviewed by the [ ~~treatment~~ ] team every month and documented in the individual's services record.

c. Residential substance abuse service providers [ that are not inpatient hospital settings or crisis stabilization programs ] may develop policies and procedures that limit visitors during the initial phase of treatment when sound therapeutic practice requires the restriction, subject to the following conditions:

(1) Prior to implementation and when proposing any changes or revisions, the provider shall submit policies and procedures, program handbooks, or program rules [ ~~of conduct~~ ] to the LHRC and the human rights advocate for review and approval.

(2) The provider shall notify individuals who apply for admission of these restrictions.

9. Nothing in these provisions shall prohibit a provider from stopping, reporting, or intervening to prevent any criminal act.

D. The provider's duties.

1. Providers shall recognize, respect, support, and protect the dignity rights of each individual at all times. In the case of a minor, providers shall take into consideration the expressed preferences of the minor and the parent or guardian.

2. Providers shall develop, carry out, and regularly monitor policies and procedures that assure the protection of each individual's rights.

3. Providers shall assure the following relative to abuse, neglect, and exploitation:-:

a. Policies and procedures governing harm, abuse, neglect, and exploitation of individuals receiving their services shall require that, as a condition of employment or volunteering, any employee, volunteer, consultant, or student who knows of or has reason to believe that an individual may have been abused, neglected, or exploited at any location covered by these regulations, shall immediately report this information directly to the director.

b. The director shall immediately take necessary steps to protect the individual ~~receiving services~~ until an investigation is complete. This may include the following actions:

(1) Direct the employee or employees involved to have no further contact with the individual. In the case of incidents of peer-on-peer [ ~~harm~~ aggression ], protect the individuals from the aggressor in accordance with sound therapeutic practice and these regulations.

(2) Temporarily reassign or transfer the employee or employees involved to a position that has no direct contact with individuals receiving services.

(3) Temporarily suspend the involved employee or employees pending completion of an investigation.

c. The director shall immediately notify the human rights advocate and the legally individual's authorized representative, ~~as applicable~~. In no case shall notification ~~exceed be later than~~ 24 hours ~~from~~ after the receipt of the initial allegation of abuse, neglect, or exploitation.

d. In no case shall the director punish ~~one or~~ retaliate against an employee, volunteer, consultant, or student for reporting an allegation of abuse, neglect, or exploitation to an outside entity.

e. The director shall initiate an impartial investigation within 24 hours of receiving [ notification a report of potential abuse or neglect ]. The investigation shall be conducted by a person trained to do investigations and who is not involved in the issues under investigation.

(1) The investigator shall make a final report to the director or the investigating authority and to the human rights advocate within 10 working days of appointment. Exceptions to this timeframe may be requested and approved by the department if submitted prior to the close of the sixth day.

(2) The director or investigating authority shall, based on the investigator's report and any other available information, decide whether the abuse, neglect or exploitation occurred. Unless otherwise provided by law, the standard for deciding whether abuse, neglect, or exploitation has occurred is preponderance of the evidence.

(3) If abuse, neglect or exploitation occurred, the director shall take any action required to protect the individual and other individuals. All actions must be documented and reported as required by 12VAC35-115-230.

(4) In all cases, the director shall provide his written ~~notice~~ decision, including actions taken as a result of the investigation, within seven working days following the completion of the investigation ~~of the decision and all actions taken~~ to the individual or the individual's legally authorized representative, the human rights advocate, the investigating authority, and the involved employee or employees. [ The decision shall be in writing and in the manner, format, and language that is most easily understood by the individual. ]

(5) If the individual affected by the alleged abuse, neglect, or exploitation or his legally authorized representative is not satisfied with the director's actions, he or his legally authorized representative, or anyone acting on his behalf, may file a petition for an LHRC hearing under 12VAC35-115-180.

f. The director shall cooperate with any external investigation, including those conducted by the inspector

general, the protection and advocacy agency, or other regulatory ~~and~~ or enforcement agencies.

g. If at any time the director has reason to suspect that an individual may have been abused or neglected, the director shall immediately report this information to the appropriate local Department of Social Services (see ~~§§63.1-55.3 and 63.1-248.3~~ §§63.2-1509 and 63.2-1606 of the Code of Virginia) and cooperate fully with any investigation that results.

h. If at any time the director has reason to suspect that the abusive, neglectful or exploitive act is a crime, the director [ or his designee ] shall immediately contact the appropriate law-enforcement authorities and cooperate fully with any investigation that results.

**E. Exceptions and conditions to the provider's duties.**

~~1. If an individual has funds for clothing and to buy paper, pencils, and stamps to send a letter every day, the provider does not have to pay for them.~~

~~2. The provider may prohibit any religious services or practices that present a danger of bodily injury to any individual or interfere with another individual's religious beliefs or practices. Participation in religious services or practices may be reasonably limited by the provider in accordance with other general rules limiting privileges or times or places of activities.~~

~~3. If a provider has reasonable cause to believe that an individual's mail contains illegal material or anything dangerous, the director may open the mail, but not read it, in the presence of the individual. The director shall inform the individual of the reasons for the concern. An individual's ability to communicate by mail may also be limited if, in the judgment of a licensed physician or doctoral level psychologist (in the exercise of sound therapeutic practice), the individual's communication with another person or persons will result in demonstrable harm to the individual's mental health. The reasons for the restriction shall be documented in the individual's service record, the human rights advocate shall be notified prior to implementation.~~

~~4. Providers may limit the use of a telephone in the following ways:~~

~~a. Providers may limit use to certain times and places to make sure that other individuals have equal access to the telephone and that they can eat, sleep, or participate in an activity without being disturbed.~~

~~b. Providers may limit use by individuals receiving services for substance abuse, but only if sound therapeutic practice requires the restriction and the human rights advocate is notified.~~

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~~e. Providers may limit an individual's access to the telephone if communication with another person or persons will result in demonstrable harm to the individual and is significantly impacting treatment in the judgment of a licensed physician or doctoral level psychologist. The reasons for the restriction shall be documented in the individual's service record and the human rights advocate shall be notified prior to implementation.~~

~~5. Providers may limit or supervise an individual's visitors when, in the judgment of a licensed physician or doctoral level psychologist, the visits result in demonstrable harm to the individual and significantly impact the individual's treatment; or when the visitors are suspected of bringing contraband or in any other way are threatening harm to the individual. The reasons for the restriction shall be documented in the individual's service record, and the human rights advocate shall be notified prior to implementation.~~

~~6. Providers may stop, report or intervene to prevent any criminal act.~~

## 12VAC35-115-60. Services.

A. Each individual receiving services shall receive those services according to law and sound therapeutic practice.

B. The provider's duties.

1. Providers shall develop, carry out, and regularly monitor policies and procedures [~~governing~~ prohibiting] discrimination in the provision of services. Providers shall comply with all state and federal laws, including any applicable provisions of the Americans with Disabilities Act (42 USC §12101 et seq.), that prohibit discrimination on the basis of race, color, religion, ethnicity, age, sex, disability, or ability to pay. These policies and procedures shall require, at a minimum, the following:

a. An individual or anyone acting on his behalf may complain to the director if he believes that his services have been limited or denied due to discrimination.

b. If an individual ~~makes a complaint~~ complains of discrimination, the director shall assure that an appropriate investigation is conducted immediately. The director shall make a decision, take action, and document the action within 10 working days of receipt of the complaint.

c. A written copy of the decision and the director's action shall be forwarded to the individual [and his authorized representative], the human rights advocate, and any employee or employees involved.

d. If the individual or his legally authorized representative, ~~as applicable~~, is not satisfied with the director's decision or action, he may file a petition for an LHRC hearing under 12VAC35-115-180.

2. Providers shall ensure that all [~~clinical~~] services, including medical services and treatment, are at all times delivered ~~within~~ in accordance with sound therapeutic practice. Providers may deny or limit an individual's access to services if sound therapeutic practice requires limiting the service to individuals of the same sex or similar age, disability, or legal status.

3. Providers shall develop and implement policies and procedures that address emergencies. These policies and procedures shall:

a. Identify what caregivers may do to respond to an emergency;

b. Identify qualified clinical staff who are accountable for assessing emergency conditions and determining the appropriate intervention;

c. Require that the director immediately notify the individual's ~~legally~~ authorized representative, ~~if there is one~~, and the advocate if an emergency results in harm or injury to any individual; and

d. Require documentation in the individual's services record of all facts and circumstances surrounding the emergency.

4. Providers shall assign a specific person or group of persons to carry out each of the following activities:

a. Medical, mental health, and behavioral screenings and assessments, as applicable, upon admission and during the provision of services;

b. Preparation, implementation, and appropriate changes [~~in~~ to] an individual's services plan based on the ongoing review of the medical, mental, and behavioral needs of the individual ~~receiving services~~; and

c. Preparation and implementation of an individual's discharge plan; and

d. [ ~~Approval of seclusion and restraint~~ Review of every use of seclusion or restraint by a qualified professional who is involved in providing services to the individual ].

5. Providers shall not ~~prepare or~~ deliver any service ~~for any~~ to an individual without a services plan that is tailored specifically to the needs and expressed preferences of the individual ~~receiving services~~ and, in the case of a minor, the minor and the minor's parent or guardian. Services provided in response to emergencies or crises shall be deemed part of the services plan and thereafter documented in the individual's services plan.

6. Providers shall write the services plan and discharge plan in clear, understandable language.

7. When preparing and or changing an individual's services or discharge plan, providers shall ensure that all services received by the individual are integrated. With the

individual's or the individual's authorized representative's [ ~~consent authorization~~ ], providers may involve family members in services and discharge planning. When the individual or his authorized representative requests such involvement, the provider shall take all reasonable steps to do so. In the case of services to minors, the parent or guardian or other person authorized to consent to treatment pursuant to §54.1-2969 A of the Code of Virginia shall be involved in [ service and ] discharge planning.

8. Providers shall ensure that the entries in an individual's services record are at all times authentic, accurate, complete, timely, and pertinent.

C. Exceptions and conditions to the provider's duties.

1. Providers may deny or limit an individual's access to a service or services if sound therapeutic practice requires limiting the service to individuals of the same sex, or similar age, disability, or legal status.

2. With the individual's or legally authorized representative's consent, providers may involve family members in services and discharge planning. When the individual or the legally authorized representative requests such involvement, the provider shall take all reasonable steps to do so.

**12VAC35-115-70. Participation in decision making and consent.**

A. Each individual has a right to participate meaningfully in decisions regarding all aspects of services affecting him. This includes the right to:

1. Participate meaningfully in the preparation, implementation and any changes to the individual's services and discharge plans.

2. Express his preferences and have them incorporated into the services and discharge plans consistent with his condition and need for services and the provider's ability to provide.

3. Object to any part of a proposed services or discharge plan.

4. Give or not give consent for treatment, including medical treatment. See Consent 12VAC35-115-30.

5. Give or not give written informed consent for electroconvulsive treatment prior to the treatments or series of treatments.

a. Informed consent shall be documented on a form that shall become part of the individual's services record. In addition to containing the elements of informed consent as set forth in the definition of "consent" in 12VAC35-115-30, this form shall:

(1) Specify the maximum number of treatments to be administered during the series;

(2) Indicate that the individual has been given the opportunity to view an instructional video presentation about the treatment procedures and their potential side effects;

(3) Be signed by the individual receiving the treatment, or the individual's legally authorized representative, where applicable; and

(4) Be witnessed in writing by a person not involved in the individual's treatment who attests that the individual has been counseled and informed about the treatment procedures and the potential side effects of the procedures.

b. Separate consent, documented on a separate consent form, shall be obtained for any treatments exceeding the maximum number of treatments indicated on the initial consent form.

e. Providers shall inform the individual receiving services or the legally authorized representative, as applicable, that the individual may obtain a second opinion before receiving electroconvulsive treatment and shall document such notification in the individual's services record.

d. Before initiating electroconvulsive treatment for any individual under age 18 years, two qualified child psychiatrists must concur with the treatment. The psychiatrists must be trained or experienced in treating children and adolescents and not directly involved in treating the individual. Both must examine the individual, consult with the prescribing psychiatrist, and document their concurrence with the treatment in the individual's services record.

6. Give or not give informed consent for participation in human research.

7. Give or not give consent to the disclosure of information the provider keeps about him. See 12VAC35-115-80.

8. Have a legally authorized representative make decisions for him in cases where the individual lacks capacity to give informed consent.

9. Object to any decision that allows a legally authorized representative to make decisions for him. This includes having a professional assessment of capacity to consent and, at the individual's own expense, an independent assessment of capacity.

10. Be accompanied by someone the individual trusts as his representative when participating in services planning.

11. Indicate by signature in the service record, the individual's participation in and agreement to services plan, discharge plan, changes to these plans, and all other significant aspects of treatment and services he receives.

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~~12. Request admission to or discharge from any service any time.~~

1. Consent or not consent to receive or participate in services.

a. The ISP and discharge plan shall incorporate the individual's preferences consistent with his condition and need for service and the provider's ability to address them;

b. The individual's services record shall include evidence that the individual has participated in the development of his ISP and discharge plan, in changes to these plans, and in all other significant aspects of his treatment and services; and

c. The individual's services record shall include the signature or other indication of the individual's or his authorized representative's consent.

2. Give or not give informed consent to receive or participate in treatment or services that pose a risk of harm greater than ordinarily encountered in daily life and to participate in human research except research that is exempt under §37.2-162.17 of the Code of Virginia. Informed consent is always required for [ ~~surgery~~ surgical procedures ], electroconvulsive treatment, or use of psychotropic medications.

a. To be informed, consent for any treatment or service must be based on disclosure of and understanding by the individual or his authorized representative of the following information:

(1) An explanation of the treatment, service, or research and its purpose;

(2) When proposing human research, the provider shall describe the research and its purpose, explain how the results of the research will be disseminated and how the identity of the individual will be protected, and explain any compensation or medical care that is available if an injury occurs;

(3) A description of any adverse consequences and risks associated with the research, treatment, or service;

(4) A description of any benefits that may be expected from the research, treatment, or service;

(5) A description of any alternative procedures that might be considered, along with their side effects, risks, and benefits;

(6) Notification that the individual is free to refuse or withdraw his consent and to discontinue participation in any treatment, service, or research requiring his consent at any time without fear or reprisal against or prejudice to him; [ and ]

(7) A description of the ways in which the individual or his authorized representative can raise concerns and ask questions about the research [ ~~or~~ ] treatment [ , or service ] to which consent is given [ ~~and~~ ]

[ ~~(8) When the provider proposes human research, an explanation of any compensation or medical care that is available if an injury occurs~~ ].

b. Evidence of informed consent shall be documented in an individual's services record and indicated by the signature of the individual or his authorized representative on a form or the ISP.

c. Informed consent for electroconvulsive treatment requires the following additional components:

(1) Informed consent shall be in writing, documented on a form that shall become part of the individual's services record. This form shall:

(a) Specify the maximum number of treatments to be administered during the series;

(b) Indicate that the individual has been given the opportunity to view an instructional video presentation about the treatment procedures and their potential side effects; and

(c) Be witnessed in writing by a person not involved in the individual's treatment who attests that the individual has been counseled and informed about the treatment procedures and potential side effects of the procedures.

(2) Separate consent, documented on a [ ~~separate~~ new ] consent form, shall be obtained for any treatments exceeding the maximum number of treatments indicated on the initial consent form.

(3) Providers shall inform the individual [ ~~receiving services~~ ] or his authorized representative that the individual may obtain a second opinion before receiving electroconvulsive treatment and the individual is free to refuse or withdraw his consent and to discontinue participation at any time without fear of reprisal against or prejudice to him. The provider shall document such notification in the individual's services record.

(4) Before initiating electroconvulsive treatment for any individual under age 18 years, two qualified child psychiatrists must concur with the treatment. The psychiatrists must be trained or experienced in treating children or adolescents and not directly involved in treating the individual. Both must examine the individual, consult with the prescribing psychiatrist, and document their concurrence with the treatment in the individual's services record.

3. Have an authorized representative make decisions for him in cases where the individual [ ~~lacks~~ has been

determined to lack the ] capacity to consent or authorize the disclosure of information.

a. If an individual who has an authorized representative who is not his legal guardian objects to the disclosure of specific information or a specific proposed treatment or service, the director [ or his designee ] shall immediately notify the human rights advocate and authorized representative. A petition for LHRC review of the objection may be filed under 12VAC35-115-200.

b. If the authorized representative objects or refuses to consent to a specific proposed treatment or service for which consent is necessary, the provider shall not institute the proposed treatment, except in an emergency in accordance with this section [ or as otherwise permitted by law ].

4. Be accompanied, except during forensic evaluations, by [ someone a person or persons ] whom the individual trusts [ as his representative to support and represent him ] when he participates in services planning, assessments, [ and ] evaluations, including discussions and evaluations of the individual's capacity to consent, and discharge planning.

5. Request admission to or discharge from any service at any time.

B. The provider's duties.

1. Providers shall respect, protect, and help develop each individual's ability to participate meaningfully in decisions regarding all aspects of services affecting him. This shall be done by involving the individual, to the extent permitted by his capacity, in ~~decision-making~~ decision making regarding all aspects of services.

2. Providers shall ask the individual to express his preferences about decisions regarding all aspects of services that affect him and shall honor these preferences to the extent possible.

3. Providers shall give each individual the opportunity, and any help he needs, to participate meaningfully in the preparation of his services plan, discharge plan, and changes to these plans, and all other aspects of services he receives. Providers shall document these opportunities in the individual's services record.

~~4. Providers shall obtain and document in the individual's services record the individual's consent prior to disclosing any information about him. See 12VAC35-115-80 for the rights, duties, exceptions, and conditions relating to disclosure.~~

~~5.~~ 4. Providers shall obtain and document in the individual's services record the individual's or his authorized representative's consent for any treatment, ~~including medical treatment,~~ before the treatment it begins. If the individual is a minor in the legal custody of a natural

or adoptive parent, the provider shall obtain this consent from at least one parent. The consent of a parent is not needed if a court has ordered or consented to treatment or services pursuant to §16.1-241 D, 16.1-275, or 54.1-2969 B of the Code of Virginia, or a local department of social services with custody of the minor has provided consent. Reasonable efforts must be made, however, to notify the parent or legal custodian promptly following the treatment or services. Additionally, a competent minor may independently consent to treatment ~~of~~ for sexually transmitted or contagious diseases, family planning or pregnancy, or outpatient services or treatment for mental illness, emotional disturbance, or ~~additions~~ substance use disorders pursuant to §54.1-2969 E of the Code of Virginia.

5. Providers may initiate, administer, or undertake a proposed treatment without the consent of the individual or the individual's authorized representative in an emergency. All emergency treatment or services and the facts and circumstances justifying the emergency shall be documented in the individual's services record within 24 hours of the treatment or services.

a. Providers shall immediately notify the authorized representative of the provision of treatment without consent during an emergency.

b. Providers shall continue emergency treatment without consent beyond 24 hours only following a review of the individual's condition and if a new order is issued by a professional who is authorized by law and the provider to order treatment.

c. Providers shall notify the human rights advocate if emergency treatment without consent continues beyond 24 hours.

d. Providers shall develop and integrate treatment strategies into the ISP to address and prevent future emergencies to the extent possible following provision of emergency treatment without consent.

6. Providers shall obtain and document in the individual's services record the ~~individual's informed consent of the individual or his authorized representative~~ to continue any treatment initiated in an emergency that lasts longer than 24 hours after the emergency began.

~~7. If the capacity of an individual to give consent is in doubt, the provider shall make sure that a professional qualified by expertise, training, education, or credentials and not directly involved with the individual conducts an evaluation and makes a determination of the individual's capacity.~~

~~8. If the individual or his family objects to the results of the qualified professional's determination, the provider shall immediately inform the human rights advocate.~~

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~~a. If the individual or family member wishes to obtain an independent evaluation of the individual's capacity, he may do so at his own expense and within reasonable timeframes consistent with his circumstances. The provider shall take no action for which consent is required, except in an emergency, pending the results of the independent evaluation. The provider shall take no steps to designate a legally authorized representative until the independent evaluation is complete.~~

~~b. If the independent evaluation is consistent with the provider's evaluation, the evaluation is binding, and the provider shall implement it accordingly.~~

~~c. If the independent evaluation is not consistent with the provider's evaluation, the matter shall be referred to the LHRC for review and decision under Part IV (12VAC35-115-150 et seq.) of this chapter.~~

~~9. When it is determined that an individual lacks the capacity to give consent, the provider shall designate a legally authorized representative. The director shall have the primary responsibility for determining the availability of and designating a legally authorized representative in the following order of priority:~~

~~a. An attorney in fact currently authorized to give consent under the terms of a durable power of attorney, a health care agent appointed by an individual under an advance directive pursuant to §54.1-2983 of the Code of Virginia, a legal guardian of the individual not employed by the provider and currently authorized to give consent, or, if the individual is a minor, a parent having legal custody of the individual.~~

~~b. The individual's next of kin. In designating the next of kin, the director shall select the best qualified person, if available, according to the following order of priority unless, from all information available to the director, another person in a lower priority is clearly better qualified: spouse, an adult child, a parent, an adult brother or sister, any other relative of the individual. If the individual expresses a preference for one family member over another in the same category, the director shall appoint that family member.~~

~~e. If no other person specified in subdivisions a and b is available and willing to serve, a provider may appoint a next friend of the individual, after a review and finding by the LHRC that the proposed next friend has shared a residence with or provided support and assistance to the individual for a period of at least six months prior to the designation, the proposed next friend has appeared before the LHRC and agreed to accept these responsibilities, and the individual has no objection to this proposed next friend being appointed authorized representative.~~

~~10. No provider, director, or employee of a provider or director may serve as legally authorized representative for~~

~~any individual receiving services delivered by that provider or director unless the employee is a relative or legal guardian.~~

~~11. If a provider documents that the individual lacks capacity and no person is available or willing to act as a legally authorized representative, the provider shall:~~

~~a. Attempt to identify a suitable person who would be willing to serve as guardian and ask the court to appoint said person to provide consent; or~~

~~b. Ask a court to authorize treatment. See §37.1-134.21 of the Code of Virginia.~~

~~12. If the individual who has a legally authorized representative objects to the disclosure of specific information or a specific proposed treatment, the director shall immediately notify the human rights advocate and the legally authorized representative, as applicable. A petition for a LHRC review may be filed under 12VAC35-115-180.~~

~~13. Providers shall make sure that an individual's capacity to consent is reviewed at least every six months or as the individual's condition warrants according to sound therapeutic practice to assess the continued need for a surrogate decision maker. Such reviews, or decisions not to review, shall be documented in the individual's services record and communicated in writing to the surrogate decision maker. Providers shall also consider an individual's request for review in a timely manner.~~

~~7. Providers may provide treatment in accordance with a court order or in accordance with other provisions of law that authorize such treatment or services including the Health Care Decisions Act (§54.1-2981 et seq. of the Code of Virginia). The provisions of these regulations are not intended to be exclusive of other provisions of law but are cumulative ( [ e.g., see ] §54.1-2970 of the Code of Virginia).~~

~~14. 8. Providers shall respond to an individual's request for discharge [ according to requirements ] set forth in statute and shall make sure that the individual is not subject to punishment, reprisal, or reduction in services because he makes a request. However, if an individual leaves a service "against medical advice," any subsequent billing of the individual by his private third party payer shall not constitute punishment or reprisal on the part of the provider.~~

~~a. Voluntary admissions.~~

~~(1) Individuals admitted under §37.1-65 §37.2-805 of the Code of Virginia to mental health facilities state hospitals operated by the department who notify the director of their intent to leave shall be released discharged when appropriate, but no later than eight hours after notification, unless another provision of law authorizes~~

the director to ~~detain~~ retain the individual for a longer period.

(2) Minors admitted under §16.1-338 or 16.1-339 of the Code of Virginia shall be released to the parent's (or legal guardian's) custody within 48 hours of the consenting parent's (or legal guardian's) notification of withdrawal of consent, unless a petition for continued hospitalization pursuant to §16.1-340 or 16.1-345 of the Code of Virginia is filed.

b. Involuntary ~~commitment~~ admissions.

(1) When a minor involuntarily ~~committed~~ admitted under §16.1-345 of the Code of Virginia no longer meets the commitment criteria, the director shall take appropriate steps to arrange the minor's discharge.

(2) When an individual involuntarily ~~committed~~ admitted under ~~§37.1-67.3~~ §37.2-817 of the Code of Virginia has been receiving services for more than 30 days and makes a written request for discharge, the director shall determine whether the individual continues to meet the criteria for involuntary ~~commitment~~ admission. If the director denies the request for discharge, he shall notify the individual in writing of the reasons for denial and of the individual's right to seek relief in the courts. The request and the reasons for denial shall be included in the individual's services record. Anytime ~~an~~ the individual meets any of the criteria for discharge set out in ~~§37.1-98~~ §37.2-837 or 37.2-838 of the Code of Virginia, the director shall take all necessary steps to arrange the individual's discharge.

(3) If at any time it is determined that an individual involuntarily admitted under Chapter 11 (§19.2-167 et seq.) or Chapter 11.1 (§19.2-182.2 et seq.) of Title 19.2 of the Code of Virginia no longer meets the criteria ~~upon~~ under which the individual was admitted and retained, the director ~~shall notify the or~~ shall notify the commissioner ~~who, as appropriate,~~ shall seek judicial authorization to discharge or transfer the individual. Further, pursuant to §19.2-182.6 of the Code of Virginia, the commissioner shall petition the committing court for conditional or unconditional release at any time he believes the acquttee no longer needs hospitalization.

c. Certified admissions. If an individual certified for admission ~~[ under to a state training center or his authorized representative requests discharge, the director or his designee shall contact the individual's community services board to finalize and implement the discharge plan ]~~ §37.1-65.1 or 37.1-65.3 [ §37.2-806 of the Code of Virginia requests discharge, the director ] will ~~[ shall determine whether the individual continues to meet the criteria for ]~~ certification [ admission. If the director denies the request for discharge, the individual and the individual's ] legally ~~[ authorized representative shall be~~

~~notified in writing of the reasons for the denial and of the individual's right to seek relief in the courts. The request and the reasons for denial ]~~ will [ shall be included in the individual's services record ].

C. ~~Exceptions and conditions to the provider's duties.~~

~~1. Providers, in an emergency, may initiate, administer, or undertake a proposed treatment without the consent of the individual or the individual's legally authorized representative. All emergency treatment shall be documented in the individual's services record within 24 hours.~~

~~a. Providers shall immediately notify the legally authorized representative, as applicable, of the provision of treatment without consent during an emergency.~~

~~b. Providers shall continue emergency treatment without consent beyond 24 hours only following a review of the individual's condition and if a new order is issued by a professional who is authorized by law and the provider to order the treatment.~~

~~c. Providers shall notify the human rights advocate if emergency treatment without consent continues beyond 24 hours.~~

~~d. Providers shall develop and integrate treatment strategies to address and prevent future such emergencies to the extent possible, into the individual's services plan, following the provision of emergency treatment without consent.~~

~~2. Providers may provide treatment without consent in accordance with a court order or in accordance with other provisions of law that authorize such treatment including the Health Care Decisions Act (§54.1-2981 et seq.). The provisions of these regulations are not intended to be exclusive of other provisions of law but are cumulative (e.g., see §54.1-2970 of the Code of Virginia).~~

**12VAC35-115-80. Confidentiality.**

A. Each individual is entitled to have all identifying information that a provider maintains or knows about him remain confidential. Each individual has a right to give his ~~consent~~ authorization before the provider shares identifying information about him or his care unless another ~~law, federal state law or~~ regulation, or these regulations specifically require or permit the provider to disclose certain specific information.

B. The provider's duties.

1. Providers shall maintain the confidentiality of any information that identifies an individual ~~receiving services from the provider~~. If an individual's services record pertains in whole or in part to referral, diagnosis or treatment of substance ~~[ abuse use disorders ]~~, providers shall release disclose information only according to applicable federal

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regulations (see 42 CFR Part 2, Confidentiality of Alcohol and Drug Abuse Patient Records).

2. Providers shall obtain and document in the individual's services record the individual's authorization [ or that of the authorized representative ] prior to disclosing any identifying information about him. The authorization must contain the following elements:

a. The name of the organization and the name or other specific identification of the person or persons or class of persons to whom disclosure is made;

b. A description of the nature of the information to be disclosed, the purpose of the disclosure, and an indication whether the authorization extends to the information placed in the individual's record after the authorization was given but before it expires;

c. An indication of the effective date of the authorization and the date the authorization will expire, or the event or condition upon which it will expire; and

d. The signature of the individual and the date. If the authorization is signed by an authorized representative, a description of the authorized representative's authority to act.

~~2- 3.~~ 3. Providers shall tell each individual, and his legally authorized representative if he has one, about the individual's confidentiality rights. This shall include how information can be disclosed and how others might get information about the individual without his consent authorization. If a disclosure is not required by law, the [ providers provider ] shall give strong consideration to any objections from the individual or his authorized representative in making the decision to disclose information [ (see Virginia Government Data Collection and Dissemination Practices Act (§2.2-3800 et seq. of the Code of Virginia)) ].

~~3- 4.~~ 4. Providers shall prevent unauthorized disclosures of information from services records and shall convey maintain and disclose [ the ] information in a secure manner.

4. If consent to disclosure is required, providers shall get the written consent of the individual or the legally authorized representative, as applicable, before disclosing information. 5. In the case of a minor, the consent authorization of the custodial parent or other person authorized to consent to the minor's treatment under §54.1-2969 is required, except as provided below:

a. Section 54.1-2969 E of the Code of Virginia permits a minor to authorize the release disclosure of records information related to medical or health services for a sexually transmitted or contagious disease ~~or~~ a family planning but requires parental consent for release of records related to or pregnancy, and outpatient care, treatment or rehabilitation for substance use disorders, mental illness, or emotional disturbance.

~~b. A minor may authorize the release of outpatient substance abuse records without parental consent in programs governed by 42 CFR Part 2. The concurrent authorization of the minor and [ custodial ] parent is required to disclose inpatient substance abuse records.~~

c. The minor and the [ custodial ] parent shall authorize the disclosure of identifying information related to the minor's inpatient psychiatric hospitalization when the minor is 14 years of age or older and has consented to the admission.

~~5- 6.~~ 6. When providers disclose identifying information, they shall attach a statement that informs the person receiving the information that it must not be disclosed to anyone else unless the individual consents authorizes the disclosure or unless the state law or regulation allows or requires further disclosure without consent authorization.

~~6. Upon request, providers shall tell individuals the sources of information contained in their services records and the names of anyone, other than employees of the provider, who has received information about them from the provider. Individuals receiving services should be informed that the department may have access to their records.~~

C. Exceptions and conditions to the provider's duties.

~~4- 7.~~ 7. Providers may encourage individuals to name family members, friends, and others who may be told of their presence in the program and general condition or well-being. Consent must be obtained and documented in the services record for the provider to contact family members, friends, or others. Nothing in this provision shall prohibit providers from taking steps necessary to secure a legally authorized representative. Except for information governed by 42 CFR Part 2, providers may disclose to a family member, other relative, a close personal friend, or any other person identified by the individual, information that is directly relevant to that persons involvement with the individual's care or payment for his health care, if (i) the provider obtains the individual's agreement, (ii) the provider provides the individual with the opportunity to object to the disclosure, and (iii) the individual does not object or the provider reasonably infers for the circumstances, based on the exercise of professional judgment, that the individual does not object to the disclosure. If the opportunity to agree or object cannot be provided because of the individual's incapacity or an emergency circumstance, the provider may, in the exercise of professional judgment, determine whether the disclosure is in the best interest of the individual and, if so, disclose only the information that is directly relevant to the person's involvement with the individual's health care.

~~2- 8.~~ 8. Providers may disclose the following identifying information without consent authorization or violation of the individual's confidentiality, but only under the conditions specified in this subdivision and in subdivision 3 the

following subdivisions of this subsection. Providers should always consult 42 CFR Part 2, Confidentiality of Alcohol and Drug Abuse Patient Records, if applicable, because these federal regulations may prohibit some of the disclosures addressed in this section. [ ~~See also §32.1-127.1-03 of the Code of Virginia for a list of circumstances under which records may be disclosed without~~ ] consent [ authorization ].

a. Emergencies: Providers may disclose information in an emergency to any person who needs that particular information for the purpose of preventing injury [ ~~to~~ ]; or death or substantial property destruction in an emergency [ of an individual or other person ]. The provider shall not disclose any information that is not needed for [ ~~these~~ this ] specific [ ~~purposes~~ purpose ].

b. Employees: Providers or health plans: Providers may ~~disclose to permit~~ any full- or part-time employee, consultant, agent, or contractor of the provider; to use identifying information or disclose to another provider, a health plan, the department, or a CSB, information required to give services to the individual or to get payment for the services.

~~c. Insurance companies and other third party payers: Disclosure may be made to insurance companies and other third party payers according to Chapter 12 (§37.1-225 et seq.) of Title 37.1 of the Code of Virginia.~~

~~d. c. Court proceedings~~: If the individual; or someone acting for him; introduces any aspect of his mental condition or services as an issue before a court, administrative agency, or medical malpractice review panel, the provider may disclose any information relevant to that issue. The provider may also disclose any records if they are properly subpoenaed, if a court orders them to be produced, or if involuntary ~~commitment~~ admission or certification for admission is being proposed ~~or conducted~~.

e. d. Legal counsel: Providers may disclose information to their own legal counsel; or to anyone working on behalf of their legal counsel; in providing representation to the provider. Providers of state-operated services may disclose information to the Office of the Attorney General; or to anyone appointed by or working on behalf of that office; in providing representation to the Commonwealth of Virginia.

f. e. Human rights committees: Providers may disclose to the LHRC and the SHRC any information necessary for the conduct of their responsibilities under these regulations.

g. f. Others authorized or required by the commissioner, CSB, or private program director: Providers may disclose information to other persons if authorized or required ~~by the commissioner, CSB or private program director~~ for the following activities:

- (1) Licensing, human rights, or certification or accreditation reviews;
- (2) Hearings, reviews, appeals, or investigations under these regulations;
- (3) Evaluation of provider performance and individual outcomes (see ~~§37.1-98.2~~ §§37.2-508 and 37.2-608 of the Code of Virginia);
- (4) Statistical reporting;
- (5) Preauthorization, utilization reviews, financial and related administrative services reviews, and audits; or
- (6) Similar oversight and review activities.

~~h. g. Preadmission screening, services, and discharge planning~~: Providers may disclose to the department, the CSB, or to other providers information necessary to [ ~~prescreen~~ screen ] individuals [ for admission ] or to prepare and carry out a comprehensive individualized services or discharge plan (see ~~§37.1-98.2~~ §37.2-505 of the Code of Virginia).

~~i. h. Protection and advocacy agency~~: Providers may disclose information to the protection and advocacy agency ~~any information that may establish probable cause to believe that an individual receiving services has been abused or neglected and any information concerning the death or serious injury of any individual while receiving services, whatever the suspected cause of the death~~ in accordance with that agency's legal authority under federal and state law.

~~j. i. Historical research~~: Providers may disclose information to persons engaging in bona fide historical research if all of the following conditions are met:

(1) The request for historical research shall include, at a minimum, a summary of the scope and purpose of the research, a description of the product to result from the research and its expected date of completion, a rationale explaining the need to access otherwise private information, and the specific identification of the type and location of the records sought.

~~(1) (2)~~ The commissioner, CSB executive director, or private program director ~~authorizes~~ has authorized the research;

~~(2) (3)~~ The individual or individuals who are the subject of the disclosure are deceased;

~~(3) (4)~~ There are no known living persons ~~authorized~~ permitted by law to ~~consent to~~ authorize the disclosure; and

~~(4) (5)~~ The disclosure would in no way reveal the identity of any person who is not the subject of the historical research.

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~~k.~~ A request for historical research shall include, at a minimum:

- ~~(1) A summary of the scope and purpose of the research;~~
- ~~(2) A description of the product to result from the research and its expected date of completion;~~
- ~~(3) A rationale explaining the need to access otherwise confidential records; and~~
- ~~(4) Specific identification of the type and location of the records sought.~~

~~l.~~ j. Protection of the public safety: If a provider reasonably believes an individual receiving services is a present threat to a specifically named individual or readily identifiable person ~~or the public~~ and the provider reasonably believes that the individual has the intent and the ability to carry out the threat immediately or imminently, the provider may ~~communicate only~~ disclose those facts necessary to alleviate the potential threat.

~~m.~~ k. Inspector General: Providers may disclose to the Inspector General any individual services records and other information relevant to the provider's delivery of services.

~~n.~~ l. Virginia Patient Level Data System: Providers may disclose financial and services information to Virginia Health Information as required by law (see Chapter 7.2 (§32.1-276.2 et seq.) of Title 32.1 of the Code of Virginia).

m. Psychotherapy notes: Providers shall obtain an individual's authorization for any disclosure of psychotherapy notes, except when disclosure is made:

- (1) For the provider's own training programs in which students, trainees, or practitioners in mental health are being taught under supervision to practice or improve their skills in group, joint, family or individual counseling;
- (2) To defend the provider or its employees or staff against any accusation or wrongful conduct;
- (3) In discharge of the provider's duty, in accordance with §54.1-2400.1 B of the Code of Virginia, to take precautions to protect third parties from violent behavior or other serious harm;
- (4) As required in the course of an investigation, audit, review, or proceeding regarding a provider's conduct by a duly authorized law-enforcement, licensure, accreditation, or professional review entity; or
- (5) When otherwise required by law.

[ n. A law-enforcement official:

- (1) Pursuant to a search warrant or grand jury subpoena;

(2) In response to their request, for the purpose of identifying or locating a suspect, fugitive, [an] individual required to register pursuant to §92.1-901 of the Sex Offender and Crimes Against Minors Registry Act, material witness, or missing person, provided that only the following information is disclosed:

- (a) Name and address of the individual;
- (b) Date and place of birth of the individual;
- (c) Social Security number of the individual;
- (d) Blood type of the individual;
- (e) Date and time of treatment received by the individual;
- (f) Date and time of death of the individual;
- (g) Description of distinguishing physical characteristics of the individual; and
- (h) Type of injury sustained by the individual.

(3) Regarding the death of an individual for the purpose of alerting law enforcement of the death if the health care entity has a suspicion that such death may have resulted from criminal conduct; or

(4) If the health care entity believes in good faith that the information disclosed constitutes evidence of a crime that occurred on its premises. ]

~~o.~~ [ n. o. ] Other statutes or regulations: Providers may disclose information to the extent required or permitted by any other state or federal statute law or regulations regulation. [ See also §32.1-127.1:03 of the Code of Virginia for a list of circumstances in which records may be disclosed without authorization. ]

~~3.~~ If information is disclosed without consent to anyone other than employees of the department, CSB or other provider, providers shall take the following steps before the disclosure (or, in an emergency, promptly afterward):

- ~~a.~~ Put a written notation of the information disclosed, the name of the person who received the information, the purpose of disclosure, and the date of disclosure permanently in the individual's services record.
- ~~b.~~ Give the individual or his legally authorized representative written notice of the disclosure, including the name of each person who received the information and the nature of the information.

~~4.~~ If the disclosure is not required by law, give strong consideration to any objections from the individual or his legally authorized representative in making the decision to release information (see Virginia Government Data Collection and Dissemination Practices Act, §2.2-3800 et seq. of the Code of Virginia).

9. Upon request, the provider shall tell the individual or his authorized representative the sources of information contained in his services records and provide a written listing of disclosures of information made without authorization, except for disclosures:

- a. To employees of the department, CSB, the provider, or other providers;
- b. To carry out treatment, payment, or health care operations;
- c. That are incidental or unintentional disclosures that occur as a by-product of engaging in health care communications and practices that are already permitted or required;
- d. To an individual or his authorized representative;
- e. Pursuant to an authorization;
- f. For national security or intelligence purposes; [ or ]
- g. To correctional institutions or law enforcement officials [ ; or ]
- h. That were made more than six years prior to the request. ]

10. The provider shall include the following information in the listing of disclosures of information provided to the individual or his authorized representative under subdivision 9 of this subsection:

- a. The name of the person or organization that received the information and the address if known;
- b. A brief description of the information disclosed; and
- c. A brief statement of the purpose of the disclosure or, in lieu of such a statement, a copy of the written request for disclosure.

11. If the provider makes multiple disclosures of information to the same person or entity for a single purpose, the provider shall include the following:

- a. The information required in subdivision 10 of this subsection for the first disclosure made during the requested period;
- b. The frequency, periodicity, or number of disclosures made during the period for which the individual is requesting information; and
- c. The date of the last disclosure during the time period.

12. [ The provider need not inform an individual whom it believes to be a victim of abuse or neglect. If the provider makes a disclosure to a social service or protective services agency about an individual who the provider reasonably believes to be a victim of abuse or neglect, the provider is not required to inform the individual or his authorized representative of the disclosure if ] :

a. [ If the The ] provider, in the exercise of professional judgment, believes that informing the individual would place the individual at risk of serious harm; or

b. [ If the The ] provider would [ inform be informing ] the authorized representative, and the provider reasonably believes that the authorized representative is responsible for the abuse or neglect [ , ] and that informing such person would not be in the best [ interest interests ] of the individual.

**12VAC35-115-90. Access to and ~~correction~~ amendment of services records.**

A. Each individual has a right to see, read, and get a copy of his own services record. Minors must have their parent or guardian's permission first. If this right is restricted according to law, the individual has a right to let certain other people see his record. Each individual has a right to challenge, correct or explain anything in his record. Whether or not corrections are made as a result, each individual has a right to let anyone who sees his record know that he tried to correct or explain his position and what happened as a result. An individual's legally authorized representative has the same rights as the individual himself has (see §2.2-3806 of the Code of Virginia). With respect to his own services record, each individual and his authorized representative has the right to:

- 1. See, read, and get a copy of his own services record, [ except psychotherapy notes, ] information that is privileged pursuant to §8.01-581.17 of the Code of Virginia, and information compiled by the provider in reasonable anticipation of or for use in a civil, criminal, or administrative action or proceeding;
- 2. Let certain other people see, read, or get a copy of his own services record if the individual is restricted by law from seeing, reading, or receiving a copy;
- 3. Challenge, [ request to ] amend, or receive an explanation of anything in his services record; and
- 4. Let anyone who sees his record, regardless of whether amendments to the record have been made, know that the individual has tried to amend the record or explain his position and what happened as a result.

B. Except in the following circumstances, minors must have their parent's or guardian's permission before they can access their services record:

- 1. A minor may access his services record without the permission of a parent only if the records pertain to treatment for sexually transmitted or contagious diseases, family planning or pregnancy, outpatient care, treatment or rehabilitation for substance use disorders, mental illness or emotional disturbance, or inpatient psychiatric hospitalization when a minor is 14 years of age or older and has consented to the admission.

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2. A parent may access his minor child's services record unless parental rights have been terminated, a court order provides otherwise, or the minor's treating physician or clinical psychologist has determined, in the exercise of professional judgment, that the disclosure to the parent would be reasonably likely to cause substantial harm to the minor or another person.

B. C. The provider's duties.

1. Providers shall tell each individual, and his legally authorized representative if he has one, how he can access and ~~provide corrections to~~ request amendment of his own services records record.

2. Providers shall permit each individual to see his records services record when he requests ~~them~~ it and to ~~provide corrections~~ request amendments if necessary.

a. Access to all or a part of an individual's services record may be denied or limited only if a physician or a clinical psychologist involved in providing services to the individual talks to the individual, examines the services record as a result of the individual's request for access, and signs and puts in the services record permanently a written statement that he thinks access to the services record by the individual at this time would be reasonably likely to endanger the life or physical safety of the individual or another person or that the services record makes reference to a person other than a health care provider and the access requested would be reasonably likely to cause substantial harm to the referenced person. The physician or clinical psychologist must also tell the individual as much about his services record as he can without risking harm to the individual.

b. If access is denied in whole or in part, the provider shall give the individual or his authorized representative a written statement that explains the basis for the denial, the individual's review rights, as set forth in the following subdivisions, how he may exercise them, and how the individual may file a complaint with the provider or the United States Department of Health and Human Services, if applicable. If restrictions or time limits are placed on access, the individual shall be notified of the restrictions and time limits and conditions for their removal. These time limits and conditions also shall be specified in the services record.

(1) If the individual requests a review of denial of access, the provider shall designate a physician or clinical psychologist who was not directly involved in the denial to review the decision to deny access. The physician or clinical psychologist must determine within a reasonable period of time whether or not to deny the access requested in accordance with the standard in subdivision 2 a of this subsection. The provider must promptly provide the individual notice of the physician's or

psychologist's determination and provide or deny access in accordance with that determination.

(2) At the individual's option, the individual may designate at his own expense a reviewing physician or clinical psychologist who was not directly involved in the denial to review the decision to deny access in accordance with the standard in subdivision 2 a of this subsection. If the individual chooses this option, the provider is not required to designate a physician or clinical psychologist to review the decision.

c. If the provider limits or refuses to let an individual see his services record, the provider shall also notify the advocate and tell the individual that he can ask to have a lawyer of his choice see his record. If the individual makes this request, the provider shall disclose the record to that lawyer (§8.01-413 of the Code of Virginia).

3. Providers shall, without charge, give individuals any help they may need to read and understand their services records record and ~~provide corrections~~ request amendments to ~~them~~ it.

4. If the provider limits or refuses to let an individual see his services records, the provider shall notify the advocate and tell the individual that he can ask to have a lawyer, physician, or psychologist of his choice see his records. If the individual makes this request, the provider shall disclose the record to that lawyer, physician, or psychologist (§§2.2-3705, 32.1-127.1:03 and 8.01-413 of the Code of Virginia).

5. The provider shall document in the record the decision and reasons for the decision to limit or refuse access to the individual's medical record. The individual shall be notified of time limits and conditions for removal of the restriction. These time limits and conditions shall also be specified in the record.

6. 4. If an individual asks to challenge, ~~correct~~ amend, or explain any information contained in his services record, the provider shall investigate and file in the services record a written report concerning the individual's request.

a. If the report finds that the services record is incomplete, inaccurate, not pertinent, not timely, or not necessary, the provider shall:

(1) Either mark that part of the services record clearly to say so, or else remove that part of the services record and file it separately with an appropriate cross reference to indicate that the information was removed;

(2) Not disclose the original services record without separate specific ~~consent~~ authorization or legal authority (e.g., if compelled by subpoena or other court order);

(3) Obtain the individual's identification of and agreement to have the provider notify the relevant persons of the amendment; and

(4) Promptly notify in writing all persons who have received the incorrect information and all persons identified by the individual that the services record has been corrected and request that recipients acknowledge the correction.

b. If the report does not result in action satisfactory to the individual, the provider shall, upon a request to amend the services record is denied, the provider shall give the individual a written statement containing the basis for the denial and notify the individual of his right to submit a statement of disagreement and how to submit such a statement. The provider shall also give the individual (i) a statement that if a statement of disagreement is not submitted that the individual may request the provider to disclose the request for amendment and the denial with future disclosures of information and (ii) a description of how the individual may complain to the provider or the Secretary of Health and Human Services, if applicable. Upon request, the provider shall file in the services record the individual's statement explaining his position. If needed, the provider shall help the individual to write this statement. If a statement is filed, the provider shall:

(1) Give all persons who have copies of the record a copy of the individual's statement.

(2) Clearly note in any later disclosure of the record that it is disputed and include a copy of the statement with the disputed record.

~~C. Exceptions and conditions to the provider's duties. A provider may deny access to all or a part of an individual's services record only if a physician or a licensed psychologist involved in providing services to the individual talks to the individual, looks over the services record as a result of the individual's request for access, signs and puts in the services record permanently a written statement that he thinks access to the services records by the individual at this time would be physically or mentally harmful to the individual. The physician or licensed psychologist must also tell the individual as much about his services record as he can without risking harm to the individual.~~

**12VAC35-115-100. Restrictions on freedoms of everyday life.**

A. From admission until discharge from a service, each individual is entitled to:

1. Enjoy all the freedoms of everyday life that are consistent with his need for services, his protection, and the protection of others, and that do not interfere with his services or the services of others. These freedoms include the following:

- a. Freedom to move within the service setting, its grounds, and the community;
- b. Freedom to communicate, associate, and meet privately with anyone the individual chooses;
- c. Freedom to have and spend personal money;
- d. Freedom to see, hear, or receive television, radio, books, and newspapers, whether privately owned or in a library or public area of the service setting;
- e. Freedom to keep and use personal clothing and other personal items;
- f. Freedom to use recreational facilities and enjoy the outdoors; and
- g. Freedom to make purchases in canteens, vending machines, or stores selling a basic selection of food and clothing.

2. Receive services in that setting and under those conditions that are least restrictive of his freedom.

B. The provider's duties.

1. Providers shall encourage each individual's participation in normal activities and conditions of everyday living and support each individual's freedoms.

2. Providers shall not limit or restrict any individual's freedom more than is needed to achieve a therapeutic benefit, maintain a safe and orderly environment, or intervene in an emergency.

3. Providers shall not impose any restriction on an individual unless the restriction is justified and carried out according to these regulations. If a provider imposes a restriction, except as provided in 12VAC35-115-50, the following conditions shall be met:

a. A qualified professional involved in providing services has, in advance, assessed and documented all possible alternatives to the proposed restriction, taking into account the individual's medical and mental condition, behavior, preferences, nursing and medication needs, and ability to function independently.

b. A qualified professional involved in providing services has, in advance, determined that the proposed restriction is necessary for effective treatment of the individual or to protect him or others from personal harm, injury, or death.

c. A qualified professional involved in providing services has, in advance, documented in the individual's services record the specific reason for the restriction.

d. A qualified professional involved in providing services has explained, so that the individual can understand, the reason for the restriction, the criteria for removal, and the

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individual's right to a fair review of whether the restriction is permissible.

e. A qualified professional regularly reviews the restriction and that the restriction is discontinued when the individual has met the criteria for removal.

f. If a court has ordered the provider to impose the restriction or if the provider is otherwise required by law to impose the restriction, the restriction shall be documented in the individual's services record.

~~4. Providers shall make sure that a qualified professional regularly reviews every restriction and that the restriction is discontinued when the individual has met the criteria for removal.~~

~~5. Providers shall not place any restriction on the physical or personal freedom of any individual solely because criminal or delinquency charges are pending against that individual, except in the situation where the individual is transferred directly from jail or detention for the purpose of receiving an evaluation or treatment.~~

## ~~C. Exceptions and conditions on the provider's duties.~~

~~1. Except as provided in 12VAC 35-115-50 E, providers may impose restrictions if a qualified professional involved in providing services to the individual has, in advance:~~

~~a. Assessed and documented all possible alternatives to the proposed restriction, taking into account the individual's medical and mental condition, behavior, preferences, nursing and medication needs, and the ability to function independently;~~

~~b. Determined that the proposed restriction is necessary for effective treatment of the individual or to protect him or others from personal harm, injury or death;~~

~~c. Documented in the individual's services record the specific reason for the restriction; and~~

~~d. Explained, so the individual can understand, the reason for the restriction, the criteria for removal, and the individual's right to a fair review of whether the restriction is permissible.~~

~~2. Providers may impose a restriction if a court has ordered the provider to impose the restriction or if the provider is otherwise required by law to impose such restriction. Such restriction shall be documented in the individual's services record.~~

~~3. 4. Providers may develop and enforce written program rules of conduct, but only if the rules do not conflict with these regulations or any individual's services plan; and the rules are needed to maintain a safe and orderly environment.~~

~~4. 5. Providers shall, in the development of these program rules of conduct:~~

~~a. Get as many suggestions as possible from all individuals who are expected to obey the rules;~~

~~b. Apply these rules in the same way to each individual;~~

~~c. Give the rules to and review them with each individual and his legally authorized representative in a way that the individual can understand them. ~~This includes explaining possible consequences for violating the rules, including explaining possible consequences for violating them;~~~~

~~d. Post the rules in summary form in all areas to which individuals and their families have regular access;~~

~~e. Submit the rules to the LHRC for review and approval before putting them into effect, before any changes are made to the rules, and upon request of the advocate or LHRC; and~~

~~f. Prohibit individuals from disciplining other individuals, except as part of an organized self-government program conducted according to a written policy approved in advance by the LHRC.~~

## **12VAC35-115-110. Use of seclusion, restraint, and time out.**

A. Each individual is entitled to be completely free from any unnecessary use of seclusion, restraint, ~~and~~ or time out.

B. [ The voluntary use of mechanical supports to achieve proper body position, balance, or alignment so as to allow greater freedom of movement or to improve normal body functioning in a way that would not be possible without the use of such a mechanical support, and the voluntary use of protective equipment are not considered restraints.

## C. ] The provider's duties.

~~1. Providers shall not use seclusion or restraint as punishment, reprisal, or for the convenience of staff.~~

~~2. Providers shall limit each authorization for seclusion or behavioral restraint to four hours for individuals 18 and older, two hours for children and adolescents ages 9 to 17, and one hour for children under age 9.~~

~~3. Providers shall monitor the combined use of seclusion and restraint by a continuous face-to-face observation, not solely by an electronic surveillance device.~~

~~4. Providers shall ensure that seclusion and restraint may only be implemented, monitored, and discontinued by staff who have been trained in the proper and safe use of seclusion and restraint techniques.~~

~~5. Providers shall not utilize seclusion or restraint unless it is justified and carried out according to these regulations.~~

~~a. The justification for any seclusion or restraint procedure must be documented in the individual's services plan.~~

- b. The authorization for the use of seclusion or restraint must be documented in the individual's services plan and include behavioral criteria the individual must meet for release.
- e. The authorization for the use of seclusion or restraint must be time limited. Authorizations for the use of seclusion or restraint procedures may not be given on an as-needed basis.
- d. The authorizing professional must document that he has taken into account any physical or psychological conditions that would place the individual at greater risk during restraint or seclusion.
6. Providers shall make sure that a qualified professional regularly reviews every use of seclusion or restraint and that the procedure is discontinued when the individual has met the criteria for removal.
7. Providers shall not use seclusion or restraint solely because criminal or delinquency charges are pending against the individual.
8. Providers who use seclusion or restraint shall develop written seclusion and restraint policies and procedures that comply with applicable federal and state statutes and regulations, accreditation standards, third party payer requirements, and sound therapeutic practice. These policies and procedures shall include the following requirements at a minimum:
- a. Providers shall submit all proposed seclusion and restraint policies and procedures to the LHRC for review and comment before they are implemented, when changes are proposed, and upon request by the human rights advocate or the LHRC. The SHRC may request these policies and procedures be transmitted to the SHRC for review.
  - b. Providers shall make sure that each individual who requires seclusion or restraint is given the opportunity for motion and exercise, to eat at normal meal times and take fluids, to use the restroom, and bathe as needed.
  - e. Providers shall make sure that the medical and mental condition of each individual in seclusion or restraint is continuously monitored by trained, qualified staff for the duration of the restriction.
  - d. Each use of seclusion or restraint shall end immediately when criteria for removal is met.
  - e. Incidents of seclusion and restraint, including the rationale, type and duration of the restraint, shall be reported to the department as provided in 12VAC35-115-230.
9. Providers shall not consider the use of seclusion or restraint unless other less restrictive techniques have been considered and documented in the individual's services plan to demonstrate that these less restrictive techniques did not or would not succeed in reducing or eliminating behaviors that are self injurious or dangerous to other people.
10. Only inpatient hospital settings and residential facilities for children or adolescents licensed under the Mandatory Certification/Licensure Standards for Treatment Programs for Residential Facilities for Children (12VAC35-40-10 et seq.) of the Standards for Interdepartmental Regulation of Children's Residential Facilities (22VAC42-10-10 et seq.) may use seclusion.
11. Providers shall comply with all applicable state and federal laws and regulations, accreditation standards, and third party payer requirements as they relate to seclusion and restraint. Whenever an inconsistency exists between these regulations and federal regulations, accreditation standards, or the requirements of third party payers, the provider will be held to the higher standard.
12. Providers shall notify the department whenever a regulatory or accreditation agency or third party payer identifies problems in the provider's compliance with any applicable seclusion or restraint standard.
13. Providers shall ensure that no individual is in time out for more than 30 minutes per episode and that the instruction to the individual to move or remain in the alternative location may not take the form of a threat.
14. Providers shall ensure that isolated time out as defined by the U.S. Health Care Financing Administration (HCFA) may be used only in compliance with HCFA requirements. Isolated time out may only be used as part of a behavioral treatment program that has been approved by the LHRC and incidents of isolated time out shall be limited to one hour.
- C. Exceptions and conditions on the provider's duties:
- 1. Providers who use seclusion and restraint may impose seclusion or restraint in an emergency, but only to the extent necessary to stop the emergency and only if:
    - a. Less restrictive measures have been exhausted; or
    - b. The emergency is so sudden that no less restrictive measure is possible.
  - 2. Providers who use seclusion and restraint may use seclusion or restraint if a qualified professional involved in providing services to the individual has, in advance:
    - a. Assessed and documented why alternatives to the proposed use of seclusion or restraint have not been successful in changing the behavior or not attempted, taking into account the individual's medical and mental condition, behavior, preferences, nursing and medication needs, and ability to function independently;

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b. Determined that the proposed seclusion or restraint is necessary for effective treatment of the individual or to protect him or others from personal harm, injury, or death;

e. Documented in the individual's service record the specific reasons for the seclusion or restraint; and

d. Explained, so that the individual can understand, the reason for using restraint or seclusion, the criteria for its removal, the individual's right to a fair review of whether the restriction is permissible.

3. Providers who use seclusion and restraint may use restraint or seclusion in a behavioral treatment plan, but only if the plan has been developed according to policies and procedures. All plans involving the use of restraints for behavioral purposes and all plans involving the use of seclusion shall be reviewed in advance by the LHRC. Such procedures shall ensure that:

a. Plans are initiated, developed, carried out, and monitored by professionals who are qualified by expertise, training, education or credentials.

b. Individual plans are submitted to and approved by an independent review committee, comprised of professionals with training and experience in applied behavior analysis, which shall assess the technical adequacy of the plan and data collection procedures; and the LHRC, which shall review the plans to ensure that the rights of the individuals are protected. All approvals shall be documented in the individual's services record before implementation.

e. Information about the individual plans or aggregate data about all plans is available anytime:

(1) Upon request by the human rights advocate, the LHRC, the SHRC, the Inspector General, and the department; and

(2) According to relevant reporting requirements.

d. Seclusion and restraint shall only be included in plans:

(1) To address behaviors that present an immediate danger to the individual or others, but only after it has been demonstrated by a detailed and systematic analysis of the behavior itself and the situations in which the behavior occurs. Providers shall document the lack of success or of probable success of less restrictive procedures attempted and that the risks associated with not treating the behavior are greater than any risks associated with the use of restraint or seclusion.

(2) After review by the LHRC. If the LHRC finds that a behavioral treatment plan that utilizes seclusion or restraint violates or has the potential to violate the rights of the individual, the LHRC will notify and make recommendations to the director.

(3) If the plans include nonrestrictive procedures and environmental modifications that address the targeted behavior.

e. Plans that include the use of seclusion and restraint shall also be reviewed quarterly by the independent review committee and by the LHRC to assess if the use of restrictions has resulted in improvements in functioning.

4. Providers may use time out, but only according to policies and procedures that comply with sound therapeutic practice. These policies and procedures shall be documented in the individual's services plan with the justification and purpose for using time out instead of other less restrictive techniques.

1. Providers shall meet with the individual or his authorized representative upon admission to [ the service to ] discuss [ the individual's and document in the individual's services record, his ] preferred interventions [ should it become necessary to use in the event his behaviors or symptoms become a danger to himself or others and under what circumstances, if any, the intervention may include ] seclusion, restraint, or time out.

2. Providers shall document [ in the individual's services record ] all known contraindications to the use of seclusion, time out, or any form of physical or mechanical restraint, including medical contraindications and a history of trauma [ , in the individual's services record and the record and ] shall [ be flagged flag the record ] to alert and communicate this information to staff.

3. Only residential facilities for children that are licensed under the Regulations for Providers of Mental Health, Mental Retardation, and Substance Abuse Residential Services for Children (12VAC35-45) and inpatient hospitals may use seclusion and only in an emergency.

4. Providers shall not use seclusion, restraint, or time out as a punishment or reprisal or for the convenience of staff.

5. Providers shall not use seclusion or restraint solely because criminal charges are pending against the individual.

6. Providers shall not use seclusion or restraint for any behavioral, medical, or protective purpose unless other less restrictive techniques have been considered and documentation is placed in the individual's services plan that these less restrictive techniques did not or would not succeed in reducing or eliminating behaviors that are self-injurious or dangerous to other people or that no less restrictive measure was possible in the event of a sudden emergency.

7. Providers that use seclusion, restraint, or time out shall develop written policies and procedures that comply with applicable federal and state [ statutes laws ] [ , regulation

and regulations ], accreditation, [ ~~or~~ and ] certification standards, third party payer requirements, and sound therapeutic practice. These policies and procedures shall include at least the following requirements:

a. Individuals shall be given the opportunity for motion and exercise, to eat at normal meal times and take fluids, to use the restroom, and to bathe as needed.

b. Trained, qualified staff [ ~~monitors~~ shall monitor ] the individual's medical and mental condition continuously [ ~~for the duration of~~ while ] the restriction [ is being used ].

c. Each use of seclusion, restraint, or time out shall end immediately when criteria for removal are met.

d. Incidents of seclusion and restraint, including the rationale for and the type and duration of the restraint [ , ] are reported to the department as provided in 12VAC35-115-230 C.

8. Providers shall submit all proposed seclusion, restraint, and time out policies and procedures to the LHRC for review and comment before implementing them, when proposing changes, or upon request of the human rights advocate, the LHRC, or the SHRC.

9. Providers shall comply with all applicable state and federal laws and regulations, certification and accreditation standards, and third party requirements as they relate to seclusion and restraint.

a. Whenever an inconsistency exists between these regulations and federal [ laws or ] regulations, accreditation or certification standards, or the requirements of third party payers, the provider shall comply with the higher standard.

b. Providers shall notify the department whenever a regulatory, accreditation, or certification agency or third party payer identifies problems in the provider's compliance with any applicable seclusion and restraint standard.

10. Providers shall ensure that only staff who have been trained in the proper and safe use of seclusion, restraint, and time out techniques may initiate, monitor, and discontinue their use.

11. Providers shall ensure that a qualified professional who is involved in providing services to the individual reviews every use of [ ~~any physical~~ ] restraint as soon as possible after it is carried out [ and document the results of his review in the individual's services record ].

12. Providers shall ensure that review and approval by a qualified professional for the use or continuation of restraint [ for medical or protective purposes ] is documented in the individual's services record. [ Approval

for the use of restraint may not be given on an as needed basis. ] Documentation includes:

a. Justification for any restraint;

b. Time-limited approval for the use or continuation of restraint; and

c. Any physical or psychological conditions that would place the individual at greater risk during restraint.

13. Providers may use seclusion or mechanical restraint for behavioral purposes [ ~~only~~ ] in an emergency [ ~~and~~ ] only if a qualified professional involved in providing services to the individual has, within one hour of the initiation of the procedure:

a. Conducted a face-to-face assessment of the individual placed in seclusion or mechanical restraint and documented [ ~~why that~~ ] alternatives to the proposed use of seclusion [ ~~and~~ or ] mechanical restraint have not been successful in changing the behavior or were not attempted, taking into account the individual's medical and mental condition, behavior, preferences, nursing and medication needs, and ability to function independently;

b. Determined that the proposed seclusion or mechanical restraint is necessary to protect the individual or others from harm, injury, or death;

c. Documented in the individual's services record the specific reason for the seclusion or mechanical restraint;

d. Documented in the individual's services record the behavioral criteria that the individual must meet for release from seclusion or mechanical restraint; and

e. Explained to the individual, in a way that he can understand, the reason for using mechanical restraint or seclusion, the criteria for its removal, and the individual's right to a fair review of whether the mechanical restraint or seclusion [ ~~is~~ was ] permissible.

14. Providers shall limit each approval for restraint for behavioral purposes or seclusion to four hours for individuals age 18 and older, two hours for children and adolescents ages 9 through 17, and one hour for children under age nine.

[ 15. Providers shall not issue standing orders for the use of seclusion or restraint for behavioral purposes. ]

[ ~~15- 16.~~ ] Providers shall [ ~~limit each approval for~~ ensure that no individual is in ] time out [ ~~to no~~ for ] more than 30 minutes [ per episode ].

[ ~~16- 17.~~ ] Providers shall monitor the use of restraint for behavioral purposes or seclusion through continuous face-to-face observation, rather than by an electronic surveillance device.

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~~[ 17. 18. ]~~ Providers may use restraint or time out in a behavioral treatment plan to address behaviors that present an immediate danger to the individual or others, but only after a qualified professional has conducted a detailed and [ systemic analysis systematic assessment ] of the behavior and the situations in which the behavior occurs.

a. Providers shall develop any behavioral treatment plan involving the use of restraint or time out for behavioral purposes according to its policies and procedures, which ensure that:

(1) Behavioral treatment plans are initiated, developed, carried out, and monitored by professionals who are qualified by expertise, training, education, or credentials to do so.

(2) Behavioral treatment plans include nonrestrictive procedures and environmental modifications that address the targeted behavior.

(3) Behavioral treatment plans are submitted to and approved by an independent review committee comprised of professionals with training and experience in applied behavior analysis who have assessed the technical adequacy of the plan and data collection procedures.

b. Providers shall document in the individual's services record that the lack of success, or probable success, of less restrictive procedures attempted and the risks associated with not treating the behavior are greater than any risks associated with the use of restraint.

c. Prior to the implementation of any behavioral treatment plan involving the use of restraint or time out, the provider shall obtain approval of the LHRC. If the LHRC finds that the plan violates or has the potential to violate the rights of the individual, the LHRC shall notify and make recommendations to the director.

d. Behavioral treatment plans involving the use of restraint or time out shall be reviewed quarterly by the independent review committee and by the LHRC to determine if the use of restraint has resulted in improvements in functioning of the individual.

~~[ 18. 19. ]~~ Providers may not use seclusion in a behavioral treatment plan.

## **12VAC35-115-120. Work.**

A. Individuals have a right to engage or not engage in work or work-related activities consistent with their service needs while receiving services. Personal maintenance and personal housekeeping by individuals receiving services in residential settings are not subject to this provision.

B. The provider's duties.

1. Providers shall not require, entice, persuade, or permit any individual or his family member to perform labor for the provider as a condition of receiving services. If an individual voluntarily chooses to perform labor for the provider, the labor must be consistent with his individualized services plan. All policies and procedures, including pay, must be consistent with the Fair Labor Standards Act (29 USC §201 et seq.).

2. Providers shall consider individuals who are receiving services for employment opportunities on an equal basis with all other job applicants and employees according to the Americans with Disabilities Act (42 USC §12101 et seq.).

3. Providers shall give individuals and employers information, training, and copies of policies affecting the employment of individuals receiving services upon request.

4. If vocational training, extended employment services, or ~~supportive~~ supported employment services are offered, providers shall establish procedures for documenting the decision on employment and training and the methodology for establishing [ ~~consumer~~ ] wages. Providers shall give a copy of the procedures and information about possible consequences for violating the procedures to all individuals and their legally authorized representatives.

5. Providers who employ individuals receiving services shall not deduct the cost of services from an individual's wages unless ordered to do so by a court.

6. Providers shall not sell to or purchase goods or services from an individual receiving services except through established governing body policy that is consistent with U.S. Department of Labor standards.

## **12VAC35-115-130. Research.**

A. Each individual has a right to choose to participate or not participate in human research.

B. The provider's duties.

1. Providers shall ~~get~~ obtain prior, written, informed consent of the individual or his legally authorized representative before any individual begins to participate in human research unless the research is exempt under §32.1-162.17 of the Code of Virginia.

2. Providers shall comply with all other applicable state and federal laws and regulations regarding human research, including the provisions under Chapter 5.1 (§32.1-162.16 et seq.) of Title 32.1 of the Code of Virginia and the regulations ~~promulgated~~ adopted under ~~that statute~~ §37.2-402 of the Code of Virginia.

3. Providers shall ~~solicit consultation and~~ obtain review ~~by and approval from~~ and approval from an institutional review board or research review committee prior to ~~participation~~ performing or

participating in [ a ] human research protocol. [ Documentation of this review and approval shall be maintained and made available on request by the individual or his authorized representative. ]

4. [ All providers shall inform the ] Local Human Rights Committee [ LHRC before an individual receiving services may participate in any human research project and provide periodic updates on the status of the individual's participation to the committee Prior to participation by individuals in any human research project, the provider shall inform and provide a copy of the institutional review board or research review committee approval to the LHRC. Once the research has been initiated, the provider shall update the LHRC periodically on the status of the individual's participation ].

**12VAC35-115-140. Complaint and fair hearing.**

A. Each individual has a right to:

1. Complain that ~~his~~ the provider has violated any of the rights assured under these regulations;
2. Have a timely and fair review of any complaint according to the procedures in Part ~~IV~~ V (12VAC35-115-150 et seq.) of this chapter;
3. Have someone file a complaint on his behalf;
4. Use these and other complaint procedures; and
5. Complain under any other applicable law, including complain to the protection and advocacy agency.

B. The provider's duties.

1. If an individual makes a complaint, ~~his~~ the provider shall make every attempt to resolve the complaint ~~to the individual's satisfaction~~ at the earliest possible step.
2. Providers shall not take, threaten to take, permit, or condone any action to retaliate against anyone filing a complaint or prevent anyone from filing a complaint or helping an individual to file a complaint.
3. Providers shall assist the complainant in understanding the full complaint process ~~of complaint~~, the options for resolution including the formal and informal processes, and the confidentiality elements ~~of confidentiality~~ involved.

Part IV

Complaint Resolution, Hearing, and Appeal Procedures

Substitute Decision Making

**12VAC35-115-145. Determination of capacity to give consent or authorization.**

[ ~~A~~ ] If the capacity of an individual to consent to treatment, services, or research, or authorize the disclosure of information is in doubt, the provider shall obtain an evaluation from a professional who is qualified by expertise,

training, education, or credentials and not directly involved with the individual to determine whether the individual has capacity to consent or to authorize the disclosure of information.

1. Capacity evaluations shall be obtained for all individuals who may lack capacity, even if they [ ~~requested~~ request ] that an authorized representative be designated or agree to submit to a recommended course of treatment.

2. In conducting this evaluation, the professional may seek comments from [ ~~a representative~~ representatives ] accompanying the individual pursuant to 12VAC35-115-70 A 4 about the individual's capacity to consent or [ to ] authorize disclosure.

3. Providers shall determine the need for an evaluation of an individual's capacity to consent or authorize disclosure of information and the need for a substitute decision maker whenever the individual's condition warrants, the individual requests such a review, at least every six months, and at discharge, except for individuals receiving acute inpatient services.

a. If the individual's record indicates that the individual is not expected to obtain or regain capacity, the provider shall document annually that it has reviewed the individual's capacity to make decisions and whether there has been any change in that capacity.

b. Providers of acute inpatient services shall determine the need for an evaluation of an individual's capacity to consent or authorize disclosure of information whenever the individual's condition warrants or at least at every treatment team meeting. Results of such reviews shall be documented in the treatment team notes and communicated to the individual and [ ~~the his~~ ] authorized representative.

4. Capacity evaluations shall be conducted in accordance with accepted standards of professional practice and shall indicate the specific type [ ~~or level~~ ] of decision for which the individual's capacity is being evaluated (e.g., medical [ ~~treatment planning~~ ] ) and shall indicate what specific type of decision the individual has or does not have the capacity to make. [ Capacity evaluations shall address the type of supports that might be used to increase the individual's decision-making capabilities. ]

5. If the individual or his family objects to the results of the qualified professional's determination, the provider shall immediately inform the human rights advocate.

a. If the individual or family member wishes to obtain an independent evaluation of the individual's capacity, he may do so at his own expense and within reasonable timeframes consistent with his circumstances. If the individual or family member cannot pay for an independent evaluation, the individual may request that

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the LHRC consider the need for an independent evaluation pursuant to 12VAC35-115-200 B. The provider shall take no action for which consent or authorization is required, except in an emergency, pending the results of the independent evaluation. The provider shall take no steps to designate an authorized representative until the independent evaluation is complete.

b. If the independent evaluation is consistent with the provider's evaluation, the provider's evaluation is binding, and the provider shall implement it accordingly.

c. If the independent evaluation is not consistent with the provider's evaluation, the matter shall be referred to the LHRC for review and decision under 12VAC35-115-200 through 12VAC35-115-250.

## **12VAC35-115-146. Authorized representatives.**

A. When it is determined in accordance with 12 VAC-35-115-145 that an individual lacks the capacity to consent or authorize the disclosure of information, the provider shall recognize and obtain consent or authorization for those decisions for which the individual lacks capacity from the following [ if available ]:

1. An attorney-in-fact who is currently empowered to consent or authorize the disclosure under the terms of a durable power of attorney;

2. A health care agent appointed by the individual under an advance directive or power of attorney in accordance with the laws of Virginia; or

3. A legal guardian of the individual, or if the individual is a minor, a parent with legal custody of the minor or other person authorized to consent to treatment pursuant to §54.1-2969 A of the Code of Virginia.

B. If an attorney-in-fact, health care agent or legal guardian is not available, the director shall designate a substitute decision maker as authorized representative in the following order of priority:

1. The individual's family member. In designating a family member, the director shall [ ~~select the best qualified person, if available, according to the following order of priority unless, from all information available to the director, another person in a lower priority is clearly better qualified. The director shall ask the individual and if the individual expresses a preference for one family member over another in the same category, the director shall designate that family member, unless there is a compelling clinical reason not to do so~~ honor the individual's preference unless doing so is clinically contraindicated.

a. If the director does not appoint the family member chosen by the individual, the individual shall be told of

the reasons for the decision and information about how to request LHRC review according to 12VAC35-115-200.

b. If the individual does not have a preference or if the director does not honor the individual's preference in accordance with these regulations, the director shall select the best qualified person, if available, according to the following order of priority unless, from all information available to the director, another person in a lower priority is clearly better qualified. ]

[ ~~a-~~ (1) ] A spouse;

[ ~~b-~~ (2) ] An adult child;

[ ~~c-~~ (3) ] A parent;

[ ~~d-~~ (4) ] An adult brother or sister; or

[ ~~e-~~ (5) ] Any other relative of the individual.

2. Next friend of the individual. If no other person specified above is available and willing to serve as authorized representative, a provider may designate a next friend of the individual, after a review and finding by the LHRC that the proposed next friend has, for a period of six months within two years prior to the designation either:

a. Shared a residence with the individual; or

b. Had regular contact or communication with the individual and provided significant emotional, personal, financial, spiritual, psychological, or other support and assistance to the individual.

3. In addition to the conditions set forth in subdivision 2 of this subsection, the individual must have no objection to the proposed next friend being designated as the authorized representative.

4. The person designated as next friend also shall:

a. Personally appear before the LHRC, unless the LHRC has waived the personal appearance; and

b. Agree to accept these responsibilities and act in the individual's best interest and in accordance with the individual's preferences, if known.

5. The LHRC shall have the discretion to waive a personal appearance by the proposed next friend and to allow that person to appear before it by telephone, video, or other electronic means of communication as the LHRC may deem appropriate under the circumstances. Waiving the personal appearance of the proposed next friend should be done in very limited circumstances.

6. If, after designation of a next friend, an appropriate family member becomes available to serve as authorized representative, the director shall replace the next friend with the family member.

C. No director, employee, or agent of a provider may serve as an authorized representative for any individual receiving services delivered by that provider unless the authorized representative is a relative or the legal guardian. When a provider, or the director, an employee, or agent of the provider is also the individual's guardian, the provider shall assure that the individual's preferences are included in the services plan and that the individual can make complaints about any aspect of the services he receives.

D. The provider shall document the recognition or designation of an authorized representative in the individual's services record, including evidence of consultation with the individual about his preference, copies of applicable legal documents such as the durable power of attorney, advance directive, or guardianship order, names and contact information for family members, and, when there is more than one potential family member available for designation as authorized representative, the rationale for the designation of the particular family member as the authorized representative.

E. If a provider documents that the individual lacks capacity to consent and no person is available or willing to act as an authorized representative, the provider shall:

1. Attempt to identify a suitable person who would be willing to serve as guardian and ask the court to appoint that person to provide consent or authorization; or
2. Ask a court to authorize treatment (See §37.2-1101 of the Code of Virginia).

F. Court orders authorizing treatment shall not be viewed as substituting or eliminating the need for an authorized representative.

1. Providers shall review the need for court-ordered treatment and determine the availability of and seek an authorized representative whenever the individual's condition warrants, the individual requests such a review, or at least every six months except for individuals receiving acute inpatient treatment.
2. Providers of acute inpatient services shall review the need for court-ordered treatment and determine the availability of and seek an authorized representative whenever the individual's condition warrants or at least at every treatment team meeting. All such reviews shall be documented in the individual's services record and communicated to the individual.
3. When the provider recognizes or designates an authorized representative, the provider shall notify the court that its order is no longer needed and shall immediately suspend its use of the court order.

G. Conditions for removal of an authorized representative. Whenever an individual has regained capacity to consent as indicated by a capacity evaluation or clinical determination, the director shall immediately remove any authorized

representative designated pursuant to subdivision B 1 or 2 of this section, notify the individual and the authorized representative, and ensure that the services record reflects that the individual is capable of making his own decisions. Whenever an individual with an authorized representative who is his legal guardian has regained his capacity to give informed consent, the director [ ~~shall~~ may ] use the applicable statutory provisions to remove the authorized representative. (See §37.2-1012 of the Code of Virginia.) [ ~~Powers~~ If powers ] of attorney and health care agents' powers [ ~~should~~ do not ] cease of their own accord when a clinician has determined that the individual is no longer incapacitated [ , the director shall seek the consent of the individual and remove the person as authorized representative ] .

1. The director shall remove the authorized representative designated pursuant to subdivision B 1 or 2 of this section if the authorized representative becomes unavailable, unwilling, or unqualified to serve. The individual or the advocate may [ ~~appeal~~ request the LHRC to review ] the director's decision to remove an authorized representative [ ~~to the LHRC~~ ] under the procedures set out at 12VAC35-115-180, and the LHRC may reinstate the authorized representative if it determines that the director's action was unjustified.

2. Prior to any removal under this authority, the director shall notify the individual of the decision to remove the authorized representative, of his right to request that the LHRC review the decision, and of the reasons for the removal decision. This information shall be placed in the individual's services record. If the individual requests, the director shall provide him with a written statement of the facts and circumstances upon which the director relied in deciding to remove the authorized representative.

The LHRC may recommend the removal of a next friend pursuant to 12VAC35-115-200 when the next friend is not acting in accordance with the individual's best interest.

3. The director may otherwise seek to replace an authorized representative recognized pursuant to this section who is an attorney-in-fact currently authorized to consent under the terms of a durable power of attorney, a health care agent appointed by an individual under an advance directive, a legal guardian of the individual, or, if the individual is a minor, a parent with legal custody of the individual, only by a court order under applicable statutory authority.

**12VAC35-115-150. General provisions.**

A. The parties to any complaint are the individual and the director. Each party can also have anyone else ~~to~~ represent him during resolution of the complaint ~~resolution~~. [ The director shall make every effort to resolve the complaint at the earliest possible stage. ]

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B. Meetings, reviews, and hearings will generally be closed to other people unless the individual making the complaint requests that other people attend or if an open meeting is required by the Virginia Freedom of Information Act (§2.2-3700 et seq. of the Code of Virginia).

1. The LHRC and SHRC may conduct a closed hearing to protect the confidentiality of persons who are not a party to the complaint, but only if a closed meeting is otherwise allowed under the Virginia Freedom of Information Act (§2.2-3700 et seq. see §2.2-3711 of the Code of Virginia).

2. If any person alleges that implementation of an LHRC recommendation would violate the individual's rights or those of other individuals, the person may file a petition for a hearing with the SHRC, according to 12VAC35-115-210.

C. In no event shall a pending hearing, review, or appeal prevent a director from taking corrective action based on the advice of the provider's legal counsel that such action is required by law or he otherwise thinks such action is correct and justified.

D. The LHRC or SHRC, on the motion of any party or on its own motion, may, for good cause, extend any time periods either before or after the expiration of that time period. No director may extend any time periods for any actions he is required to take under these procedures without prior approval of the LHRC or SHRC.

E. Except in the case of emergency proceedings, if a time period in which action must be taken under this part is not extended by the LHRC or SHRC, the failure of a party to act within that time period shall waive that party's further rights under these procedures.

F. In making their recommendations regarding complaint resolution, the LHRC and the SHRC shall identify any rights or regulations that the provider violated and any policies, practices, or conditions that contributed to the violations. They shall also recommend appropriate corrective actions, including changes in policies, practices, or conditions, to prevent further violations of the rights assured under these regulations.

G. If it is impossible to carry out the recommendations of the LHRC or the SHRC within a specified time, the LHRC or the SHRC, as appropriate, shall recommend any necessary interim action that gives appropriate and possible immediate remedies.

H. Any action plan submitted by the director or commissioner in the course of these proceedings shall fully address both final and interim recommendations made by the LHRC or the SHRC and identify financial or other constraints, if any, which that prevent efforts to fully remedy the violation.

[ I. All communication with the individual during the complaint resolution process shall be in the manner, format, and language most easily understood by the individual. ]

## **12VAC35-115-160. Informal ~~complaint~~ process. (Repealed.)**

~~A. Step 1. Anyone who believes that a provider has violated an individual's rights under these regulations may report the alleged violation to the director or the director's designee.~~

~~B. Step 2. The director or his designee shall attempt to resolve the complaint immediately. If the complaint is resolved to the individual's or legally authorized representative's satisfaction, no further action is required.~~

~~C. Step 3. The director or his designee shall refer any complaint that is not resolved to the individual's or legally authorized representative's satisfaction, within five working days, to the human rights advocate per 12VAC35-115-170.~~

~~D. Step 4. If the individual or his legally authorized representative, as applicable, is not satisfied with the resolution then the director or the director's designee shall immediately notify the human rights advocate per 12VAC35-115-170.~~

~~E. The individual or the legally authorized representative, as applicable, may contact the human rights advocate at any time to pursue a formal complaint per 12VAC35-115-170.~~

~~F. The human rights advocate shall have access to information regarding all informal complaints upon request.~~

~~G. Complaints made under this section will not be reported to the department under 12VAC35-115-230.~~

## **12VAC35-115-170. Formal [ ~~complaint~~ Complaint ] resolution process.**

~~A. The following steps apply if:~~

~~1. The informal complaint process did not resolve the complaint to the individual's satisfaction within five working days; or~~

~~2. The individual chooses to not pursue the informal complaint process.~~

~~B. Step 1: A. Anyone who believes that a provider has violated an individual's rights under these regulations may report it to the director ~~and~~ or the human rights advocate, ~~or either of them~~, for resolution.~~

1. If the report is made only to the director ~~or his designee~~, the director or his designee shall immediately notify the human rights advocate. If the report is made on a weekend or holiday, then the director or his designee shall notify the human rights advocate on the next business day.

2. If the report is made only to the human rights advocate, the human rights advocate shall immediately notify the director ~~or his designee~~. If the report is made on a weekend

or holiday, then the human rights advocate shall notify the director or his designee on the next business day. The human rights advocate or the director or his designee shall notify the individual of his right to pursue his complaint through all available means under this part.

~~3. If the human rights advocate concludes, after an initial investigation, that there is substantial risk that serious and irreparable harm will result if the complaint is not resolved immediately, the human rights advocate shall inform the director, the provider, the provider's governing body, and the LHRC. Steps 2 through 6 below shall not be followed. Instead, the LHRC shall conduct a hearing according to the special procedures for emergency hearings in 12VAC35-115-190.~~

3. The human rights advocate or [ the ] director or his designee shall discuss the report with the individual and notify the individual of his right to pursue a complaint through the process established in these regulations. [ The steps in the informal and formal complaint process established in these regulations shall be thoroughly explained to the individual. The human rights advocate or the director or his designee shall ask the individual if he understands the complaint process and the choice that he has before asking the individual how he wishes to pursue the complaint. ] The individual shall [ then ] be given the choice of pursuing the complaint through the informal or formal complaint process. If the individual does not make a choice, the complaint shall be managed through the informal process.

4. The following steps apply if the complaint is pursued through the informal process:

Step 1: The director or his designee shall attempt to resolve the complaint immediately. If the complaint is resolved, no further action is required.

Step 2: If the complaint is not resolved within five working days, the director or his designee shall refer it for resolution under the formal process. The individual may extend the informal process five-day time frame for good cause. All such extensions shall be reported to the human rights advocate by the director or his designee.

5. The following steps apply if the complaint is pursued through the formal process:

~~C. Step 2 Step 1: The director or his designee shall try to resolve the complaint by meeting within 24 hours of receipt of the complaint with the individual, any representative the individual chooses, the human rights advocate, and others as appropriate, and by conducting an investigation if necessary within 24 hours of receipt of the complaint or the next business day if that day is a weekend or holiday. The director or his designee shall conduct an investigation of the complaint, if necessary.~~

~~D. Step 3 Step 2: The director or his designee shall give the individual and his chosen representative a written preliminary decision and, where appropriate, an action plan for resolving the complaint within 10 working days of receiving the complaint. Along with the action plan, the director shall provide written notice to the individual about the time frame for the individual's response pursuant to Step 3 of this subdivision [ , information on how to contact the human rights advocate for assistance with the process, ] and a statement the complaint will be closed if the individual does not respond.~~

~~E. Step 4 Step 3: If the individual is not satisfied at this step disagrees with the director's preliminary decision or action plan, he can respond to the director in writing within 5 five working days after receiving the director's or the designee's written preliminary decision and action plan. If the individual has not responded within five working days, the complaint will be closed.~~

~~F. Step 5 Step 4: If the individual disagrees with the preliminary decision or action plan [ and reports his disagreement to the director in writing within five working days after receiving the decision or action plan ], the director shall investigate further as appropriate and shall make a final decision regarding the complaint. The director shall forward a written copy of his final decision and action plan to the individual, his chosen representative, and the human rights advocate within 40 five working days after the director received receives the individual's written response. Along with the action plan, the director shall provide written notice to the individual about the time frame for the individual's response pursuant to Step 5 of this subdivision [ , information about how to contact the human rights advocate for assistance with the process, ] and a statement that if the individual does not respond that the complaint will be closed.~~

~~G. Step 6 Step 5: If the individual is not satisfied disagrees with the director's final decision or action plan, he may file a petition for a hearing by the LHRC using the procedures prescribed in 12VAC35-115-180. If the individual has accepted the relief offered by the director, the matter is not subject to further review.~~

B. If at any time during the formal complaint process the human rights advocate concludes that there is substantial risk that serious or irreparable harm will result if the complaint is not resolved immediately, the human rights advocate shall inform the director, the provider, the provider's governing body, and the LHRC. Steps 1 through 5 of subdivision A 5 of this section shall not be followed. Instead, the LHRC shall conduct a hearing according to the special procedures for emergency hearings in 12VAC35-115-180.

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## 12VAC35-115-180. Local Human Rights Committee hearing and review procedures.

A. Any individual or ~~legally his~~ authorized representative as ~~applicable who is not satisfied with~~ does not accept the relief offered by the director or disagrees with (i) a director's final decision and action plan resulting from the complaint resolution; (ii) a director's final action following a report of abuse, neglect, or exploitation; or (iii) a director's final decision following a complaint of discrimination in the provision of services may request an LHRC hearing by following the steps provided in subsections B through I of this section.

B. Step 1: The individual or his authorized representative must file the petition must be filed for a hearing with the chairperson of the LHRC within 10 working days of the director's action or final decision ~~for which there is a~~ on the complaint.

1. The petition for hearing must be in writing. It should contain all facts and arguments surrounding the complaint and reference any section of the regulations that the individual believes the provider violated.

2. The human rights advocate or any person the individual chooses may help the individual in filing the petition. If the individual chooses a person other than the human rights advocate to help him, he and his chosen representative may request the human rights advocate's assistance in filing the petition.

C. Step 2: The LHRC chair shall forward a copy of the petition to the director and the human rights advocate as soon as he receives it. A copy of the petition shall also be forwarded to the provider's governing body.

D. Step 3: Within five working days, the director shall submit ~~the following~~ to the LHRC:

1. A written response to everything contained in the petition; and

2. A copy of the entire written record of the complaint.

E. Step 4: The LHRC shall hold a hearing within ~~45~~ 20 working days of receiving the petition.

1. The parties shall have at least five working days' notice of the hearing.

2. The director or his ~~chosen representative~~ designee shall attend the hearing.

~~3.~~ 3. The individual or ~~legally his~~ authorized representative, ~~as applicable,~~ making the complaint shall attend the hearing.

~~3.~~ 4. At the hearing, the parties and ~~their~~ chosen representatives and designees have the right to present witnesses and other evidence and the opportunity to be heard.

F. Step 5: Within 10 working days after the hearing ends, the LHRC shall give, ~~in writing,~~ its written findings of fact and recommendations to the parties and their representatives. Whenever appropriate, the LHRC shall identify information that it believes the director shall take into account in making decisions concerning discipline or termination of personnel.

G. Step 6: Within five working days of receiving the LHRC's findings and recommendations, the director shall give the individual, the individual's chosen representative, the human rights advocate, the governing body, and the LHRC a written action plan he intends to take to respond to the LHRC's findings and recommendations. Along with the action plan, the director shall provide written notice to the individual about the time frame for the individual's response pursuant to Step 7 (subsection H of this section) and a statement that if the individual does not respond that the complaint will be closed. The plan shall not be implemented for five working days after it is submitted, unless the individual ~~receiving services~~ agrees to its implementation sooner.

H. Step 7: The individual, his chosen representative, the human rights advocate, or the LHRC may object to the action plan within five working days by stating ~~what~~ the objection is and what the director can do to resolve the objection.

1. If an objection is made, the director may not implement the action plan, or may implement only that portion of the plan that the individual making the complaint agrees to, until he resolves the objection as requested or ~~until he~~ appeals to the SHRC for a decision under 12VAC35-115-210.

2. If no one objects to the action plan, the director shall begin to implement ~~it~~ the plan on the sixth working day after he submitted it.

I. Step 8: If an objection to the action plan is made and the director does not resolve the objection to the action plan to the individual's satisfaction within two working days following ~~the objection~~ its receipt by the director, the individual may appeal to the SHRC under 12VAC35-115-210.

## 12VAC35-115-190. Special procedures for emergency hearings by the LHRC.

A. ~~Step 1:~~ If the human rights advocate informs the LHRC of a substantial risk that serious and irreparable harm will result if a complaint is not resolved immediately, the LHRC shall hold and conclude a preliminary hearing within 72 hours of receiving this information.

1. The director or his designee and the human rights advocate shall attend the hearing. The individual and ~~the~~ legally his authorized representative may attend the hearing.

2. The hearing shall be conducted according to the procedures in 12VAC35-115-180, but it shall be concluded on an expedited basis.

B. ~~Step 2:~~ At the end of the hearing, the LHRC shall make preliminary findings and, if a violation is found, shall make preliminary recommendations to the director, the provider, and the provider's governing body.

C. ~~Step 3:~~ The director shall formulate and carry out an action plan within 24 hours of receiving the LHRC's preliminary recommendations. A copy of the plan shall be sent to the human rights advocate, the individual, his authorized representative, and the governing body.

D. ~~Step 4:~~ If the individual or the human rights advocate objects within 24 hours to the LHRC findings or recommendations or to the director's action plan, the LHRC shall conduct a full hearing within five working days of the objection, following the procedures outlined in 12VAC35-115-180. This objection shall be in writing to the LHRC chairperson, with a copy sent to the director.

E. ~~Step 5:~~ Either party may appeal the LHRC's decision to the SHRC under 12VAC35-115-210.

**12VAC35-115-200. Special procedures for LHRC reviews involving consent and authorization.**

A. ~~Step 1:~~ The LHRC may be requested, in writing, to review whether an individual's personal consent is required in the following situations: individual, his authorized representative, or anyone acting on the individual's behalf may request in writing that the LHRC review the following situations and issue a decision:

1. If an individual [~~or his authorized representative~~] objects at any time to ~~a specific treatment, participation in specific human research, or disclosure of specific confidential information,~~ [the appointment of a specific person as authorized representative or] any decision for which consent or authorization is required and has been given by his ~~legally~~ authorized representative, other than a legal guardian, he may ask the LHRC to decide whether his ~~personal consent is required for that treatment, participation in research, or disclosure of information~~ his capacity was properly evaluated, the authorized representative was properly appointed, or his authorized representative's decision was made based on the individual's basic values and any preferences previously expressed by the individual to the extent that they are known, and if unknown or unclear in the individual's best interests.

a. The provider shall take no action for which consent or authorization is required if the individual objects, except in an emergency or as otherwise permitted by law, pending the LHRC review.

b. If the LHRC determines that the individual's capacity was properly evaluated, the authorized representative is properly designated, or the authorized representative's decision was made based on the individual's basic values and any preferences previously expressed by the individual to the extent that they are known, or if unknown or unclear in the individual's best interests, then the provider may proceed according to the decision of the authorized representative.

c. If the LHRC determines that the individual's capacity was not properly evaluated or the authorized representative was not properly designated, then the provider shall take no action for which consent is required except in an emergency or as otherwise required or permitted by law, until the capacity review and authorized representative designation is properly done.

d. If the LHRC determines that the authorized representative's decision was not made based on the individual's basic values and any preferences previously expressed by the individual to the extent known, and if unknown or unclear, in the individual's best interests, then the provider shall take steps to remove the authorized representative pursuant to 12VAC35-115-146.

2. If an individual or his family member has obtained an independent evaluation of the individual's capacity to ~~give any informed~~ consent to treatment or ~~participation services~~ or to ~~participate~~ in human research under 12VAC35-115-70, or ~~authorize the disclosure of information under 12VAC35-115-90,~~ and the opinion of that evaluator conflicts with the opinion of the provider's evaluator, the LHRC may be requested to decide ~~whether the individual's personal consent is required for any treatment or participation in research~~ which evaluation will control.

a. If the LHRC agrees that the individual lacks the capacity to consent to treatment or services [ ; ] or authorize disclosure of information, the director may begin or continue treatment or research [ ; ] or disclose information, but only the appropriate consent or authorization of the authorized representative. The LHRC shall advise the individual of his right to appeal this determination to the SHRC under 12VAC35-115-210.

b. If the LHRC does not agree that the individual lacks the capacity to consent to treatment or services [ ; ] or authorize disclosure of information, the director shall not begin any treatment [ ; or ] research, or disclose information [ with without ] the individual's consent or authorization, or shall take immediate steps to discontinue any actions begun without the consent or authorization of the individual. The director may appeal to the SHRC under 12VAC35-115-210 but may not take any further action until the SHRC issues its opinion.

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3. If a director makes a decision that affects an individual and the individual believes that the decision requires his personal consent or authorization or that of his legally authorized representative, he may object and ask the LHRC to decide whether consent or authorization is required.

NOTE: If the individual is a minor, the consent of the parent or legal guardian must be obtained, unless the treatment provided is for treatment referenced under §54.1-2969 E of the Code of Virginia, including outpatient medical or health services for substance abuse, or mental illness or emotional disturbance, in which case the minor alone may provide the consent as if an adult. If treatment involves admission to an inpatient treatment program, the consent of a minor 14 years of age and older, in addition to that of the parent, must also be obtained in accordance with §16.1-338 of the Code of Virginia.

Regardless of the individual's capacity to consent to treatment or services [ ] or authorize disclosure of information, if the LHRC determines that a decision made by a director requires consent or authorization that was not obtained, the director shall immediately rescind the action unless and until such consent or authorization is obtained. The director may appeal to the SHRC under 12VAC35-115-210 but [ may ] not take any further action until the SHRC issues its opinion.

~~B. Step 2: The LHRC may ask that a physician or licensed clinical psychologist not employed by the provider and at the provider's expense, evaluate the individual and give an opinion about his capacity to consent. The LHRC may not make a decision until it reviews the action proposed by the director, any determination of lack of capacity, the opinion of the independent evaluator if applicable, and the individual's reasons for objecting to that determination. Before making such a decision, the LHRC shall review the action proposed by the director, any determination of lack of capacity, the opinion of the independent evaluator if applicable, and the individual's or his authorized representative's reasons for objecting to that determination. To facilitate its review, the LHRC may ask that a physician or licensed clinical psychologist not employed by the provider [ ] evaluate the individual at the provider's expense [ ] and give an opinion about his capacity to consent to treatment or authorize information.~~

~~C. Step 3: The LHRC shall ~~issue its~~ notify all parties and the human rights advocate of the decision within 10 working days of the initial request.~~

~~1. If the LHRC agrees that the individual lacks the capacity to consent, the director may begin or continue treatment or research, or disclose the information, but only with the appropriate consent of the legally authorized representative. The LHRC shall advise the individual of his~~

~~right to appeal this determination to the SHRC under 12VAC35-115-210.~~

~~2. If the LHRC does not agree that the individual lacks the capacity to consent, the director shall not begin any treatment, research or information disclosure without the individual's consent, or shall take immediate steps to discontinue use of medication if it has already begun. The director may appeal to the SHRC under 12VAC35-115-210 but may not take any further action until the SHRC issues its opinion.~~

~~3. If, regardless of the individual's capacity to consent, the LHRC determines that a decision made by a director requires consent that was not obtained, the director shall immediately rescind the action unless and until such consent is obtained. The director may appeal to the SHRC under 12VAC35-115-210 but may not take any further action until the SHRC issues its opinion.~~

## **12VAC35-115-210. State Human Rights Committee appeals procedures.**

A. Any party may appeal to the ~~State Human Rights Committee~~ SHRC if he is not satisfied with any of the following:

1. An LHRC's final findings of fact and recommendations following a hearing;
2. A director's final action plan following an LHRC hearing;
3. An LHRC's final decision regarding the capacity of an individual to consent to treatment, services, or research; or authorize disclosure of confidential information; or
4. An LHRC's final decision concerning whether consent or authorization is needed for the director to take a certain action.

The steps for filing an appeal are provided in subsections B through I of this section.

B. Step 1: Appeals shall be filed in writing with the SHRC by a party within 10 working days of receipt of the final action.

1. The appeal shall explain the reasons the final action is not satisfactory.
2. The human rights advocate or any other person may help in filing the appeal. If the individual chooses a person other than the human rights advocate to help him, he and his chosen representative may request the human rights advocate's help in filing the appeal.
3. The party appealing must give a copy of the appeal to the other party, the human rights advocate, and the LHRC.
4. If the director is the party appealing, he shall first request and get written permission to appeal from the

commissioner or governing body of the provider, as appropriate. If the director does not get this written permission and note the appeal within 10 working days, his right to appeal is waived.

C. Step 2: If the director is appealing, the individual may file a written statement with the SHRC within five working days after receiving a copy of the appeal. If the individual is appealing, the director shall file a written statement with the SHRC within five working days after receiving a copy of the appeal.

D. Step 3: Within five working days of noting or being notified of an appeal, the director shall forward a complete record of the LHRC hearing to the SHRC. The record shall include, at a minimum:

1. The original petition or information filed with the LHRC and any statement filed by the director in response;
2. Parts of the individual's services record that the LHRC considered and any other parts of the services record submitted to, but not considered by the LHRC that either party considers relevant;
3. All written documents and materials presented to and considered by the LHRC, including any independent evaluations conducted;
4. A tape or ~~word for word~~ transcript of the LHRC proceedings, if available;
5. The LHRC's findings of fact and recommendations;
6. The director's action plan, if any; and
7. Any written objections to the action plan or its implementation.

E. Step 4: The SHRC shall hear the appeal ~~within 20 working days~~ at its next scheduled meeting after the ~~chair~~ chairperson receives the appeal.

1. The SHRC shall give the parties at least 10 working days' notice of the appeal hearing.
2. The following rules govern appeal hearings:
  - a. The SHRC shall not hear any new evidence.
  - b. The SHRC is bound by the LHRC's findings of fact subject to subdivision 3 of this subsection.
  - c. The SHRC shall limit its review to whether the facts, as found by the LHRC, establish a violation of these regulations and a determination of whether the LHRC's recommendations or the action plan adequately address the alleged violation.
  - d. All parties and their representatives shall have the opportunity to appear before the SHRC to present their [~~position~~ positions] and answer questions the SHRC may have.

e. The SHRC ~~will~~ shall notify the inspector general of the appeal.

3. If the SHRC decides that the LHRC's findings of fact are clearly wrong or that the hearing procedures employed by the LHRC were inadequate, the SHRC may ~~either~~:

- a. Send the case back to the LHRC for another hearing to be completed within a time period specified by the SHRC; or
- b. Conduct its own fact-finding hearing. If the SHRC chooses to conduct its own fact-finding hearing, it may appoint a subcommittee of at least three of its members as fact finders. The fact-finding hearing shall be conducted within 30 working days of the SHRC's initial hearing.

In either case, the parties shall have 15 working days' notice of the date of the hearing and the opportunity to be heard and to present witnesses and other evidence.

F. Step 5: Within 20 working days after the SHRC appeal hearing, the SHRC shall submit a report, its findings of fact, if applicable, and recommendations to the commissioner and to the provider's governing body, with copies to the parties, the LHRC, and the human rights advocate.

G. Step 6: Within 10 working days after receiving the SHRC's report, in the case of appeals involving a state facility, the commissioner shall submit an outline of actions to be taken in response to the SHRC's recommendations. In the case of appeals involving CSBs and private providers, ~~both~~ the commissioner and the provider's governing body shall each outline in writing the action or actions they will take in response to the recommendations of the SHRC. They shall also explain any reasons for not carrying out any of the recommended actions. Copies of their responses shall be forwarded to the SHRC, the LHRC, the director, the human rights advocate, and the individual.

H. Step 7: If the SHRC objects in writing to the commissioner's or governing body's proposed actions, or both, their actions shall be postponed. The commissioner or governing body, or both, shall meet with the SHRC at its next regularly scheduled meeting to attempt to arrange a mutually agreeable resolution.

I. Step 8: In the case of services provided directly by the department, the commissioner's action plan shall be final and binding on all parties. However, when the SHRC believes the commissioner's action plan is incompatible with the purpose of these regulations, it shall notify the board, the protection and advocacy agency, and the inspector general.

In the case of services delivered by all other providers, the action plan of the provider's governing body shall be reviewed by the commissioner. If the commissioner determines that the provider has failed to develop and carry out an acceptable action plan, the commissioner shall notify

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the protection and advocacy agency and shall inform the SHRC ~~what~~ of the sanctions the department will impose against the provider.

J. Step 9: Upon completion of the process outlined in subsections B through I of this section, the SHRC shall notify the parties and the human rights advocate of the final outcome of the complaint.

## Part ~~V~~ VI

### Variances

#### **12VAC35-115-220. Variances.**

A. Variances to these regulations shall be requested and approved only when the provider has tried to implement the relevant requirement without a variance and can provide objective, documented information that continued operation without a variance is not feasible or will prevent the delivery of effective and appropriate services and supports to individuals.

B. Only directors may apply for variances, and they must first be approved by the provider, the governing body of the provider, or the commissioner, as appropriate, before consideration by an LHRC or the SHRC.

C. Upon receiving approval from the governing body [or commissioner], and after notifying the human rights advocate and other interested persons, the director shall file a formal application for variance with the LHRC. This application shall reference the specific part of these regulations to which a variance is needed, the proposed wording of the substitute rule or procedure, and the justification for [~~seeking~~] a variance. The application shall also describe time limits and other conditions for duration and the circumstances that will end the applicability of the variance.

1. When the LHRC receives the application, it shall invite, and provide ample time to receive, oral or written statements about the application from the human rights advocate [, individuals affected by the variance,] and other interested persons.

2. The LHRC shall review the application and prepare a written report of facts, which shall include its recommendation for approval, disapproval, or modification. The LHRC shall send its report, recommendations, and a copy of the original application to the State Human Rights Director, the SHRC, and the director making application for the variance.

D. When the SHRC receives the application and the LHRC's report, the SHRC shall do the following:

1. Invite oral or written statements about the application from the applicant director, LHRC, advocate, and other interested persons by publishing the request for variance in the next issue of the Virginia Register of Regulations;

2. Notify the inspector general of the request for variance; and

3. After considering all available information, prepare a written decision deferring, disapproving ~~or~~ or modifying, or approving the application. All variances shall be approved for a specific time period and must be reviewed at least annually.

a. A copy of this decision including conditions, time frames, circumstances for removal, and the reasons for the decision shall be given to the applicant director, the commissioner or governing body, ~~where appropriate,~~ the state human rights director, the human rights advocate, any person commenting on the request at any stage, and the LHRC.

b. The decision and reasons shall also be published in the next issue of the Virginia Register of Regulations.

E. Directors shall implement any approved variance in strict compliance with the written application as amended, modified, or approved by the SHRC.

F. Providers shall develop policies and procedures for monitoring the implementation of any approved variances. These policies and procedures shall specify that at no time can a variance approved for one individual be extended to general applicability. These policies and procedures shall assure the ongoing collection of any data relevant to the variance and the presentation of any later report concerning the variance as requested by the commissioner, the state human rights director, the human rights advocate, the LHRC or the SHRC.

G. The decision of the SHRC granting or denying a variance shall be final.

[ H. Following the granting of a variance, the provider shall notify all individuals affected by the variance about the details of the variance. ]

[ ~~H. I.~~ ] If an individual is in immediate danger due to a provider's implementation of these regulations, the provider may request a temporary variance pending approval pursuant to the process described in this section. Such a request shall be submitted in writing to the commissioner, chairperson of the SHRC, and state human rights director. The commissioner, chairperson of the SHRC, and state human rights director shall issue a decision within 48 hours of the receipt of such a request.

## Part ~~VI~~ VII

### Reporting Requirements

#### **12VAC35-115-230. Provider requirements for reporting to the department.**

A. Providers shall collect, maintain and report the following information concerning abuse, neglect, and exploitation:

1. The director of a facility operated by the department shall report allegations of abuse and neglect in accordance with all applicable operating instructions issued by the commissioner or his designee.

2. The director of a service licensed or funded by the department shall report each allegation of abuse or neglect to the assigned human rights advocate within 24 hours from the receipt of the allegation (see 12VAC35-115-50).

3. The investigating authority shall provide a written report of the results of the investigation of abuse or neglect to the director and human rights advocate within 10 working days from the date the investigation began unless an exemption has been granted by the department (see 12VAC35-115-50). This report shall include ~~but not be limited to the following~~:

- a. Whether abuse, neglect, or exploitation occurred;
- b. The type of abuse; and
- c. Whether the act resulted in physical or psychological injury.

B. Providers shall collect, maintain [ ] and report the following information concerning deaths and serious injuries:

1. The director of a facility operated by the department shall report to the department deaths and serious injuries in accordance with all applicable operating instructions issued by the commissioner or his designee.

2. The director of a service licensed or funded by the department shall report deaths and serious injuries in writing to the department within 24 hours of discovery and by telephone to the ~~legally~~ authorized representative, ~~as applicable~~, within 24 hours.

3. All reports of death and serious injuries shall include ~~but not be limited to~~ [ the following ]:

- a. Date and place of ~~death/injury~~ the death or [ serious ] injury;
- b. Nature of the injuries and treatment required; and
- c. Circumstances of ~~death/serious~~ the death or serious injury.

C. Providers shall collect, maintain and report the following information concerning seclusion and restraint:

1. The director of a facility operated by the department shall report each instance of seclusion or restraint or both in accordance with all applicable operating instructions issued by the commissioner or his designee.

2. The director of a service licensed or funded by the department shall submit an annual report of each instance of seclusion or restraint or both by the 15th of January each year, or more frequently if requested by the department.

3. Each instance of seclusion or restraint or both shall be compiled on a monthly basis and the report shall include [ ~~but not be limited to the following~~ ]:

- a. Type(s) to include:
  - (1) Physical restraint (manual hold);
  - (2) Mechanical restraint;
  - (3) Pharmacological ~~(chemical restraint)~~; and
  - (4) Seclusion.
- b. Rationale for the use of seclusion or restraint to include:
  - (1) Behavioral purpose;
  - (2) Medical purpose; or
  - (3) Protective purpose.
- c. Duration of the seclusion or restraint, as follows:

(1) The duration of seclusion and restraint used for behavioral purposes is defined as the actual time the individual is in seclusion or restraint from the time of initiation of seclusion or restraint until the individual is released.

(2) The duration of restraint for medical and protective purposes is defined as the length of the episode as indicated in the order.

4. Any instance of seclusion or restraint that does not comply with these regulations or approved variances, or that results in injury to an individual, shall be reported to the ~~legally~~ authorized representative, as applicable, and the assigned human rights advocate within 24 hours.

~~D. Providers shall collect, maintain and report the following information concerning human rights activities:~~

~~1. D.~~ The director shall provide to the human rights advocate, at least monthly, and the LHRC information on the type, resolution level, and findings of each complaint of a human rights violation; reports shall be made to the LHRC upon request and implementation of variances in accordance with the LHRC meeting schedule or as requested by the advocate.

~~2. The director shall provide to the human rights advocate and the LHRC, at least monthly, reports regarding the implementation of any variances.~~

E. Reports required under this section shall be submitted to the department on forms or in an automated format or both developed by the department.

F. The department shall compile all data reported under this section and make this data available to the public and the inspector general upon request.

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1. The department shall provide the compiled data in writing or by electronic means.

2. The department shall remove all provider-identifying information and all information that could be used to identify a person as an individual receiving services.

G. In the reporting, compiling and releasing of information and statistical data provided under this section, the department and all providers shall take all measures necessary to ensure that any [ ~~consumer-identifying~~ ] information [ identifying individuals ] is not released to the public, including encryption of data transferred by electronic means.

H. Nothing in this section is to be construed as requiring the reporting of proceedings, minutes, records, or reports of any committee or nonprofit entity providing a centralized credentialing service which are identified as privileged pursuant to §8.01-581.17 of the Code of Virginia.

I. Providers shall report to the Department of Health Professions, Enforcement Division, violations of these regulations that constitute reportable conditions under ~~§54.1-2906 §§54.1-2400.4, 54.1-2909, and 54.1-2900.6~~ of the Code of Virginia.

## Part ~~VH~~ VIII

### Enforcement and Sanctions

#### **12VAC35-115-240. Human rights enforcement and sanctions.**

A. The commissioner may invoke the sanctions enumerated in ~~§37.1-185.1~~ §37.2-419 of the Code of Virginia upon receipt of information that a provider licensed or funded by the department is:

1. In violation of (i) the provisions of ~~§37.1-84.1~~ §37.2-400 and ~~§§37.1-179 through 37.1-189.2~~ §§37.2-403 through 37.2-422 of the Code of Virginia; (ii) these regulations; ~~or~~ and [ ~~and~~ or ] (iii) provisions of the licensing regulations [ ~~promulgated~~ adopted ] pursuant to ~~§§37.1-179.1 and 37.1-182~~ §§37.2-404 and 37.2-411 of the Code of Virginia; and

2. ~~Such~~ The violation adversely ~~impacts~~ affects the human rights of individuals [ ~~receiving services~~ ] or poses an imminent and substantial threat to the health, safety, and welfare of individuals [ ~~receiving services~~ ].

The commissioner shall notify the provider in writing of the specific violation or violations found and of his intention to convene an informal conference pursuant to §2.2-4019 of the Code of Virginia at which the presiding officer will be asked to recommend issuance of a special order.

B. The sanctions contained in the special order shall remain in effect ~~during the pendency~~ for the duration of any appeal of the special order.

## Part ~~VIII~~ IX

### Responsibilities and Duties

#### **12VAC35-115-250. Offices, composition and duties.**

A. Providers and their directors shall:

1. Identify a person or persons accountable for helping individuals to exercise their rights and resolve complaints regarding services.

2. Comply with all state laws governing the reporting of abuse and neglect and all procedures set forth in these regulations for reporting allegations of abuse, neglect, or exploitation.

3. Require competency-based training on these regulations upon employment and at least annually thereafter. Documentation of such competency shall be maintained in the employee's personnel file.

4. Take all steps necessary to assure compliance with these regulations in all services provided.

5. Communicate information about the availability of a human rights advocate ~~and assure an LHRC to all~~ individuals ~~receiving services~~ and authorized representatives.

6. ~~Assure that appropriate staff attend all LHRC meetings to report on human rights activities as directed by the human rights advocate or the LHRC bylaws one LHRC affiliation within the region as defined by the SHRC. The SHRC may require multi-site providers to have more than one LHRC affiliation within a region if the SHRC determines that additional affiliations are necessary to protect individuals' human rights.~~

7. Assure that the appropriate staff attend LHRC meetings in accordance with the LHRC meeting schedule to report on human rights activities, to impart information to the LHRC at the request of the human rights advocate or LHRC, and discuss specific concerns or issues with the LHRC.

~~7. 8.~~ Cooperate with the human rights advocate and the LHRC to investigate and correct conditions or practices interfering with the free exercise of individuals' human rights and make sure that all employees cooperate with the human rights advocate and the LHRC in carrying out their duties under these regulations. Notwithstanding the requirements for complaints pursuant to Part V (12VAC35-115-150 et seq.) of this chapter, the provider shall submit a written response indicating intended action to any written recommendation made by the human rights advocate or LHRC within 15 days of the receipt of such recommendation.

~~8. 9.~~ Provide the advocate unrestricted access to individuals and individual services records whenever the

human rights advocate deems access necessary to carry out rights protection, complaint resolution, and advocacy.

9. ~~10.~~ Submit to the human rights advocate for review and comment any proposed policies, procedures, or practices that may affect individual human rights.

~~10.~~ 11. Comply with requests by the SHRC, LHRC, and human rights advocate for information, policies, procedures, and written reports regarding compliance with these regulations.

~~11.~~ 12. Name a liaison to the LHRC, who shall give the LHRC suitable meeting accommodations, clerical support and equipment, and assure the availability of records and employee witnesses upon the request of the LHRC. Oversight and assistance with the LHRC's substantive implementation of these regulations shall be provided by the SHRC. See subsection E of this section.

~~12.~~ 13. Submit applications for variances to these regulations only as a last resort.

~~13.~~ 14. Post in program locations information about the existence and purpose of the human rights program.

~~14.~~ 15. Not influence or attempt to influence the appointment of any person to an LHRC associated with the provider or director.

~~15.~~ 16. Perform any other duties required under these regulations.

B. Employees of the provider shall, as a condition of employment:

1. Become familiar with these regulations, comply with them in all respects, and help individuals understand and assert their rights.

2. Protect individuals from any form of abuse, neglect ~~and or~~ exploitation (i) by not abusing, neglecting or exploiting any individual; (ii) by not permitting or condoning anyone else ~~to abuse, neglect, or exploit~~ abusing, neglecting, or exploiting any individual; and (iii) by reporting all suspected abuse [ , neglect, or exploitation ] to the [ ~~program~~ ] director. Protecting individuals receiving services from abuse also includes using the minimum force necessary to restrain an individual.

3. Cooperate with any investigation, meeting, hearing, or appeal held under these regulations. Cooperation includes; ~~but is not limited to,~~ giving statements or sworn testimony.

4. Perform any other duties required under these regulations.

C. The human rights advocate shall:

1. Represent any individual making a complaint or, upon request, consult with and help any other representative the individual chooses.

2. Monitor the implementation of an advocacy system for individuals receiving services from the provider or providers to which the advocate is assigned.

3. Promote and monitor provider compliance with these and other applicable individual rights laws, regulations, and policies.

4. Investigate and try to prevent or correct, informally or formally, any alleged rights violations by interviewing, mediating, negotiating, advising, and consulting with providers and their respective governing bodies, directors, and employees.

5. Whenever necessary, file a written complaint with the LHRC for an individual ~~receiving services~~ or, where general conditions or practices interfere with individuals' rights, for ~~the~~ a group of individuals.

6. Investigate and examine all conditions or practices ~~which that~~ which may interfere with the free exercise of individuals' rights.

7. Help the individual or the individual's chosen representative during any meeting, hearing, appeal, or other proceeding under these regulations unless the individual or his chosen representative chooses not to involve the human rights advocate.

8. Provide orientation, training, and technical assistance to the LHRCs for which ~~they are~~ he is responsible.

9. Tell the LHRC about any recommendations made to the director, the provider, the provider's governing body, the state human rights director, or the department for changes in policies, procedures, or practices that have the potential to adversely affect the rights of individuals.

10. Make recommendations to the state human rights director concerning the employment and supervision of other advocates where appropriate.

11. Submit regular reports to the state human rights director, the LHRC, and the SHRC about provider implementation of and compliance with these regulations.

12. Provide consultation to individuals, providers and their governing bodies, directors [ , ] and employees regarding individuals' rights, providers' duties, and complaint resolution.

13. Perform any other duties required under these regulations.

D. The Local Human Rights Committee shall:

1. Consist of five or more members appointed by the SHRC.

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a. Membership shall be broadly representative of professional and consumer interests. At least [~~one-third of the members on each committee~~ two members] shall be individuals who are receiving [~~services~~] and or [~~family members of similar individuals with at least two individuals who are receiving services or who~~] have received within the five years of their initial appointment public or private mental health, mental retardation, or substance abuse treatment or habilitation services ~~on each committee~~ within five years of their initial appointment. [At least one-third of the members shall be consumers or family members of consumers.] Remaining appointments shall include persons with interest, knowledge, or training in the mental health, mental retardation, or substance abuse field.

b. ~~No member shall be an employee of the department or an employee or board member of the provider for which the LHRC provides oversight.~~ At least one member shall be a health care provider.

c. No current employee of the department or a provider shall serve as a member of any LHRC that serves an oversight function for the employing facility or provider.

e. ~~d.~~ Initial appointments to an LHRC shall be staggered, with approximately one-third of the members appointed for a term of three years, approximately one-third for a term of two years, and the remainder for a term of one year. After that, all appointments shall be for a term of three years.

~~d.~~ e. A person may be appointed for no more than two consecutive three-year terms. A person appointed to fill a vacancy may serve out that term, and then be eligible for two additional consecutive terms.

e. ~~f.~~ Nominations for membership to LHRCs shall be submitted directly to the SHRC through the state human rights director at the department's Office of Human Rights.

2. Permit affiliations of local providers in accordance with the recommendations from the human rights advocate. SHRC approval is required for the denial of an affiliation request.

~~2.~~ 3. Receive complaints of alleged rights violations filed by or for individuals receiving services from providers with which the LHRC is ~~associated~~ affiliated and hold hearings according to the procedures set forth in Part ~~IV~~ V (12VAC35-115-150 et seq.) of this chapter.

~~3.~~ 4. Conduct investigations as requested by the SHRC.

4. 5. Upon the request of the human rights advocate, provider, director, or an individual or individuals [~~receiving services~~], or on its own initiative, an LHRC may review any existing or proposed policies, procedures, ~~or~~ practices, or behavioral treatment plans that could

jeopardize the rights of ~~one or more~~ individuals receiving services from the provider with which the LHRC is affiliated. In conducting this review, the LHRC may consult with any human rights advocate, employee of the [~~director~~ provider], or anyone else. After this review, the LHRC shall make recommendations to the director concerning changes in these plans, policies, procedures, and practices.

~~5.~~ 6. Receive, review, and act on applications for variances to these regulations according to 12VAC35-115-220.

~~6.~~ 7. Receive, review and comment on all ~~restrictive behavioral treatment programs and seclusion and plans involving the use of restraint or time out and seclusion, restraint, or time out~~ policies for affiliated providers.

7. 8. Adopt written bylaws that address procedures for conducting business, electing the ~~chair~~ chairperson, secretary, and other officers, designating standing committees, and setting the frequency of meetings.

~~8.~~ 9. Elect from its own members a ~~chair~~ chairperson to coordinate the activities of the LHRC and to preside at regular committee meetings and any hearings held pursuant to these regulations.

9. ~~10.~~ Conduct a meeting every quarter or more frequently as necessary to adhere to all time lines as set forth in these regulations.

~~10.~~ 11. Require members to recuse themselves from all cases wherein they have a financial, ~~family~~ or other conflict of interest.

12. The LHRC may delegate summary decision-making authority to a subcommittee when expedited decisions are required before the next scheduled LHRC meeting to avoid seriously compromising an individual's quality of care, habilitation, or quality of life. The decision of the subcommittee shall be reviewed by the full LHRC at its next meeting.

~~11.~~ 13. Perform any other duties required under these regulations.

E. The State Human Rights Committee (~~[ SHRC ]~~) [State Human Rights Committee] shall:

1. Consist of nine members appointed by the board.

a. Members shall be broadly representative of professional and consumer interests and of geographic areas in the Commonwealth. At least two members shall be individuals who are receiving services or have received ~~within five years of their initial appointment~~ public or private mental health, mental retardation, or substance abuse treatment or habilitation services within five years of their initial appointment. At least one-third of the members shall be consumers or family members ~~of similar individuals of consumers.~~ Remaining

appointments shall include persons with interest, knowledge, or training in the mental health, mental retardation, or substance abuse field.

b. At least one member shall be a health care professional.

~~b. c.~~ No member can be an employee or board member of the department or a CSB.

~~e. All appointments after November 21, 2001, shall be for a term of three years.~~

d. If there is a vacancy, interim appointments may be made for the remainder of the unexpired term.

e. A person may be appointed for no more than two consecutive three-year terms. A person appointed to fill a vacancy may serve out that term, and then be eligible for two additional consecutive terms.

2. Elect a ~~chair~~ chairperson from its own members who shall:

- a. Coordinate the activities of the SHRC;
- b. Preside at regular meetings, hearings [    ] and appeals; and
- c. Have direct access to the commissioner and the board in carrying out these duties.

3. Upon request of the commissioner, human rights advocate, provider, director, ~~or an individual or individuals~~ [ receiving services or individuals ], or on its own initiative, a SHRC may review any existing or proposed policies, procedures, or practices that could jeopardize the rights of ~~one or more~~ individuals receiving services from any provider. In conducting this review, the SHRC may consult with any human rights advocate, employee of the director, or anyone else. After this review, the SHRC shall make recommendations to the director or commissioner concerning changes in these policies, procedures, and practices.

4. Determine the appropriate number and geographical boundaries of LHRCs and consolidate LHRCs serving only one provider into regional LHRCs whenever consolidation would assure greater protection of rights under these regulations.

5. Appoint members of LHRCs with the advice of ~~and consultation with~~ the [ commissioner, respective LHRC, human rights advocate, ] and the state human rights director.

6. Advise ~~and consult with~~ the commissioner ~~in~~ about the employment of the state human rights director and human rights advocates.

7. Conduct at least eight regular meetings per year.

8. Review decisions of LHRCs and, if appropriate, hold hearings and make recommendations to the commissioner, the board, and providers' governing bodies regarding alleged violations of individuals' rights according to the procedures specified in these regulations.

9. Provide oversight and assistance to LHRCs in the performance of their duties hereunder, including the development of guidance documents such as sample bylaws, affiliation agreements, and minutes to increase operational consistency among LHRCs.

10. Review denials of LHRC affiliations.

~~10. 11.~~ Notify the commissioner and the [ ~~State Human Rights Director~~ state human rights director ] whenever it determines that its recommendations in a particular case are of general interest and applicability to providers, human rights advocates, or LHRCs and assure the availability of the opinion or report to providers, human rights advocates, and LHRCs as appropriate. No document made available shall identify the name of individuals or employees in a particular case.

~~11. 12.~~ Grant or deny variances according to the procedures specified in Part ~~V~~ VI (12VAC35-115-220) of this chapter and review approved variances at least once every year.

~~12. 13.~~ Make recommendations to the board concerning proposed revisions to these regulations.

~~13. 14.~~ Make recommendations to the commissioner concerning revisions to any existing or proposed laws, regulations, policies, procedures, and practices to ensure the protection of individuals' rights.

~~14. 15.~~ Review the scope and content of training programs designed by the department to promote responsible performance of the duties assigned under these regulations by providers, employees, human rights advocates, and LHRC members, and, where appropriate, make recommendations to the commissioner.

~~15. 16.~~ Evaluate the implementation of these regulations and make any necessary and appropriate recommendations to the board, the commissioner, and the state human rights director concerning interpretation and enforcement of the regulations.

~~16. 17.~~ Submit ~~a report on its activities~~ to the board each year and publish an annual report of its activities and the status of human rights in mental health, mental retardation, and substance abuse treatment and services in Virginia and make recommendations for improvement.

~~17. 18.~~ Adopt written bylaws that address procedures for conducting business; making membership recommendations to the board; electing a ~~chair~~ chairperson, vice ~~chair~~ chairperson, secretary, and other

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officers; appointing members of LHRCs; designating standing committees and their responsibilities; establishing ad hoc committees; and setting the frequency of meetings.

~~18. 19. Review and approve the bylaws of LHRCs.~~

~~19. Publish an annual report of the status of human rights in the mental health, mental retardation, and substance abuse treatment and services in Virginia and make recommendations for improvement.~~

20. Require members to recuse themselves from all cases where they have a financial, ~~family~~ or other conflict of interest.

21. Perform any other duties required under these regulations.

F. The state human rights director shall:

1. Lead the implementation of the statewide human rights program and make ongoing recommendations to the commissioner, the SHRC, and ~~the~~ LHRCs for continuous improvements in the program.

2. Advise the commissioner concerning the employment and retention of human rights advocates.

3. Advise providers, directors, advocates, LHRCs, the SHRC, and the commissioner concerning their responsibilities under these regulations and other applicable laws, regulations [ ~~and departmental~~ ], policies [ ~~and departmental instructions~~ ] that protect individuals' rights.

4. Organize, coordinate, and oversee training programs designed to promote responsible performance of the duties assigned under these regulations.

5. Periodically visit service settings to monitor ~~the~~ free exercise of ~~those~~ rights enumerated in these regulations.

6. Supervise human rights advocates in the performance of their duties under these regulations.

7. Support the SHRC and LHRCs in carrying out their duties under these regulations.

8. Review LHRC decisions and recommendations for general applicability and provide suggestions for training to appropriate entities.

9. Monitor implementation of corrective action plans approved by the SHRC.

10. Perform any other duties required under these regulations.

G. The commissioner shall:

1. Employ the state human rights director after ~~advice and~~ consultation with the SHRC.

2. Employ advocates following consultation with the state human rights director.

3. Provide or arrange for assistance and training necessary to carry out and enforce these regulations.

4. Cooperate with the SHRC and the state human rights director to investigate providers and correct conditions or practices that interfere with the free exercise of individuals' rights.

5. Advise and consult with the SHRC and the state human rights director concerning the appointment of members of LHRCs.

6. Maintain current and regularly updated data and perform regular trend analyses to identify the need for corrective action in the areas of abuse, neglect, and exploitation; seclusion and restraint; complaints; deaths and serious ~~incidents~~ injuries; and variance applications.

7. Assure regular monitoring and enforcement of these regulations, including authorizing unannounced compliance reviews at any time.

8. Perform any other duties required under these regulations.

H. The board shall:

1. ~~Promulgate~~ Adopt regulations [ ~~defining that further~~ define ] the rights of individuals receiving services from providers covered by these regulations.

2. Appoint members of the SHRC.

3. Review and approve the bylaws of the SHRC.

4. Perform any other duties required under these regulations.

VA.R. Doc. No. R05-146; Filed July 20, 2007, 2:57 p.m.



## TITLE 16. LABOR AND EMPLOYMENT

### SAFETY AND HEALTH CODES BOARD

#### Proposed Regulation

Titles of Regulations: **16VAC25-90. Federal Identical General Industry Standards (29 CFR Part 1910) (repealing 16VAC25-90-1910.269 (p)(1)(ii)).**

**16VAC25-97. Reverse Signal Operation Safety Requirements for Motor Vehicles, Machinery and Equipment in General Industry and the Construction Industry (adding 16VAC25-97-10 through 16VAC25-97-70).**

**16VAC25-175. Federal Identical Construction Industry Standards (29 CFR Part 1926) (repealing 16VAC25-175-**

**1926.601 (b)(4), 16VAC25-175-602 (a)(9)(ii), 16VAC25-175-1926.952 (a)(3).**

Statutory Authority: §40.1-22 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comments: Public comments may be submitted until 5 p.m. on October 19, 2007.

Agency Contact: John Crisanti, Policy and Planning Manager, Department of Labor and Industry, Powers Taylor Building, 13 South 13th Street, Richmond, VA 23219, telephone (804) 786-4300, FAX (804) 786-8418, or email john.crisanti@doli.virginia.gov.

Basis: The Safety and Health Codes Board is authorized by §40.1-22(5) of the Code of Virginia to:

"... adopt, alter, amend, or repeal rules and regulations to further, protect and promote the safety and health of employees in places of employment over which it has jurisdiction and to effect compliance with the federal VOSH Act of 1970...as may be necessary to carry out its functions established under this title."

"In making such rules and regulations to protect the occupational safety and health of employees, the Board shall adopt the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence that no employee will suffer material impairment of health or functional capacity."

"However, such standards shall be at least as stringent as the standards promulgated by the federal OSH Act of 1970 (P.L. 91-596). In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experiences gained under this and other health and safety laws."

Purpose: The purpose of the proposed change is to provide more comprehensive protection to employees in construction and general industry work areas exposed to vehicular, machinery and equipment traffic covered by the aforementioned standards and to provide the same degree of protection to employees in similar working conditions where vehicles, machinery and equipment with obstructed views to the rear are not otherwise covered by current regulations. The proposed regulation will apply to all covered vehicles, machinery and equipment in both construction and general industry, whether during operations in off-road work zones or over-the-road transportation or hauling.

Substance: The VOSH Program seeks the amendment of reverse signal operation safety procedures in standards for the construction industry in 16VAC25-175-1926.601(b)(4), 16VAC25-175-1926.602(a)(9)(ii), and 16VAC25-175-1926.952(a)(3) and for the General Industry Standard for the

Electric Power Generation, Transmission and Distribution in 16VAC25-90-1910.269(p)(1)(ii). The VOSH Program also seeks to establish a comprehensive reverse signal operation procedures regulation for all construction and general industry vehicles, machinery and equipment with an obstructed view to the rear, whether for operation in off-road work zones or over-the-road transportation or hauling.

Issues: Employers would be required to train both drivers of covered vehicles, machinery and equipment and designated employee signalers/ground guides on the requirements of the amended and new regulations. The proposed regulation would provide employers with flexibility to achieve safe vehicle back-up operations to include:

1. Covered vehicles with video or similar technological capability to provide the driver with a full view behind the vehicle can be operated in reverse without a designated employee signaler/ground guide.
2. Covered vehicles could be exempted from using a designated employee signaler/ground guide if it has a reverse signal alarm audible above surrounding noise and the driver visually determines from outside the vehicle that no employees are in the backing zone and that it is reasonable to expect that no employees will enter the backing zone during reverse operations.
3. Covered vehicles that were not equipped with a reverse-signal alarm upon manufacture or later retrofitted with an alarm are exempt from the reverse signal alarm requirement if they either use a designated employee signaler/ground guide, or if the driver visually determines from outside the vehicle that no employees are in the backing zone and that it is reasonable to expect that no employees will enter the backing zone during back-up.
4. To the extent that any federal Department of Transportation (DOT) regulation applying to covered vehicles conflicts with any proposed regulation adopted by the board, the DOT regulation would preempt any board regulation in accordance with §40.1-1 of the Code of Virginia.

Construction and general industry employees across the state would benefit from increased safety requirements from vehicular, machinery and equipment back-up operations. (Current standards are limited in their scope and do not apply to all construction and general industry vehicles and equipment with an obstructed view to the rear). A significant reduction in employee deaths attributed to covered vehicles is anticipated (for the period 1992 to 2005, VOSH investigated nine general industry and 15 construction fatal accidents where employees were struck by vehicles or equipment). Employees that are drivers of covered vehicles or designated signalers/ground guides will have to receive training on the requirements of the proposed regulation.

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## Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Regulation. The Safety and Health Codes Board (Board) proposes to amend reverse signal safety procedures for general industry and construction vehicles, machinery and equipment (for vehicles/machinery/equipment built without unobstructed rear views).

Result of Analysis. The benefits likely exceed the costs for this proposed regulatory change.

Estimated Economic Impact. Current regulations mandate that construction and general industry vehicles/machinery/equipment (covered vehicles) not be operated in reverse without either sounding an audible alarm (loud enough to be heard over ambient noise) or having a trained designated observer who will ensure that the covered vehicle can safely reverse.

These proposed regulations will require that, with several exceptions, all covered vehicles sound an audible alarm (loud enough to be heard over ambient noise) and be guided by a trained designated observer. Reversing covered vehicles will not have to be guided by a trained ground observer if 1) these vehicles are equipped with video or similar technology capable of providing the driver with a unobstructed rear view or 2) the driver "visually determines from outside the vehicle that no employees are in the backing zone and that it is reasonable to expect that no employees will enter the backing zone during the reverse operation of the vehicle". Reversing covered vehicles will not have to sound an audible alarm if they are not equipped with a reverse signal alarm. In addition to these exceptions, these proposed regulations stipulate that "to the extent that any federal Department of Transportation (DOT) regulation applies to covered vehicles (and) conflicts ..., the DOT regulation shall take precedence".

The Department of Labor and Industry (DOLI) reports that 136,222 businesses (136,000 small businesses) will be affected by these new regulations; DOLI has no information on the number of these businesses that 1) currently just have covered vehicles sound an audible signal when reversing, 2) currently just have a trained designated observer guide reversing covered vehicles or 3) currently use both covered vehicles with audible reverse signals and have a designated observer for reversing vehicles. Businesses that fall under category 3) will not incur any extra costs since they are already in compliance with these proposed regulations. Businesses that fall under category 2) are unlikely to incur any additional costs on account of the proposed regulations since the vehicles they use very likely would not be equipped with an audible reverse signal alarm. These businesses will be free to continue only using a trained designated observer.

Businesses that fall under category 1) will incur minimal costs for training employees on the requirements of the proposed regulation. These businesses will also incur some

opportunity costs since employees who are acting as designated observers cannot complete other tasks (during the times they are watching reversing covered vehicles). DOLI estimates that employee training will take between 15 and 30 minutes and can likely be done during already regularly occurring "toolbox" meetings (meetings held informally on site at the beginning of the workday or shift).

These minimal costs are likely less than the benefits that will likely be realized because of the proposed regulations. DOLI reports that, in every year but one (1994) between 1992 and 2005, at least one person has died in an accident that involved a reversing covered vehicle. Deaths like these, as well as injuries, will be less likely if ground observers make sure that nobody is in the path of reversing vehicles.

Businesses and Entities Affected. DOLI reports that 136,222 businesses (136,000 small businesses) will be affected by these new regulations.

Localities Particularly Affected. No locality will be particularly affected by these proposed regulations.

Projected Impact on Employment. The requirements of these proposed regulations are minimal enough that they will likely not affect employment at regulated businesses.

Effects on the Use and Value of Private Property. The costs associated with these regulations are likely too minimal to adversely impact the value of affected businesses.

Small Businesses: Costs and Other Effects. Approximately 136,000 small businesses will be affected by these proposed regulations. An unknown percentage of these businesses will incur (likely minimal) costs for training employees to act as designated observers and for the employee time that is spent observing reversing vehicles.

Small Businesses: Alternative Method that Minimizes Adverse Impact. There are likely no alternative methods to accomplish the Board's goal that would be less costly than the methods mandated by these proposed regulations.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with §2.2-4007 H of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007 H requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, Section 2.2-4007 H requires that such economic impact analyses include (i) an identification and estimate of the number of

small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

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

Summary:

*The proposed regulatory action repeals the back-up alarm requirements in the current regulations at 1910.269(p)(1)(ii), 1926.601(b)(4), 1926.602(a)(9)(ii), 1926.952(a)(3), and establishes a new, comprehensive proposed regulation, 16VAC25-97. 16VAC25-97 provides that construction and general industry vehicles, machinery and equipment (hereafter referred to as covered vehicles), whether for operation in off-road work zones or over the road transportation or hauling, shall not be operated in reverse unless the vehicle has a reverse signal alarm audible above the surrounding noise level and the vehicle is backed up only when a designated observer or ground guide signals that it is safe to do so. (Current regulations require either the use of a reverse signal alarm or a designated signaler/ground guide to back up the vehicle or equipment.)*

*Other provisions in the proposal provide that:*

- 1. Designated signalers/ground guides must have no other assigned duties.*
- 2. Drivers must maintain constant visual contact with the designated signaler/ground guide.*
- 3. Designated signalers/ground guides and drivers must be provided training on the requirements of the proposed amendments.*
- 4. Vehicles with video or similar technological capability to provide the driver with a full view behind the vehicle would be exempt from the requirement to have a designated signaler/ground guide.*
- 5. Vehicles would be exempt from the requirement to have a designated signaler/ground guide if the driver visually determines from outside the vehicle that no employees are in the backing zone and that it is reasonable to expect that no employees will enter the backing zone during reverse operation of the vehicle.*

*6. Vehicles that were not equipped with a reverse-signal alarm upon manufacture or were not later retrofitted with an alarm are exempt from having a reverse signal alarm audible above the surrounding noise level, but must still comply with other requirements in the proposed regulation.*

*7. To the extent that any federal Department of Transportation (DOT) regulation applies to covered vehicles conflicts with this section, the DOT regulation will take precedence.*

*The proposed regulation also provides a definition of the phrase "obstructed view to the rear."*

**16VAC25-90-1910.269. Electric power generation, transmission, and distribution.**

\* \* \*

(p) Mechanical equipment—(1) General requirements.

\* \* \*

~~(ii) No vehicular equipment having an obstructed view to the rear may be operated on off highway jobsites where any employee is exposed to the hazards created by the moving vehicle, unless:~~

~~(A) The vehicle has a reverse signal alarm audible above the surrounding noise level, or~~

~~(B) The vehicle is backed up only when a designated employee signals that it is safe to do so.~~

\* \* \*

CHAPTER 97

REVERSE SIGNAL OPERATION SAFETY REQUIREMENTS FOR MOTOR VEHICLES, MACHINERY AND EQUIPMENT IN GENERAL INDUSTRY AND THE CONSTRUCTION INDUSTRY

**16VAC25-97-10. Applicability.**

This chapter shall apply to all general industry and construction industry vehicles, machinery or equipment capable of traveling in reverse and with an obstructed view to the rear (hereafter referred to as "covered vehicles"), whether intended for operation in off-road work zones or over the road transportation or hauling.

**16VAC25-97-20. Definitions.**

The phrase "obstructed view to the rear" means anything that interferes with the overall view of the operator of the vehicle to the rear of the vehicle at ground level, and includes, but is not limited to, such obstacles as any part of the vehicle (e.g., structural members); its load (e.g., gravel, dirt, machinery parts); its height relative to ground level viewing; damage to windows or side mirrors, etc., used for rearview movement of the vehicle; restricted visibility due to weather

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conditions (e.g., heavy fog, heavy snow); or work being done after dark without proper lighting.

## **16VAC25-97-30. Covered vehicle requirements.**

No employer shall use any covered vehicle unless:

1. The covered vehicle has a reverse signal alarm audible above the surrounding noise level, and
2. The covered vehicle is backed up only when a designated observer or ground guide signals that it is safe to do so.

## **16VAC25-97-40. Responsibilities while engaged in signaling activities.**

A. While engaged in signaling activities, the designated observer/ground guide shall:

1. Have no other assigned duties;
2. Not engage in any other activities unrelated to back-up operations other than those related to the covered vehicle being signaled;
3. Not use personal cellular phones, personal head phones or similar items that could pose a distraction for the designated observer/ground guide;
4. Be provided with and wear during daytime operations a safety vest or jacket in orange, yellow, strong yellow green or fluorescent versions of these colors, reflective warning garments; and
5. Be provided with and wear during nighttime operations a safety vest or jacket with retroreflective material in orange, yellow, white, silver, strong yellow green or a fluorescent version of these colors and shall be visible at a minimum distance of 1,000 feet.

B. No driver of a covered vehicle shall travel in reverse unless they maintain constant visual contact with the designated observer/ground guide. If visual contact is lost, the driver shall immediately stop the vehicle until visual contact is regained and a positive indication is received from the designated observer/ground guide to restart back-up operations.

## **16VAC25-97-50. Training.**

A. Prior to permitting an employee to engage in any covered activity under this chapter, the employer shall ensure that each driver of a covered vehicle and each designated observer/ground guide is trained in the requirements of this chapter.

B. Refresher training shall be provided by the employer for any driver of a covered vehicle or any designated observer/ground guide when the driver or designated observer/ground guide has:

1. Been observed to violate the requirements of this chapter;
2. Been involved in an accident or near miss accident; or
3. Received an evaluation that reveals that the driver or designated signaler is not operating under this chapter in a safe manner.

## **16VAC25-97-60. Exemptions.**

A. Covered vehicles with video or similar technological capability to provide the driver with a full view behind the vehicle are exempt from subdivision 2 of 16VAC25-97-30.

B. Covered vehicles are exempt from subdivision 2 of 16VAC25-97-30 if the driver visually determines from outside the vehicle that no employees are in the backing zone and that it is reasonable to expect that no employees will enter the backing zone during reverse operation of the vehicle.

C. Covered vehicles that were not equipped with a reverse-signal alarm upon manufacture or were not later retrofitted with an alarm are exempt from subdivision 1 of 16VAC25-97-30.

## **16VAC25-97-70. Applicability of federal regulations.**

To the extent that any federal Department of Transportation (DOT) regulation applies to covered vehicles conflicts with this chapter, the DOT regulation shall take precedence.

## **16VAC25-175-1926.601. Motor vehicles.**

\* \* \*

(b) General requirements.

\* \* \*

~~(4) No employer shall use any motor vehicle equipment having an obstructed view to the rear unless:~~

~~(i) The vehicle has a reverse signal alarm audible above the surrounding noise level or:~~

~~(ii) The vehicle is backed up only when an observer signals that it is safe to do so.~~

\* \* \*

## **16VAC25-175-1926.602. Material handling equipment.**

(a) Earthmoving equipment; General.

\* \* \*

(9) Audible alarms.

\* \* \*

~~(ii) No employer shall permit earthmoving or compacting equipment which has an obstructed view to the rear to be used in reverse gear unless the equipment has in operation a reverse signal alarm distinguishable from the surrounding noise level or an employee signals that it is safe to do so.~~

\* \* \*

**16VAC25-175-1926.952. Mechanical equipment.**

(a) General.

\* \* \*

~~(3) No employer shall use any motor vehicle equipment having an obstructed view to the rear unless:~~

~~(i) The vehicle has a reverse signal alarm audible above the surrounding noise level or:~~

~~(ii) The vehicle is backed up only when an observer signals that it is safe to do so.~~

\* \* \*

VA.R. Doc. No. R06-314; Filed Aug 1, 2007, 11:27 a.m.

**TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING**

**BOARD FOR BARBERS AND COSMETOLOGY**

**Final Regulation**

Title of Regulation: **18VAC41-70. Board for Barbers and Cosmetology Esthetics Regulations (adding 18VAC41-70-10 through 18VAC41-70-280).**

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

Effective Date: September 20, 2007.

Agency Contact: Bill Ferguson, Executive Director, Department of Professional and Occupational Regulation, Perimeter Center, 9960 Mayland Drive, Suite 400, Richmond, VA 23230, telephone 804-367-8590, FAX 804-367-2475, TTY 804-367-9753, or email barbercosmo@dpor.virginia.gov.

Summary:

*Chapter 829 of the 2005 Acts of Assembly mandated separate licensing categories under the Board for Barbers and Cosmetology for esthetics practitioners, schools, and spas where esthetic services are provided. The regulations contain the requirements for obtaining a license, renewal and reinstatement, fees, safety and sanitation procedures, and standards of professional conduct.*

*Changes made since publication of the proposed regulation include amending text to clarify (i) acceptable training facilities in Virginia, (ii) examination requirement, (iii) the board's discretion in determining requirements, (iv) the time period for instructors to apply for licensure by grandfathering, (v) the assessment procedure for awarding training credit and violation if not*

*followed, (vi) curriculum language, and (vii) student records.*

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.

CHAPTER 70

[ BOARD FOR BARBERS AND COSMETOLOGY ]  
ESTHETICS REGULATIONS

Part I

General

**18VAC41-70-10. Definitions.**

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise. All terms defined in Chapter 7 (§54.1-700 et seq.) of Title 54.1 of the Code of Virginia are incorporated in this chapter.

"Credit hour" means a combination of the number of hours in class each week and the number of hours per week in a laboratory by which a school may measure its course work. One unit of credit equals one hour of classroom study, two hours of laboratory experience or three hours of internship or practicum or a combination of the three times the number of weeks in the term. Emerging delivery methodologies may necessitate a unit of undergraduate credit to be measured in nontime base methods. These courses shall use the demonstration of competency, proficiency or fulfillment of learning outcomes to ensure these courses are equivalent to traditionally delivered courses.

"Direct supervision" means that a Virginia licensed esthetician or master esthetician shall be present in the esthetics spa or esthetics school at all times when services are being performed by a temporary license holder or student.

"Endorsement" means a method of obtaining a license by a person who is currently licensed in another state or jurisdiction.

"Licensee" means any individual, partnership, association, limited liability company, or corporation holding a license issued by the Board for Barbers and Cosmetology as defined in §54.1-700 of the Code of Virginia.

"Reinstatement" means having a license restored to effectiveness after the expiration date has passed.

"Renewal" means continuing the effectiveness of a license for another period of time.

"Virginia state institution" for the purposes of this chapter means any institution approved by the Virginia Department of Education.

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## Part II

### Entry

#### **18VAC41-70-20. General requirements for an esthetician license or master esthetician license.**

A. In order to receive a license as an esthetician or master esthetician, an applicant must meet the following qualifications:

1. The applicant shall be in good standing as a licensed esthetician in every jurisdiction where licensed. The applicant shall disclose to the board at the time of application for licensure any disciplinary action taken in another jurisdiction in connection with the applicant's practice as an esthetician. The applicant shall disclose to the board at the time of application for licensure whether he has been previously licensed in Virginia as an esthetician or master esthetician.

2. The applicant shall disclose his physical address. A post office box is not acceptable.

3. The applicant shall sign, as part of the application, a statement certifying that the applicant has read and understands the Virginia esthetics license laws and the board's esthetics regulations.

4. In accordance with §54.1-204 of the Code of Virginia, each applicant shall disclose a conviction, in any jurisdiction, of any misdemeanor or felony. Any plea of nolo contendere shall be considered a conviction for this purpose of this section. The record of a conviction certified or authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such guilt. The board, at its discretion, may deny licensure or certification to any applicant in accordance with §54.1-204 of the Code of Virginia.

5. The applicant shall provide evidence satisfactory to the board that the applicant has passed the board-approved examination [ requirement ] administered either by the board or by independent examiners.

#### B. Eligibility to sit for board-approved examination.

1. Training in the Commonwealth of Virginia. Any person completing an approved esthetics training program or a master esthetics training program in a Virginia licensed esthetics school [  ~~, or a Virginia public school's esthetics program approved by the state Department of Education~~  ] shall be eligible for the applicable examination.

2. Training outside of the Commonwealth of Virginia. Any person completing esthetics training that is substantially equivalent to the Virginia program but is outside of the Commonwealth of Virginia must submit to the board documentation of the successful completion of training to be eligible for examination. If less than the required hours

of esthetics training was completed, an applicant must submit a certificate, diploma or other documentation acceptable to the board verifying the completion of a substantially equivalent esthetics course and documentation of six months of work experience as an esthetician in order to be eligible for the esthetician examination.

#### **18VAC41-70-30. License by endorsement.**

Upon proper application to the board, any person currently licensed to practice as an esthetician in any other state or jurisdiction of the United States and who has completed both a training program and [  ~~a written and practical~~  ] examination [ requirement ] that is substantially equivalent to that required by this chapter may be issued an esthetician license without an examination. The applicant must also meet the requirements set forth in 18VAC41-70-20 A.

#### **18VAC41-70-40. Examination requirements and fees.**

A. Applicants for initial licensure shall [  ~~pass both a practical examination and a written~~  meet the ] examination [ requirement ] approved by the board. The examinations may be administered by the board or by a designated testing service. [ The board maintains discretion in determining the license requirements. ]

B. Any candidate failing to appear as scheduled for examination shall forfeit the examination fee.

C. The fee for examination or reexamination is subject to contracted charges to the board by an outside vendor. These contracts are competitively negotiated and bargained for in compliance with the Virginia Public Procurement Act (§2.2-4300 et seq. of the Code of Virginia). Fees may be adjusted and charged to the candidate in accordance with these contracts. The fee shall not exceed \$225 per candidate.

#### **18VAC41-70-50. Reexamination requirements.**

Any applicant who does not pass a reexamination within one year of the initial examination date shall be required to submit a new application and examination fee.

#### **18VAC41-70-60. Examination administration.**

A. The examination shall be administered by the board or the designated testing service.

B. The applicant shall follow all procedures established by the board with regard to conduct at the examination. Such procedures shall include any written instructions communicated prior to the examination date and any instructions communicated at the site, either written or oral, on the date of the examination. Failure to comply with all procedures established by the board and the testing service with regard to conduct at the examination may be grounds for denial of application.

## **18VAC41-70-70. Esthetician temporary license.**

A. A temporary license to work under the direct supervision of a currently licensed esthetician or master esthetician may be issued only to applicants for initial licensure that the board finds eligible for the applicable examination.

B. The temporary license shall remain in force for 45 days following the examination date. The examination date shall be the first test date after the applicant has successfully submitted an application to the board.

C. Any person continuing to practice esthetics services after a temporary license has expired may be prosecuted and fined by the Commonwealth under §54.1-111 A 1 of the Code of Virginia.

D. No applicant for examination shall be issued more than one temporary license.

## **18VAC41-70-80. Spa license.**

A. Any individual wishing to operate an esthetics spa shall obtain a spa license in compliance with §54.1-704.1 of the Code of Virginia.

B. An esthetics spa license shall not be transferable and shall bear the same name and address of the business. Any changes in the name, address, or ownership of the spa shall be reported to the board in writing within 30 days of such changes. New owners shall be responsible for reporting such changes in writing to the board within 30 days of the changes.

C. In the event of a closing of an esthetics spa, the owner must notify the board in writing within 30 days of the closing, and return the license to the board.

## **18VAC41-70-90. School license.**

A. Any individual wishing to operate an esthetics school shall obtain a school license in compliance with §54.1-704.2 of the Code of Virginia. All instruction and training of estheticians shall be conducted under the direct supervision of a certified esthetics instructor. All instruction and training of master estheticians shall be conducted under the direct supervision of a certified master esthetics instructor.

B. An esthetics school license shall not be transferable and shall bear the same name and address as the school. Any changes in the name or address of the school shall be reported to the board in writing within 30 days of such change. The name of the school must indicate that it is an educational institution. All signs or other advertisements must reflect the name as indicated on the license issued by the board and contain language indicating it is an educational institution.

C. In the event of a change of ownership of a school, the new owners shall be responsible for reporting such changes in writing to the board within 30 days of the changes and obtain a new license.

D. In the event of a school closing, the owner must notify the board in writing within 30 days of the closing, and return the license to the board.

## **18VAC41-70-100. General requirements for an esthetics instructor certificate.**

A. Upon filing an application with the Board for Barbers and Cosmetology, any person meeting the qualifications set forth in this section shall be eligible for an esthetics instructor certificate if the person:

1. Holds a current Virginian esthetician license; and

2. Completes one of the following qualifications:

a. Passes a course in teaching techniques at the postsecondary educational level; or

b. Completes an instructor training course approved by the Virginia Board for Barbers and Cosmetology under the supervision of a certified esthetics instructor or master esthetics instructor in an esthetics school and passes an examination in esthetics instruction administered by the board or by a testing service acting on behalf of the board.

3. Persons who (i) make application [ ~~within one year after the effective date of this chapter~~ for licensure between September 20, 2007, and September 19, 2008, ] and (ii) have completed one year of documented work experience as an esthetics instructor are not required to complete subdivision 2 of this subsection.

B. Esthetics instructors shall be required to maintain a Virginia esthetician license.

## **18VAC41-70-110. General requirements for a master esthetics instructor certificate.**

A. Upon filing an application with the Board for Barbers and Cosmetology, any person meeting the qualifications set forth in this section shall be eligible for a master esthetics instructor certificate if the person:

1. Holds a current Virginia master esthetician license; and

2. Completes one of the following qualifications:

a. Passes a course in teaching techniques at the postsecondary educational level; or

b. Completes an instructor training course approved by the Virginia Board for Barbers and Cosmetology under the supervision of a certified esthetics instructor or master esthetics instructor in an esthetics school and passes an examination in esthetics instruction administered by the board or by a testing service acting on behalf of the board.

3. Persons who (i) make application [ ~~within one year after the effective date of this chapter~~ for licensure between September 20, 2007, and September 19, 2008, ] and (ii)

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have completed one year of documented work experience as a master esthetics instructor are not required to complete subdivision 2 of this subsection.

B. Master esthetics instructors shall be required to maintain a Virginia master esthetician license.

## Part III

### Fees

#### 18VAC41-70-120. Fees.

The following fees apply:

<u>FEE TYPE</u>	<u>AMOUNT DUE</u>	<u>WHEN DUE</u>
<u>Individuals:</u>		
<u>Application</u>	<u>\$55</u>	<u>With application</u>
<u>License by Endorsement</u>	<u>\$55</u>	<u>With application</u>
<u>Renewal</u>	<u>\$55</u>	<u>With renewal card prior to expiration date</u>
<u>Reinstatement</u>	<u>\$110*</u> <u>*includes \$55 renewal fee and \$55 reinstatement fee</u>	<u>With reinstatement application</u>
<u>Instructors:</u>		
<u>Application</u>	<u>\$60</u>	<u>With application</u>
<u>License by Endorsement</u>	<u>\$60</u>	<u>With application</u>
<u>Renewal</u>	<u>\$60</u>	<u>With renewal card prior to expiration date</u>
<u>Reinstatement</u>	<u>\$120*</u> <u>*includes \$60 renewal fee and \$60 reinstatement fee</u>	<u>With reinstatement application</u>
<u>Spas:</u>		
<u>Application</u>	<u>\$90</u>	<u>With application</u>
<u>Renewal</u>	<u>\$90</u>	<u>With renewal card prior to expiration date</u>
<u>Reinstatement</u>	<u>\$180*</u> <u>*includes \$90</u>	<u>With reinstatement</u>

	<u>renewal fee and \$90 reinstatement fee</u>	<u>application</u>
<u>Schools:</u>		
<u>Application</u>	<u>\$120</u>	<u>With application</u>
<u>Renewal</u>	<u>\$120</u>	<u>With renewal card prior to expiration date</u>
<u>Reinstatement</u>	<u>\$240*</u> <u>*includes \$120 renewal fee and \$120 reinstatement fee</u>	<u>With reinstatement application</u>

#### 18VAC41-70-130. Refunds.

All fees are nonrefundable and shall not be prorated.

## Part IV

### Renewal/Reinstatement

#### 18VAC41-70-140. License renewal required.

A license or certificate issued under this chapter shall expire two years from the last day of the month in which it was issued.

#### 18VAC41-70-150. Notice of renewal.

The Department of Professional and Occupational Regulation will mail a renewal notice to the licensee outlining the procedures for renewal. Failure to receive this notice, however, shall not relieve the licensee of the obligation to renew. If the licensee fails to receive the renewal notice, a copy of the old license may be submitted as evidence of intent to renew, along with the required fee.

#### 18VAC41-70-160. Failure to renew.

A. When a licensed individual or entity fails to renew its license within 30 days following its expiration date, the licensee shall apply for reinstatement of the license by submitting to the Department of Professional and Occupational Regulation a reinstatement application and renewal fee and reinstatement fee.

B. When an esthetician or master esthetician fails to renew his license within two years following the expiration date, reinstatement is no longer possible. To resume practice, the former licensee shall apply for licensure as a new applicant, shall meet all current application requirements, and shall pass the board's current examination. Individuals applying for licensure under this section shall be eligible to apply for a temporary license from the board under 18VAC41-70-70.

C. When an esthetics spa fails to renew its license within two years following the expiration date, reinstatement is no longer possible. To resume practice, the former licensee shall apply for licensure as a new applicant and shall meet all current application requirements.

D. The application for reinstatement for an esthetics school shall provide the reasons for failing to renew prior to the expiration date, and a notarized statement that all students currently enrolled or seeking to enroll at the school have been notified in writing that the school's license has expired. All of these materials shall be called the application package. Reinstatement will be considered by the board if the school consents to and satisfactorily passes an inspection of the school by the Department of Professional and Occupational Regulation and if the school's records are maintained in accordance with 18VAC41-70-230 and 18VAC41-70-240. Upon receipt of the reinstatement fee, application package, and inspection results, the board may reinstate the school's license or require requalification or both. If the reinstatement application package and reinstatement fee are not received by the board within six months following the expiration date of the school's license, the board will notify the testing service that prospective graduates of the unlicensed school are not acceptable candidates for the examination. Such notification will be sent to the school and must be displayed in a conspicuous manner by the school in an area that is accessible to the public. No student shall be disqualified from taking the examination because the school was not licensed for a portion of the time the student attended if the school license is reinstated by the board.

When an esthetics school fails to renew its license within two years following the expiration date, reinstatement is no longer possible. To resume practice the former licensee shall apply for licensure as a new applicant and shall meet all current application requirements.

E. The date a renewal fee is received by the Department of Professional and Occupational Regulation or its agent will be used to determine whether the requirement for reinstatement of a license is applicable and an additional fee is required.

F. When a license is reinstated, the licensee shall have the same license number and shall be assigned an expiration date two years from the previous expiration date of the license.

G. A licensee who reinstates his license shall be regarded as having been continuously licensed without interruption. Therefore, a licensee shall be subject to the authority of the board for activities performed prior to reinstatement.

H. A licensee who fails to reinstate his license shall be regarded as unlicensed from the expiration date of the license forward. Nothing in this chapter shall divest the board of its authority to discipline a licensee for a violation of the law or regulations during the period of time for which the individual was licensed.

## Part V

### Esthetics Schools

#### **18VAC41-70-170. Applicants for school license.**

Any person, firm, or corporation desiring to operate an esthetics school shall submit an application to the board at least 60 days prior to the date for which approval is sought.

#### **18VAC41-70-180. General requirements.**

An esthetics school shall:

1. Hold a school license for each and every location.
2. Hold a spa license if the school receives compensation for services provided in its clinic.
3. For esthetics courses, employ a staff of licensed and certified esthetics instructors or licensed and certified master esthetics instructors.
4. For master esthetics courses, employ a staff of licensed and certified master esthetics instructors.
5. Develop individuals for entry-level competency in esthetics.
6. Submit its curricula for board approval. Esthetician curricula shall be based on a minimum of 600 clock or equivalent credit hours and shall include performances in accordance with 18VAC41-70-190. Master esthetician curricula shall be based on a minimum of 600 clock or equivalent credit hours and shall include performances in accordance with 18VAC41-70-190 C.
7. Inform the public that all services are performed by students if the school receives compensation for services provided in its clinic by posting a notice in the reception area of the spa in plain view of the public.
8. Conduct classroom instruction in an area separate from the clinic area where practical instruction is conducted and services are provided.
9. Complete practical instruction in the school's clinic area.

#### **18VAC41-70-190. Curriculum and hours of instruction requirements.**

A. Each esthetics school shall submit with its application a curriculum including, but not limited to, a course syllabus, a detailed course content outline, a sample of five lessons plans, a sample of evaluation methods to be used, and a breakdown of hours or credit hours and performances for all courses to be taught that will lead to licensure or certification. [ In addition, if a school awards credit in accordance with subsection D of this section, the school shall submit copies of the assessment policy, method of evaluation of transcripts and the examination to be used in making the assessment. ]

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B. The esthetics curriculum and hours of instruction [ in this technology ] shall consist of 600 hours or equivalent credit hours and shall include, but not be limited to, the following:

1. Orientation and business topics - minimum of 25 hours of instruction.

- a. School policies;
- b. Management;
- c. Sales, inventory and retailing;
- d. Taxes and payroll;
- e. Insurance;
- f. Client records and confidentiality; and
- g. Professional ethics and practices.

2. Laws and regulations - minimum of 10 hours of instruction.

3. General sciences - minimum of 80 hours of instruction.

- a. Bacteriology;
- b. Microorganisms;
- c. Infection control, disinfection, sterilization;
- d. Occupational Safety and Health Administration (OSHA) requirements;
- e. Material Safety Data Sheet (MSDS);
- f. General procedures and safety measures;
- g. Cosmetic chemistry;
- h. Products and ingredients; and
- i. Nutrition.

4. Applied sciences - minimum of 95 hours of instruction.

- a. Anatomy and physiology;
- b. Skin structure and function;
- c. Skin types;
- d. Skin conditions; and
- e. Diseases and disorders of the skin.

5. Skin care - minimum of 255 hours of instruction.

- a. Health screening;
- b. Skin analysis and consultation;
- c. [ ~~Facial effleurage~~ Effleurage and related ] movements and manipulations [ of the face and body ] ;
- d. Cleansings procedures;
- e. Masks;
- f. Extraction techniques;

g. Machines, equipment and electricity;

h. Manual facials and treatments;

i. Machine, electrical facials and treatments; and

j. General procedures and safety measures.

6. Makeup - minimum of 65 hours of instruction.

a. Setup, supplies and implements;

b. Color theory;

c. Consultation;

d. General and special occasion application;

e. Camouflage;

f. Application of false lashes and lash extensions;

g. Lash and tinting;

h. Lash perming;

i. Lightning of the hair on body except scalp; and

j. General procedures and safety measures.

7. Body and other treatments - minimum of 20 hours of instruction.

a. Body treatments;

b. Body wraps;

c. Body masks;

d. Body scrubs;

e. Aromatherapy; and

f. General procedures and safety measures.

8. Hair removal - minimum of 50 hours of instruction.

a. Types of hair removal;

b. Wax types;

c. Tweezing;

d. Chemical hair removal;

e. Mechanical hair removal; and

f. General procedures and safety measures.

C. The master esthetics curriculum and hours of instruction [ in this technology ] shall consist of 600 hours or equivalent credit hours and shall include, but not be limited to, the following:

1. Orientation, advanced business subjects, and infection control - minimum of 45 hours of instruction.

a. School policies and procedures;

b. Professional ethics and practices;

- c. Ethics and professional conduct;
  - d. Insurance and liability issues;
  - e. Confidentiality and Health Insurance Portability and Accountability Act of 1996 Privacy Rule (HIPAA);
  - f. Client records and documentation;
  - g. Microbiology and bacteriology;
  - h. Infection control, disinfection, and sterilization;
  - i. Occupational Safety and Health Administration (OSHA), U.S. Food and Drug Administration (FDA); and Material Safety Data Sheet (MSDS); and
  - j. Personal protective equipment.
2. State laws, rules and regulations - minimum of 10 hours of instruction.
3. Advanced anatomy and physiology - minimum of 65 hours of instruction.
- a. Advanced anatomy and physiology;
  - b. Advanced skin structure and functions;
  - c. Advanced skin typing, and conditions;
  - d. Advanced disease and disorders;
  - e. Advanced cosmetic ingredients;
  - f. Pharmacology; and
  - g. Advanced homecare.
4. Advanced skin care and advanced modalities - minimum of 90 hours of instruction.
- a. Introduction to microdermabrasion and dermaplaning;
  - b. Indications and contraindications for crystal microdermabrasion;
  - c. General procedures and safety measures for crystal microdermabrasion;
  - d. Indications and contraindications for crystal-free microdermabrasion and dermaplaning;
  - e. General procedures and safety measures for crystal-free microdermabrasion and dermaplaning;
  - f. Equipment safety: crystal and crystal-free microdermabrasion and dermaplaning;
  - g. Waste disposal, Occupational Safety and Health Administration (OSHA);
  - h. Introduction to microdermabrasion techniques and proper protocols;
  - i. Machine parts, operation, protocols, care, waste disposal and safety;
  - j. Practical application and consultation for crystal microdermabrasion;
  - k. Practical application and consultation for crystal-free microdermabrasion and dermaplaning; and
  - l. Pretreatment and posttreatment for microdermabrasion.
5. Advanced procedures and chemical exfoliation - minimum of 270 hours of instruction.
- a. Advanced skin analysis and consultation and health screening and documentation;
  - b. Advanced procedures, light treatments, light-emitting diode (LED), intense pulsed light device (IPL);
  - c. Advanced manual, machine, and electric treatments, microcurrent, and ultrasound;
  - d. Introduction to chemical exfoliation and peels of the epidermis;
  - e. Fundamentals of skin care associated with chemical exfoliation and peels and wound healing;
  - f. Pretreatment and posttreatment for chemical exfoliation and peels;
  - g. Assessing suitability and predicting chemical exfoliation efficacy;
  - h. General practical application and consultation protocols;
  - i. Practical application and consultation for enzymes, herbal exfoliations, and vitamin-based peels;
  - j. Indications and contraindications for enzymes, herbal exfoliations, and vitamin-based peels;
  - k. General procedures and safety measures for herbal exfoliations, and vitamin-based peels;
  - l. Pretreatments and posttreatments for herbal exfoliations, and vitamin-based peels;
  - m. Practical application and consultation for alpha hydroxy peels;
  - n. Indications and contraindications for alpha hydroxy peels;
  - o. General procedures and safety measures for alpha hydroxy peels;
  - p. Pretreatment and posttreatment for alpha hydroxy peels;
  - q. Practical application and consultation for beta hydroxy peels;
  - r. Indications and contraindications for beta hydroxy peels;

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s. General procedures and safety measures for beta hydroxy peels;

t. Pretreatment and posttreatment for beta hydroxy peels;

u. Practical application and consultation for Jessner and Modified Jessner peels;

v. Indications and contraindications for Jessner and Modified Jessner peels;

w. General procedures and safety measures for Jessner and Modified Jessner peels;

x. Pretreatment and posttreatment for Jessner and Modified Jessner peels;

y. Practical application and consultation for trichloroacetic acid peels;

z. Indications and contraindications for trichloroacetic acid peels;

aa. General procedures and safety measures for trichloroacetic acid peels; and

bb. Pretreatment and posttreatment for trichloroacetic acid peels.

6. Lymphatic drainage - minimum of 120 hours of instruction.

a. Introduction to lymphatic drainage;

b. Tissues and organs of the lymphatic system;

c. Functions of the lymphatic system;

d. Immunity;

e. Etiology of edema;

f. Indications and contraindications for lymphatic drainage;

g. Lymphatic drainage manipulations and movements;

h. Face and neck treatment sequence;

i. Lymphatic drainage on the trunk and upper extremities;

j. Lymphatic drainage on the trunk and lower extremities;

k. Cellulite;

l. Using lymphatic drainage [ ~~effleurage~~ ] with other treatments; and

m. Machine-aided lymphatic drainage.

D. A licensed esthetics school with an approved esthetics program may conduct an assessment of a student's competence in esthetics and, based on the assessment, give a maximum of 300 hours credit towards the requirements specified in subsection B of this section and 18VAC41-70-200 A. A licensed esthetics school with an approved master esthetics program may conduct an assessment of a student's

competence in master esthetics and, based on the assessment, give a maximum of 300 hours credit towards the requirements specified in subsection C of this section and 18VAC41-70-200 B.

[ The school shall make the assessment based on a review of the student's transcript and the successful completion of a board-approved competency examination administered by the school. The school may also request a copy of a catalog or bulletin giving the full course description when making the evaluation. The number of credit hours awarded shall not exceed the actual hours of instruction verified on the transcript or the number of hours specified in the board-approved curriculum for a specific topic. ]

E. The instructor curriculum and hours of instruction shall consist of 400 hours or equivalent credit hours and shall include, but not be limited to, the following:

1. Orientation;

2. Curriculum;

3. Course outline and development;

4. Lesson planning;

5. Classroom management;

6. Teaching techniques;

7. Methods of instruction;

8. Learning styles;

9. Learning disabilities;

10. Teaching aids;

11. Developing, administering and grading examinations;

12. School administration;

13. Recordkeeping;

14. Laws and regulations;

15. Presentation of theoretical subjects;

16. Presentation of practical subjects;

17. Supervision of clinic floor; and

18. Practicum teaching.

## **18VAC41-70-200. Practical performance requirements.**

A. The curriculum for estheticians shall include the following minimum practical performances:

Consultations, cleansings and analysis of face and body 35

Manual facials and treatments 65

Machine or electrical facials and treatments 50

Body treatments and back treatments 20

Makeup	25
Hair Removal	25
TOTAL	220

B. The curriculum for master estheticians shall include the following minimum performances:

Advanced treatments	40
Microdermabrasion	50
Chemical exfoliation	75
Lymphatic drainage treatments	50
TOTAL	215

**18VAC41-70-210. School equipment.**

A. For an esthetics course, an esthetics school must have at least one treatment table, one magnifier lamp, one steamer, one adjustable stool, and one table for instruments and products for each two students enrolled in the class.

B. For each procedure taught in the esthetics curriculum, the esthetics school must have at least one set of the applicable equipment for each three students enrolled in the class.

C. For a master esthetics course, an esthetics school must have at least one treatment table, one woods lamp, one adjustable stool, and one table for instruments and products for each two students enrolled in the class.

D. For each procedure taught in the master esthetics curriculum, the esthetics school must have at least one set of the applicable equipment for each six students enrolled in the class.

**18VAC41-70-220. School identification.**

Each esthetics school approved by the board shall identify itself to the public as a teaching institution.

**18VAC41-70-230. Records.**

[ A. Schools are required to keep all records of hours in accordance with 18VAC41-70-190, including transcripts, course descriptions and competency examinations used to award such credit for a period of five years after the student terminates or completes the curriculum of the school. ]

[~~A.B.~~ Schools are required to keep upon graduation, termination or withdrawal written records of hours and performances showing what instruction a student has received for a period of five years after the student terminates or completes the curriculum of the school. These records shall be available for inspection by the department. All records must be kept on the premises of each school.

[ ~~B.C.~~ For a period of five years after a student completes the curriculum, terminates or withdraws from the school, schools are required to provide documentation of hours and

performances completed by a student upon receipt of a written request from the student.

[ ~~C.D.~~ ] Prior to a school changing ownership or a school closing, the schools are required to provide to current students documentation of hours and performances completed.

[ ~~D.E.~~ ] For a period of one year after a school changes ownership, schools are required to provide documentation of hours and performances completed by a current student upon receipt of a written request from the student.

**18VAC41-70-240. Hours reported.**

Within 30 days of the closing of a licensed esthetics school for any reason, the school shall provide a written report to the board on performances and hours of each of its students who have not completed the program.

Part VI

Standards of Practice

**18VAC41-70-250. Scope of practice.**

A. Each licensed spa or school shall ensure that no licensee or student performs any service beyond the scope of practice for the esthetician or master esthetician license.

B. For chemical exfoliation of the epidermis by a licensed master esthetician, the standards for use of an exfoliator or concentration of acids shall be:

1. Jessner and Modified Jessner solution;
2. Trichloroacetic acid less than 20%;
3. Nonprescriptive alpha hydroxyl acids;
4. Nonprescriptive beta hydroxyl acids;
5. Nonprescriptive, commercially available products used in accordance with manufacturer's written instructions;
6. Vitamin-based acids;
7. Enzymes; or
8. Herbal exfoliators.

**18VAC41-70-260. Display of license.**

A. Each licensed spa or school shall ensure that all current licenses and temporary licenses issued by the board shall be displayed in the reception area of the spa or school in plain view of the public. Duplicate licenses or temporary licenses shall be posted in a like manner in every spa or school location where the regulant provides services.

B. All licensees and temporary license holders shall operate under the name in which the license or temporary license is issued.

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## 18VAC41-70-270. Sanitation and safety standards for spas and schools.

### A. Sanitation and safety standards.

1. Any spa or school where esthetics services are delivered to the public must be clean and sanitary at all times.
2. Compliance with these rules does not confer compliance with other requirements set forth by federal, state and local laws, codes, ordinances, and regulations as they apply to business operation, physical construction and maintenance, safety, and public health.
3. Licensees shall take sufficient measures to prevent the transmission of communicable and infectious diseases and comply with the sanitation standards identified in this section and shall ensure that all employees likewise comply.

### B. General sanitation and safety requirements.

1. All furniture, walls, floors, and windows shall be clean and in good repair;
2. The floor surface in the immediate work area must be of a washable surface other than carpet. The floor must be kept clean, free of [ ~~hair~~ debris ], dropped articles, spills and electrical cords;
3. Walls and ceilings in the immediate work area must be in good repair, free of water seepage and dirt;
4. A fully functional bathroom with a working toilet and sink must be available for clients. Fixtures must be in good condition. The bathroom must be lighted and sufficiently ventilated. There must be antibacterial soap and clean individual towels for the client's use;
5. General areas for client use must be neat and clean;
6. Electrical cords shall be placed to prevent entanglement by the client or licensee;
7. Electrical outlets shall be covered by plates;
8. The spa area shall be sufficiently ventilated to exhaust hazardous or objectionable airborne chemicals, and to allow the free flow of air; and
9. Adequate lighting shall be provided.

### C. Equipment sanitation.

1. Service chairs, wash basins, sinks, showers, tubs, tables, and workstations shall be clean. Floors shall be kept free of waste materials. Instruments shall be cleaned and disinfected after every use and stored free from contamination;
2. The top of workstands shall be kept clean;
3. The work area shall be free of clutter, trash, and any other items that may cause a hazard;

4. Equipment shall be placed so as to prevent any accidental injury to the client or licensee; and

5. Electrical appliances and equipment shall be in safe working order at all times.

### D. Articles, tools and products.

1. Any multiuse article, tool or product that cannot be cleansed or disinfected is prohibited from use;
2. Soiled implements must be removed from the tops of work stations immediately after use;
3. Clean spatulas, other clean tools, or clean disposable gloves shall be used to remove bulk substances from containers;
4. A clean spatula shall be used to remove creams or other products from jars. Cosmetic containers shall be recovered after each use;
5. All appliances shall be safely stored;
6. Presanitized tools and implements, linens and equipment shall be stored for use in a sanitary enclosed cabinet or covered receptacle;
7. Soiled towels, linens and implements shall be deposited in a container made of cleanable materials and separate from those that are clean;
8. No substance other than a sterile styptic powder or sterile liquid astringent approved for homeostasis and applied with a sterile single-use applicator shall be used to check bleeding; and
9. Any disposable material making contact with blood or other body fluid shall be disposed of in a sealed plastic bag and removed from the spa or school in accordance with the guidelines of the Virginia Department of Health and OSHA (Occupational Safety and Health Administration).

### E. Chemical storage and emergency information.

1. Spas and schools shall have in the immediate working area a binder with all Material Safety Data Sheets (MSDS) provided by manufacturers for any chemical products used;
2. Spas and schools shall have a blood spill clean-up kit in the work area;
3. Flammable chemicals shall be stored in a nonflammable storage cabinet or a properly ventilated room; and
4. Chemicals that could interact in a hazardous manner (oxidizers, catalysts and solvents) shall be separated in storage.

### F. Client health guidelines.

1. All employees providing client services shall cleanse their hands with an antibacterial product prior to providing services to each client;

2. All employees providing client services shall wear gloves while providing services when exposure to bloodborne pathogens is possible;

3. No spa or school providing esthetics services shall have on the premises esthetics products containing hazardous substances that have been banned by the U.S. Food and Drug Administration (FDA) for use in esthetics products;

4. No product shall be used in a manner that is disapproved by the U.S. Food and Drug Administration (FDA); and

5. Esthetics spas must be in compliance with current building and zoning codes.

G. In addition to any requirements set forth in this section, all licensees and temporary license holders shall adhere to regulations and guidelines established by the Virginia Department of Health and the Occupational and Safety Division of the Virginia Department of Labor and Industry.

H. All spas and schools shall immediately report the results of any inspection of the spa or school by the Virginia Department of Health as required by §54.1-705 of the Code of Virginia.

I. All spas and schools shall conduct a self-inspection on an annual basis and maintain a self-inspection form on file for five years so that it may be requested and reviewed by the board at its discretion.

**18VAC41-70-280. Grounds for license revocation, probation, or suspension; denial of application, renewal or reinstatement; or imposition of a monetary penalty.**

A. The board may, in considering the totality of the circumstances, fine any licensee, certificate holder, or temporary license holder, and suspend, place on probation, or revoke or refuse to renew or reinstate any license, certificate, or temporary license, or deny any application issued under the provisions of Chapter 7 (§54.1-700 et seq.) of Title 54.1 of the Code of Virginia and the regulations of the board if the board finds that:

1. The licensee, certificate holder, temporary license holder, or applicant is incompetent or negligent in practice, or incapable mentally or physically, as those terms are generally understood in the profession, to practice as an esthetician;

[ 2. The licensee, certificate holder, or temporary license holder fails to teach in accordance with the board-approved curriculum or fails to comply with 18VAC41-70-190 D when making an assessment of credit hours awarded. ]

[ ~~2-3.~~ ] The licensee, certificate holder, temporary license holder, or applicant is convicted of fraud or deceit in the practice or teaching of esthetics;

[ ~~3-4.~~ ] The licensee, certificate holder, temporary license holder, or applicant attempted to obtain, obtained, renewed

or reinstated a license certificate or temporary license by false or fraudulent representation;

[ ~~4-5.~~ ] The licensee, certificate holder, temporary license holder, or applicant violates or induces others to violate, or cooperates with others in violating, any of the provisions of this chapter or Chapter 7 (§54.1-700 et seq.) of Title 54.1 of the Code of Virginia or any local ordinance or regulation governing standards of health and sanitation of the establishment in which any esthetician may practice or offer to practice;

[ ~~5-6.~~ ] The licensee, certificate holder, temporary license holder, or applicant fails to produce, upon request or demand of the board or any of its agents, any document, book, record, or copy thereof in a licensee's, certificate holder's, temporary license holder's, applicant's, or owner's possession or maintained in accordance with this chapter;

[ ~~6-7.~~ ] A licensee, certificate holder, or temporary license holder fails to notify the board of a change of name or address in writing within 30 days of the change for each and every license, certificate, or temporary license. The board shall not be responsible for the licensee's, certificate holder's, or temporary license holder's failure to receive notices, communications and correspondence caused by the licensee's, certificate holder's, or temporary license holder's failure to promptly notify the board in writing of any change of name or address or for any other reason beyond the control of the board;

[ ~~7-8.~~ ] The licensee, certificate holder, temporary license holder, or applicant publishes or causes to be published any advertisement that is false, deceptive, or misleading;

[ ~~8-9.~~ ] The licensee, certificate holder, temporary license holder, or applicant fails to notify the board in writing within 30 days of the suspension, revocation, or surrender of a license or temporary license in connection with a disciplinary action in any other jurisdiction or of any license or temporary license that has been the subject of disciplinary action in any other jurisdiction; or

[ ~~9-10.~~ ] The licensee, certificate holder, temporary license holder, or applicant has been convicted or found guilty in any jurisdiction of any misdemeanor or felony. Any plea or nolo contendere shall be considered a conviction for the purpose of this section. The record of a conviction certified or authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such guilt;

[ ~~10-11.~~ ] The licensee, certificate holder, temporary license holder, or applicant fails to notify the board in writing within 30 days that the licensee, certificate holder, temporary license holder, or applicant has pleaded guilty or nolo contendere or was convicted and found guilty of any misdemeanor or felony.

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B. In addition to subsection A of this section, the board may, in considering the totality of the circumstances, revoke, suspend, place on probation, or refuse to renew or reinstate the license of any school or impose a fine as permitted by law, or both, if the board finds that:

1. An instructor of the approved school fails to teach the curriculum as provided for in this chapter;
2. The owner or director of the approved school permits or allows a person to teach in the school without an applicable current esthetics instructor certificate or master esthetics instructor certificate; or
3. The instructor, owner or director is guilty of fraud or deceit in the teaching of esthetics.

C. In addition to subsection A of this section, the board may, in considering the totality of the circumstances, revoke, suspend, place on probation, or refuse to renew or reinstate the license of any esthetics spa or impose a fine as permitted by law, or both, if the board finds that:

1. The owner or operator of the spa fails to comply with the sanitary requirements of an esthetics spa provided for in this chapter or in any local ordinances; or
2. The owner or operator allows a person who has not obtained a license or a temporary license to practice as an esthetician or master esthetician.

D. In addition to subsection A of this section, the board may, in considering the totality of the circumstances, revoke, suspend, place on probation, or refuse to renew or reinstate the license of any licensee or impose a fine as permitted by law, or both, if the board finds that the licensee fails to take sufficient measures to prevent transmission of communicable or infectious diseases or fails to comply with any local, state or federal law or regulation governing the standards of health and sanitation for the practice of esthetics.

**NOTICE:** The forms used in administering 18VAC41-70, Esthetics Regulations, are not being published; however, the name of each form is listed below. The forms are available for public inspection at the Department of Professional and Occupational Regulation, 3600 West Broad Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

## FORMS

Salon, Shop, Spa, and Parlor License Application, 12SSSP (eff. [ 7/07 9/07 ] ).

School License Application, 12SCHL (eff. [ 7/07 9/07 ] ).

Instructor License Application, 1213INST (eff. [ 7/07 9/07 ] ).

Esthetician License Application, [ ~~12-LIC~~ 1261-65LIC ] (eff. [ 7/07 9/07 ] ).

Esthetician/Esthetics Instructor Examination and License Application, [ ~~12-EX~~ 1261-62 EX ] (eff. [ 7/07 9/07 ] ).

Master Esthetician/Master Esthetics Instructor Examination and License Application, [ ~~12-EX~~ 1264-65EX ] (eff. [ 7/07 9/07 ] ).

VA.R. Doc. No. R06-83; Filed August 1, 2007, 11:15 a.m.

## BOARD OF MEDICINE

### Final Regulation

Title of Regulation: **18VAC85-20. Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry, and Chiropractic (amending 18VAC85-20-235).**

Statutory Authority: §§54.1-2400 and 54.1-2912.1 of the Code of Virginia.

Effective Date: September 20, 2007.

Agency Contact: William L. Harp, M.D., Executive Director, Department of Health Professions, 6603 W. Broad St., 5th Floor, Richmond, VA 23230-1712, telephone 804-662-9908, FAX 804-662-9943, TTY 804-662-7197, or email [william.harp@dhp.virginia.gov](mailto:william.harp@dhp.virginia.gov).

#### Summary:

*The amendments eliminate the requirement that 15 of the 30 hours of Type 1 continuing education required for biennial renewal of a license in medicine, osteopathic medicine, podiatry or chiropractic must be acquired face-to-face or in interactive course work.*

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

**18VAC85-20-235. Continued competency requirements for renewal of an active license.**

A. In order to renew an active license biennially on or after January 1, 2002, a practitioner shall complete the Continued Competency Activity and Assessment Form ("Form") which is provided by the board and which shall indicate completion of at least 60 hours of continuing learning activities within the two years immediately preceding renewal as follows:

1. A minimum of 30 of the 60 hours shall be in Type 1 activities or courses offered by an accredited sponsor or organization sanctioned by the profession. ~~At least 15 of the Type 1 hours shall be earned in face to face group activities or other interactive courses.~~

a. Type 1 hours in chiropractic shall be clinical hours that are approved by a college or university accredited by the Council on Chiropractic Education or any other organization approved by the board.

b. Type 1 hours in podiatry shall be accredited by the American Podiatric Medical Association, the American Council of Certified Podiatric Physicians and Surgeons or any other organization approved by the board.

2. No more than 30 of the 60 hours may be Type 2 activities or courses, which may or may not be approved by an accredited sponsor or organization but which shall be chosen by the licensee to address such areas as ethics, standards of care, patient safety, new medical technology, and patient communication.

B. A practitioner shall be exempt from the continuing competency requirements for the first biennial renewal following the date of initial licensure in Virginia.

C. The practitioner shall retain in his records the completed Form with all supporting documentation for a period of six years following the renewal of an active license.

D. The board shall periodically conduct a random audit of at least 1.0% to 2.0% of its active licensees to determine compliance. The practitioners selected for the audit shall provide the completed Form and all supporting documentation within 30 days of receiving notification of the audit.

E. Failure to comply with these requirements may subject the licensee to disciplinary action by the board.

F. The board may grant an extension of the deadline for continuing competency requirements for up to one year for good cause shown upon a written request from the licensee prior to the renewal date.

G. The board may grant an exemption for all or part of the requirements for circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters.

H. The board may grant an exemption for all or part of the requirements for a licensee who is practicing solely in an uncompensated position, provided his practice is under the direction of a physician fully licensed by the board.

VA.R. Doc. No. R06-94; Filed July 19, 2007, 12:04 p.m.

**Final Regulation**

**Title of Regulation:** 18VAC85-20. Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry, and Chiropractic (amending 18VAC85-20-235).

**Statutory Authority:** §§54.1-2400 and 54.1-2912.1 of the Code of Virginia.

**Effective Date:** September 20, 2007.

**Agency Contact:** William L. Harp, M.D., Executive Director, Department of Health Professions, 6603 W. Broad Street, 5th floor, Richmond, VA, 23230-1712, telephone 804-662-9908, FAX 804-662-9943, TTY 804-662-7197, or email william.harp@dhp.virginia.gov.

**Summary:**

*The amendments allow the Board of Medicine to waive requirements for continuing medical education for doctors of medicine whose practice is limited to service as a medical examiner.*

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

**18VAC85-20-235. Continued competency requirements for renewal of an active license.**

A. In order to renew an active license biennially on or after January 1, 2002, a practitioner shall complete the Continued Competency Activity and Assessment Form ("Form") which is provided by the board and which shall indicate completion of at least 60 hours of continuing learning activities within the two years immediately preceding renewal as follows:

1. A minimum of 30 of the 60 hours shall be in Type 1 activities or courses offered by an accredited sponsor or organization sanctioned by the profession. At least 15 of the Type 1 hours shall be earned in face-to-face group activities or other interactive courses.

a. Type 1 hours in chiropractic shall be clinical hours that are approved by a college or university accredited by the Council on Chiropractic Education or any other organization approved by the board.

b. Type 1 hours in podiatry shall be accredited by the American Podiatric Medical Association, the American Council of Certified Podiatric Physicians and Surgeons or any other organization approved by the board.

2. No more than 30 of the 60 hours may be Type 2 activities or courses, which may or may not be approved by an accredited sponsor or organization but which shall be chosen by the licensee to address such areas as ethics, standards of care, patient safety, new medical technology, and patient communication.

B. A practitioner shall be exempt from the continuing competency requirements for the first biennial renewal following the date of initial licensure in Virginia.

C. The practitioner shall retain in his records the completed Form with all supporting documentation for a period of six years following the renewal of an active license.

D. The board shall periodically conduct a random audit of at least 1.0% to 2.0% of its active licensees to determine compliance. The practitioners selected for the audit shall provide the completed Form and all supporting documentation within 30 days of receiving notification of the audit.

E. Failure to comply with these requirements may subject the licensee to disciplinary action by the board.

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F. The board may grant an extension of the deadline for continuing competency requirements for up to one year for good cause shown upon a written request from the licensee prior to the renewal date.

G. The board may grant an exemption for all or part of the requirements for circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters.

H. The board may grant an exemption for all or part of the requirements for a licensee who is:

1. Is practicing solely in an uncompensated position, provided his practice is under the direction of a physician fully licensed by the board; or

2. Is practicing solely as a medical examiner, provided the licensee obtains six hours of medical examiner training per year provided by the Office of the Chief Medical Examiner.

VA.R. Doc. No. R06-231; Filed July 19, 2007, 4:07 p.m.

## Final Regulation

**Title of Regulation:** **18VAC85-20. Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry, and Chiropractic (adding 18VAC85-20-400, 18VAC85-20-410, 18VAC85-20-420).**

**Statutory Authority:** §54.1-2400 and Chapter 29 (§54.1-2900 et seq.) of Title 54.1 of the Code of Virginia.

**Effective Date:** September 20, 2007.

**Agency Contact:** William L. Harp, M.D., Executive Director, Department of Health Professions, 6603 West Broad Street, 5th Floor, Richmond, VA 23230-1712, telephone 804-662-9908, FAX 804-662-9943, TTY 804-662-7197, or email [william.harp@dhp.virginia.gov](mailto:william.harp@dhp.virginia.gov).

### Summary:

*Chapter 475 of the 2005 Acts of Assembly required the Board of Medicine to comply with amendments to the Drug Control Act (§54.1-3400 et seq. of the Code of Virginia), exempting doctors of medicine or osteopathic medicine who mix, dilute or reconstitute drugs from the definition of compounding.*

*The key provisions of the new regulation include the definition and requirements for "immediate-use" sterile mixing, diluting or reconstituting; requirements for low, medium or high risk mixing, diluting or reconstituting; and the responsibilities of the supervising doctor.*

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

## Part IX

### Mixing, Diluting or Reconstituting of Drugs for Administration

#### **18VAC85-20-400. Requirements for immediate-use sterile mixing, diluting or reconstituting.**

A. For the purposes of this chapter, the mixing, diluting, or reconstituting of sterile manufactured drug products when there is no direct contact contamination and administration begins within 10 hours of the completion time of preparation shall be considered immediate-use. If manufacturers' instructions or any other accepted standard specifies or indicates an appropriate time between preparation and administration of less than 10 hours, the mixing, diluting or reconstituting shall be in accordance with the lesser time. No direct contact contamination means that there is no contamination from touch, gloves, bare skin or secretions from the mouth or nose. Emergency drugs used in the practice of anesthesiology and administration of allergens may exceed 10 hours after completion of the preparation, provided administration does not exceed the specified expiration date of a multiple use vial and there is compliance with all other requirements of this section.

B. Doctors of medicine or osteopathic medicine who engage in immediate-use mixing, diluting or reconstituting shall:

1. Utilize the practices and principles of disinfection techniques, aseptic manipulations and solution compatibility in immediate-use mixing, diluting or reconstituting;

2. Ensure that all personnel under their supervision who are involved in immediate-use mixing, diluting or reconstituting are appropriately and properly trained in and utilize the practices and principles of disinfection techniques, aseptic manipulations and solution compatibility;

3. Establish and implement procedures for verification of the accuracy of the product that has been mixed, diluted, or reconstituted to include a second check performed by a doctor of medicine or osteopathic medicine or a pharmacist, or by a physician assistant or a registered nurse who has been specifically trained pursuant to subdivision 2 of this subsection in immediate-use mixing, diluting or reconstituting. Mixing, diluting or reconstituting that is performed by a doctor of medicine or osteopathic medicine, a pharmacist, or by a specifically trained physician assistant or registered nurse does not require a second check;

4. Provide a designated, sanitary work space and equipment appropriate for aseptic manipulations;

5. Document or ensure that personnel under his supervision documents in the patient record or other readily retrievable

record that identifies the patient; the names of drugs mixed, diluted or reconstituted; and the date of administration; and

6. Develop and maintain written policies and procedures to be followed in mixing, diluting or reconstituting of sterile products and for the training of personnel.

C. Any mixing, diluting or reconstituting of drug products that are hazardous to personnel shall be performed consistent with requirements of all applicable federal and state laws and regulations for safety and air quality, to include but not be limited to those of the Occupational Safety and Health Administration (OSHA). For the purposes of this chapter, Appendix A of the National Institute for Occupational Safety and Health publication (NIOSH Publication No. 2004-165), Preventing Occupational Exposure to Antineoplastic and Other Hazardous Drugs in Health Care Settings is incorporated by reference for the list of hazardous drug products and can be found at [www.cdc.gov/niosh/docs/2004-165](http://www.cdc.gov/niosh/docs/2004-165).

**18VAC85-20-410. Requirements for low-, medium- or high-risk sterile mixing, diluting or reconstituting.**

A. Any mixing, diluting or reconstituting of sterile products that does not meet the criteria for immediate-use as set forth in 18VAC85-20-400 A shall be defined as low-, medium-, or high-risk compounding under the definitions of Chapter 797 of the U.S. Pharmacopeia (USP).

B. Until July 1, 2007, all low-, medium-, or high-risk mixing, diluting or reconstituting of sterile products shall comply with the standards for immediate-use mixing, diluting or reconstituting as specified in 18VAC85-20-400. Beginning July 1, 2007, doctors of medicine or osteopathic medicine who engage in low-, medium-, or high-risk mixing, diluting or reconstituting of sterile products shall comply with all applicable requirements of the USP Chapter 797. Subsequent changes to the USP Chapter 797 shall apply within one year of the official announcement by USP.

C. A current copy, in any published format, of USP Chapter 797 shall be maintained at the location where low-, medium- or high-risk mixing, diluting or reconstituting of sterile products is performed.

**18VAC85-20-420. Responsibilities of doctors who mix, dilute or reconstitute drugs in their practices.**

A. Doctors of medicine or osteopathic medicine who delegate the mixing, diluting or reconstituting of sterile drug products for administration retain responsibility for patient care and shall monitor and document any adverse responses to the drugs.

B. Doctors who engage in the mixing, diluting or reconstituting of sterile drug products in their practices shall disclose this information to the board in a manner prescribed by the board and are subject to unannounced inspections by the board or its agents.

DOCUMENTS INCORPORATED BY REFERENCE

Preventing Occupational Exposure to Antineoplastic and Other Hazardous Drugs in Health Care Settings (NIOSH Publication No. 2004-165), Appendix A (Drugs Considered Hazardous), National Institute of Occupational Safety and Health.

USP Chapter 797, United States Pharmacopeial Convention.

VA.R. Doc. No. R06-148; Filed July 19, 2007, 12:04 p.m.

**BOARD OF NURSING**

**Final Regulation**

Title of Regulation: 18VAC90-20. Regulations Governing the Practice of Nursing (amending 18VAC90-20-30; adding 18VAC90-20-225).

Statutory Authority: §54.1-2400 and Chapter 30 (§54.1-3000 et seq.) of Title 54.1 of the Code of Virginia.

Effective Date: October 1, 2007.

Agency Contact: Jay P. Douglas, R.N., Executive Director, Department of Health Professions, 6603 W. Broad Street, 5th Floor, Richmond, VA 23230-1712, telephone 804-662-9909, FAX 804-662-9512, TTY 804-662-7197, or email [jay.douglas@dhp.virginia.gov](mailto:jay.douglas@dhp.virginia.gov).

Summary:

*In response to a petition for rulemaking, the amendments allow a nurse with a current, unrestricted license to take an inactive status. The amendments set forth the process for obtaining an inactive license, the restriction on practice, and the requirements for reactivation to active status.*

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.

**18VAC90-20-30. Fees.**

Fees required [~~in connection with the licensing of applicants~~] by the board are:

- |  |       |
|--|-------|
| 1. Application for licensure by examination      | \$130 |
| 2. Application for licensure by endorsement      | \$130 |
| 3. Reapplication for licensure by examination    | \$25  |
| 4. Biennial licensure renewal                    | \$95  |
| 5. Late renewal                                  | \$35  |
| 6. Reinstatement of lapsed license               | \$145 |
| 7. Reinstatement of suspended or revoked license | \$185 |
| 8. Duplicate license                             | \$5   |
| 9. Replacement wall certificate                  | \$15  |
| 10. Verification of license                      | \$25  |

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11. Transcript of all or part of applicant/licensee records	\$25
12. Returned check charge	\$35
13. Application for CNS registration	\$95
14. Biennial renewal of CNS registration	\$60
15. Reinstatement of lapsed CNS registration	\$105
16. Verification of CNS registration to another jurisdiction	\$25
17. Late renewal of CNS registration	\$20
<u>18. Inactive licensure renewal</u>	<u>\$50</u>
<u>19. Late renewal of an inactive license</u>	<u>\$15</u>

## **18VAC90-20-225. Inactive licensure.**

A. A registered nurse or licensed practical nurse who holds a current, unrestricted license in Virginia may, upon a request on the renewal application and submission of the required fee, be issued an inactive license. The holder of an inactive license shall not be entitled to practice nursing in Virginia or practice on a multistate licensure privilege but may use the title "registered nurse" or "licensed practical nurse."

### B. Reactivation of an inactive license.

1. A nurse whose license is inactive may reactivate within one renewal period by payment of the difference between the inactive renewal and the active renewal fee.

2. A nurse whose license has been inactive for more than one renewal period may reactivate by:

a. Submitting an application;

b. Paying the difference between the inactive renewal and the active renewal fee; and

c. Providing evidence of completion of 15 hours of continuing education in nursing approved by a regionally accredited educational institution or professional nursing organization or of passage of the National Council Licensing Examination during the period in which the license has been inactive.

3. The board may waive all or part of the continuing education requirement for a nurse who holds a current, unrestricted license in another state and who has engaged in active practice during the period the Virginia license was inactive.

4. The board may request additional evidence that the nurse is prepared to resume practice in a competent manner.

5. The board reserves the right to deny a request for reactivation to any licensee who has been determined to have committed an act in violation of §54.1-3007 of the Code of Virginia or any provision of this chapter.

VA.R. Doc. No. R05-255; Filed July 25, 2007, 11:55 a.m.

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## TITLE 23. TAXATION

### DEPARTMENT OF TAXATION

#### Emergency Regulation

Title of Regulation: 23VAC10-210. Retail Sales and Use Tax (amending 23VAC10-210-693).

Statutory Authority: §58.1-203 of the Code of Virginia.

Effective Dates: July 26, 2007, through July 25, 2008.

Agency Contact: Kristen Peterson, Tax Policy Analyst, Department of Taxation, P.O. Box 27185, Richmond, VA 23261-7185, telephone (804) 371-2340, FAX (804) 371-2355, or email kristen.peterson@tax.virginia.gov.

#### Preamble:

*Item 268 of the 2006 Appropriation Act (House Bill 5002, Chapter 3, 2006 Acts of Assembly, Special Session I) changed the application of the Retail Sales and Use Tax "true object test," as it applies to businesses contracting with the United States, the Commonwealth, or any political subdivision or instrumentality thereof. The true object test is used to determine the application of the Retail Sales and Use Tax in transactions that involve the provision of both tangible personal property and services. Prior to this legislation, government contractors applied the "true object test" to the contract between the contractor and the government entity to determine the application of the Retail Sales and Use Tax. Item 268 requires that, effective July 1, 2006, for task orders, work orders, or statements of work executed on or after July 1, 2006, application of the sales and use tax to government contracts is determined based upon the true object of each separate task order, work order, or statement of work, issued in furtherance of the contract, rather than the overall contract. This regulatory action amends the Government Contractor regulation as mandated by Item 268.*

*Item 268 further provides that "(t)he Tax Commissioner shall work with the government contracting industry to promulgate an emergency regulation on or before June 30, 2007, to implement the provisions of this paragraph."*

*As the General Assembly has mandated that this regulatory activity be promulgated as an emergency regulation prior to July 1, 2007, an emergency situation exists and this regulatory activity qualifies as an emergency regulation.*

#### **23VAC10-210-693. Government contractors.**

~~The appropriate tax treatment of purchases of tangible personal property by persons who contract with the federal~~

government, the state or its political subdivisions, is based upon whether the contract is for the sale of tangible personal property (e.g., a computerized data retrieval system) or for the provision of an exempt service (e.g., facilities management or real property construction). If a contract is for the sale of tangible personal property, a contractor may purchase such tangible personal property exempt from the tax using a resale exemption certificate, Form ST-10. The tangible personal property may be resold to the government exempt of the tax.

However, if a contract is for the provision of services, the contractor is deemed to be the taxable user and consumer of all tangible personal property used in performing its services, even though title to the property provided may pass to the government or the contractor may be fully and directly reimbursed by the government, or both.

See 23VAC10-210-410 for further explanation of the tax treatment of government contractors.

## A. Definitions.

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

"Add-ons" mean additional obligations subsequent to the execution of the original contract or order, including modifications to contracts or orders.

"Classified contract" means any contract in which the contractor or its employees must have access to classified information during contract performance.

"Classified contract agent" means an auditor employed by the Department who has been authorized to review secure or classified contracts.

"Department" means the Virginia Department of Taxation.

"Government" or "government entity" means the United States government, the Commonwealth of Virginia, and any agency, board, commission, political subdivision or instrumentality of the Commonwealth of Virginia. The terms "government" and "government entity" do not include any foreign governments, other state governments of the United States, or any political subdivisions of such other state governments.

"Indeterminate purpose contract" means a contract in which the sale of the tangible personal property or the provision of services is dependent upon some future action of the purchaser for which the exact amount of time and quantity cannot be determined at the time the contract is entered into.

"Mixed contract" means a contract between a government entity and a contractor that involves the contractor both rendering a service and providing tangible personal property to the government entity under that contract.

"Order" means a specific task assigned to a contractor pursuant to a contract with a government entity. For purposes of this regulation, the term "order" shall include, but not be limited to, task orders, delivery orders, work orders, contract line item numbers ("CLINs"), and shall also include orders issued under a subcontract for fulfillment of work or products required under a general contractor's prime contract with the government and add-ons to existing contracts or orders. The term "order" shall not include a vendor order issued by a contractor to a vendor.

"Purchase for resale" means any tangible personal property or taxable service purchased by a government contractor with the intent of resale to a government agency and that is not used by the contractor for any purpose that is inconsistent with holding the property for resale to the government. "Purchase for resale" also includes tangible personal property to be incorporated into a manufactured product, that will be sold to the government entity.

"Real property contract" means a contract between a contractor and a government entity in which the contractor contracts to perform construction, reconstruction, installation, repair, or any other service with respect to real estate, or fixtures thereon, including highways, and in connection therewith, to furnish tangible personal property.

"Statement of work" means a description of work that must be completed in order to fulfill a contractual obligation. A "statement of work" may be for the provision of a service or the transfer of tangible personal property, or both. A "statement of work" may be associated with the overall purpose of a government contract, or may be a separate and distinct subordinate activity under the overall purpose of a contract. A statement of work may be included in a contract, or in an order, as defined herein.

"Subcontractor" means any contractor who contracts to perform all or a portion of a general or prime contractor's contract with a government entity. For purposes of this regulation, a subcontractor shall be deemed as such regardless of how far removed the contractor is from the general or prime contractor.

"True object test" means the method of determining whether a particular transaction that involves both the rendering of a service and the provision of tangible personal property constitutes the sale of a service or the sale of tangible personal property.

"Vendor order" means a commercial document or form completed by a contractor and issued to a vendor for the purchase of goods or services.

B. Treatment of mixed government contracts, contracts solely for the provision of services or solely for the provision of tangible personal property, and real property contracts. Where a transaction between a government entity and a contractor involves both the rendering of a service and the

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provision of tangible personal property, the transaction is deemed a mixed transaction, and the true object of the transaction must be examined to determine the taxability of the transaction.

However, where a transaction between a government entity and a contractor is solely for the provision of tangible personal property, solely for the provision of services, or constitutes a real property contract, application of the true object test is not necessary.

Example 1: Contractor A enters into a transaction with the federal government under which it must furnish personnel to staff a federal government agency's Human Resources Department. Under the terms of the contract, Contractor A is not required to provide any equipment or supplies to the government. Because such transaction is purely for the provision of services, application of the true object test is not necessary. Contractor A will be deemed the taxable user and consumer of all tangible personal property used in performing its services.

Example 2: Contractor B enters into a transaction to purchase and operate a computer system for the federal government. Because the transaction is a mixed transaction requiring Contractor B to provide services (the operation of the computer system) as well as tangible personal property (the computer system), application of the true object test is necessary. The true object of the transaction is the provision of a computer system, thus tangible personal property purchased or leased pursuant to this contract can be purchased for resale exempt of the retail sales and use tax.

C. True object test; generally. In order to determine whether a particular transaction that involves both the rendering of a service and the provision of tangible personal property constitutes a sale of a service or of tangible personal property, the true object of the transaction must be examined. The appropriate tax treatment of purchases of tangible personal property by persons who contract with the government or its political subdivisions is based upon whether the transaction is for the sale of tangible personal property (e.g., a computerized data retrieval system) or for the provision of an exempt service (e.g., real property facilities management). If a transaction is for the sale of tangible personal property, a contractor may purchase such tangible personal property exempt of the tax using a resale exemption certificate, Form ST-10. The tangible personal property may be resold to the government exempt of the tax.

However, if a transaction is for the provision of services, the contractor is deemed to be the taxable user and consumer of all tangible personal property used in performing its services, even though title to the property provided may pass to the government or the contractor may be fully and directly reimbursed by the government or both.

D. Tax treatment of government contracts executed prior to July 1, 2006. With respect to mixed contracts between government entities and contractors executed prior to July 1, 2006, the true object test shall be applied to the underlying contract without regard to the individual orders issued prior to July 1, 2006 in furtherance of the overall contract.

Example 3: Contractor A enters into an agreement with the federal government to modernize a signal acquisition system to address advances in signal interception and collection technology through the modification and customization of existing software. The contract is executed on January 1, 2004. Pursuant to the contract, the federal government issues orders specifying particular jobs under the umbrella of the contract. One order executed on January 10, 2004 requires Contractor A to provide support for the modification of government-owned software once it is customized. Using technical information that describes target signals, the Contractor is required to deliver code modification, test the modification, and to make further modifications as required. A second order executed on January 15, 2004 requires Contractor A to acquire a computer workstation on which the modified software will be installed. Because both the contract and orders were executed prior to July 1, 2006, the true object test is applied to the underlying contract, without regard to the individual orders issued by the federal government in furtherance of the underlying contract. The true object of the contract is the provision of services related to a signal acquisition system, as the overall objective of the federal government is for Contractor A to use its expertise to address advances in signal interception and collection technology through the modification and customization of existing software. Contractor A is deemed the taxable user and consumer of all tangible personal property used in fulfilling the terms of the contract.

Example 4: Contractor B enters into a contract with the Commonwealth of Virginia on January 5, 2000 to implement a complete computer-based Traffic Signal Management System, consisting of a digital, computer based, networked, central system providing direct communications with all intersections in the project area. A separate order executed on March 1, 2000 and issued pursuant to the contract requires Contractor B to furnish and integrate the complete computerized system, including all necessary communications equipment not provided by the local telephone company, central computers and peripherals, software, and other incidentals required to properly operate the system. An order executed on March 1, 2000 requires Contractor B to provide systems documentation and end-user training and support. Because the contracts and orders were entered into prior to July 1, 2006, the true object test is applied to the underlying contract, without regard to the individual orders issued in furtherance of the contract. Although Contractor B is contractually required to perform systems integration, end-user training, and support services,

the true object of the contract is for the provision of a fully operational and automated Traffic Signal Management system. The required services are provided as part of the sale of the system. Therefore, the true object of the contract is the provision of tangible personal property to the Commonwealth of Virginia. Tangible personal property purchased or leased by Contractor B, the title to which passes to the Commonwealth, may be purchased exempt from the Virginia sales tax using resale exemption certificates.

Example 5: Contractor C enters into a contract with the federal government on June 30, 2005 to replace two antennas on a combat tank. A separate order issued on July 5, 2006 pursuant to the contract calls for integration and calibration of the two antennas. Although the contract was executed prior to July 1, 2006, the true object test will be applied to the separate order issued on July 5, 2006, as that order was issued on or after July 1, 2006, and therefore, falls under the new true object test policy effective July 1, 2006. The true object of the separate order is the provision of a service and Contractor C is deemed the taxable user and consumer of all tangible personal property used in providing those services.

With respect to indeterminate purpose contracts and basic ordering agreements executed prior to July 1, 2006, the true object test shall be applied to each individual order. If the true object of the individual order constitutes a sale of tangible personal property, such sale is treated as an exempt sale for resale to a government entity. The contractor may purchase tangible personal property exempt of tax as a sale for resale using a resale exemption certificate. If the true object of the individual order is the provision of a tax-exempt service, the contractor is the user and consumer of all tangible personal property used in providing the service as well as all tangible personal property that is transferred to the government entity.

Example 6: Contractor D enters into an indeterminate purpose contract with a government entity on January 1, 2005. The contract includes hourly rates for various labor categories and specifies that all supplies and services will be ordered by individual orders. On March 1, 2005, the government entity issues a task order requiring Contractor D to provide forty hours of system evaluation services. On April 1, 2005, the government entity issues a task order requiring Contractor D to provide twenty licenses for a Commercial Off the Shelf (COTS) software package. The true object test would be applied to the March 1 and April 1 task orders independently. Thus, the March 1 order is an order for services, and the April 1 order is an order for tangible personal property.

E. Tax treatment of orders executed on and after July 1, 2006. As of July 1, 2006, the application of the sales and use tax to all mixed contracts and indeterminate purpose contracts shall be based on application of the true object test to each individual order and not the original contract. If the true object of an order is the provision of a service, the

government contractor is deemed the user and consumer of all tangible personal property used in providing such service. If the true object of the order is the sale of tangible personal property, tangible personal property purchased by the contractor to fulfill that order, even if not expressly identified by the terms of the order itself, may be purchased exempt of the tax, provided such property can be tied back to the order for resale. For add-ons to government contracts executed on or after July 1, 2006, the true object test will be applied to each separate add-on without regard to the true object of the original contract.

Example 7: Contractor A enters into a contract with the federal government on January 1, 2007 to design and provide a turn-key integrated computer hardware and software system. The contract is divided into separate orders. Order 1 requires that Contractor A design the integrated system. Order 2 requires Contractor A to test and evaluate potential hardware and software components of the integrated system. Order 3 requires that Contractor A provide and deliver the integrated system. Order 4 requires that Contractor A maintain the system, including performing all necessary functions to keep the computerized system up and running, for a period of five years following delivery. The true object of Order 1 is the provision of services, as it requires Contractor A to design the integrated supply system. The true object of Order 2 is the provision of services, as it requires Contractor A to perform the functions of testing and evaluation. As such, Contractor A is deemed the taxable user and consumer of all tangible personal property used in fulfilling Orders 1 and 2. The true object of Order 3 is the provision of tangible personal property. The true object of Order 4 is the provision of tangible personal property. As such, Contractor A may purchase items to fulfill Orders 3 and 4 exempt of the tax as purchases for resale. Contractor A purchases servers, routers, disk arrays processors and software to fulfill Order 3. Contractor A's cost accounting records clearly differentiate purchases among the four separate Orders. Although the terms of Order 3 only discuss a "turn-key computerized system" generally and do not identify the specific parts constituting that system, Contractor A's purchases of the servers, routers, disk arrays, processors, and software can be tied back to Order 3.

Example 8: Contractor A enters into a contract with an agency of the Commonwealth of Virginia on March 1, 2006 for the purchase and installation of a telecommunications system in Virginia. The government entity issues a separate order on August 1, 2006 requiring that Contractor A provide installation services. Because the separate order is issued after July 1, 2006, the true object test is applied to the separate order, rather than the underlying contract. The true object of the order is the provision of services. Contractor A is deemed the taxable user and consumer of all tangible personal property used in performing these services.

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Example 9: Contractor D executes a contract with the federal government on March 1, 2010 for the construction of a ship. The provisions of the contract contain a separate order (Order 1) that calls for engineering studies and design. An additional order (Order 2) mandates that Contractor D obtain steel and components, which will later become affixed to the ship. The true object of Order 1 is the provision of services, including engineering studies and design. As such, Contractor D is deemed the taxable user and consumer of all tangible personal property purchased in fulfilling Order 1. The true object of Order 2 is the provision of tangible personal property to be incorporated into a manufactured product sold to the government. As such, Contractor D can purchase the steel and components exempt of the tax for resale.

F. Transitional provisions for orders entered into prior to July 1, 2006. The true object test shall be applied to all orders issued under all mixed government contracts if executed on and after July 1, 2006, regardless of the date on which the original contract, add-on, or order was executed.

Example 10: Contractor B enters into a contract with a government entity on January 1, 2004. The contract requires Contractor B to sell and install a computer system to the government entity; therefore, the underlying true object of the contract is the sale of tangible personal property to the government entity. The contract is to be fulfilled by Contractor B over a five-year period with the final phase of the contract completed on or before December 31, 2008. From January 1, 2004 through June 30, 2006, all aspects of the contract will be treated as exempt sales of the tangible personal property to the government entity. Beginning July 1, 2006, the tax will be applied based on the true object of each individual order and taxed accordingly. Therefore, on and after July 1, 2006, if the true object of an order is the provision of a service, Contractor B will be liable for sales and use tax on all tangible personal property used in providing the service, even if the tangible personal property is eventually transferred to the government entity.

Example 11: Contractor C enters into a contract with a government entity on June 1, 2005. The underlying true object of the contract is the provision of janitorial services for a five-year period ending May 31, 2010. From June 1, 2005 through June 30, 2006, Contractor C will be the taxable user and consumer of all tangible personal property purchased for use in fulfilling the service contract. For all orders executed on and after July 1, 2006, the contractor will apply the true object test to each separate order. In orders for the sale of tangible personal property to the government, purchases under the order will be exempt, provided there is not a taxable interim use of the tangible personal property by the contractor prior to its sale to the government. In orders for the provision of a service, the contractor will be liable for the tax as user and consumer for purchases made pursuant to the order.

G. Interim use. When a contractor makes an interim use of tangible personal property held for resale to a government entity pursuant to an order for the purchase of tangible personal property, such use will constitute taxable interim use provided that the terms of the order in question call for the operation of the tangible personal property by the contractor and that operation is inconsistent with the holding of that property for resale.

However, when a contractor makes an interim use of tangible personal property held for resale to a government entity pursuant to an order, such use will constitute an exempt interim use if the terms of the order in question call for the operation of the tangible personal property and that operation is consistent with the holding of that property for resale.

In most instances, the testing and approval of tangible personal property prior to its transfer to the government entity will constitute exempt interim use. Likewise, a sale that is contingent upon the demonstrated successful operation of tangible personal property purchased under the order will be exempt of the retail sales and use tax.

Example 12: Contractor A enters into a contract with a state government agency after July 1, 2006 to provide and maintain computer systems, including hardware and software to such agency. A task order issued pursuant to the contract requires Contractor A to design a software package to be distributed to the state government agency. Under the terms of the order, Contractor A must provide a training session for the duration of one week to government agency employees on the use of this computer software package. Employees of the government agency visit Contractor A's facilities for a "hands-on" training session, at which Contractor A uses the actual software it will send to the government agency. After training is completed, Contractor A repackages the software and ships it by common carrier to the government agency. Because Contractor A's use of the computers is integral to the sale of computer systems to the state government and because such use is consistent with the resale, such use is insufficient to destroy the resale status of the transaction. Contractor A has made an exempt "interim use" of the software, prior to shipping it to the government agency. Contractor A's purchase of such software is exempt.

Example 13: Contractor B enters into a contract with a state agency on January 1, 2007 to acquire and furnish equipment and materials that are elements and parts of a computerized Traffic Management System. The system would provide computerized highway surveillance and control for highways in the state of Virginia. Under the provisions of the contract, Contractor B is required to provide documentation and training services on the new system to the state agency's employees. A separate order requires that Contractor B provide computers as components of the system, and contains a provision providing that the sale of such computers to the state agency is contingent upon Contractor B's ability to

demonstrate the successful operation of the computers for a two-year period. Because the sale is contingent upon the successful operation of the computers for a two-year period, such use constitutes exempt interim use, and the computers can be purchased exempt of the retail sales and use tax.

Example 14: Contractor C enters into a contract with a state agency on January 1, 2007. Order 1 of the contract requires Contractor C to operate and maintain the state's Hazardous Waste Accumulation Facility. Order 2 of the contract requires Contractor C to provide containers to the state agency. Contractor C uses the containers to fulfill another contract before passing the containers over to the state government. Contractor C's use of the containers to fulfill an outside contract, prior to passing such containers on to the state agency constitutes use that is inconsistent with the holding of that property for resale. Such use is sufficient to destroy the resale status of the containers. Contractor C will be subject to tax on the purchase of these containers.

Example 15: Contractor D enters into a contract with a government entity to provide floor-cleaning services. The government entity issues an order to Contractor C for the purchase of mops and a separate task order for the provision of floor-cleaning services. Although Contractor C will use these mops to fulfill the service contract with the government entity, Contractor C's purchase of the mops under the individual order will be exempt from tax as a sale for resale. Contractor D's use of the mops does not constitute "taxable interim use" because such use was not directed under the individual order for the purchase of mops. Thus, Contractor D may purchase such mops exempt of the retail sales and use tax.

H. Real property contracts with government entities. When a contractor contracts with a governmental entity to perform construction or reconstruction with respect to real property, and in connection with this real property contract, agrees to furnish tangible personal property for use in real estate construction, the contractor shall be deemed to have purchased such tangible personal property for use and consumption and shall be liable for the sales and use tax on such tangible personal property.

Nothing in this regulation shall be construed to authorize the application of the true object test to real property contracts with government entities. A real property contractor is taxed on the cost price of any construction or installation supplies used or consumed in the performance of real property construction, installation or repair, regardless of whether the true object of the contract or order is for services or the sale of tangible personal property. Construction and installation supplies shall include, but not be limited to, structural steel, concrete, conduit, wiring, cabling, nuts, bolts, anchors, screws, nails, glue and other materials used or consumed by a government contractor in fulfilling a contract with any government entity. Nothing in this regulation shall be

construed to exempt from the retail sales and use tax materials, equipment, or other tangible personal property purchased by a contractor for use in real property construction contracts with a government entity, regardless of whether title to such property passes directly to the government entity upon purchase by the contractor or if the contractor is reimbursed directly by the government entity for the cost of such property.

The modified application of the true object test to individual orders will not apply to contracts with a government entity to perform construction or reconstruction with respect to real property. For more information on real property construction contracts with government entities, see 23VAC10-210-410.

## I. Subcontractor activities.

1. Generally. For purposes of this regulation, a subcontractor to a prime contractor with a government entity shall be granted the same tax treatment as the prime contractor when fulfilling its contractual obligations to the prime contractor. Thus, a subcontractor shall apply the true object test to the overall purpose of the subcontract, unless it contains individual orders that were executed on or after July 1, 2006, in which case the subcontractor must apply the true object test to each separate order to determine the tax application.

Example 16: General Contractor A enters into a contract with the federal government, under which General Contractor A will furnish, install and maintain a telecommunications system. General Contractor furnishes the system and subcontracts with Subcontractor 1 to install the system and Subcontractor 2 to provide maintenance and repair services. Order 1 is issued to General Contractor A for the provision of the telecommunications system, Order 2 is issued to Subcontractor 1 to install the system and Orders 3 and 4 are issued to Subcontractor 2 to provide the maintenance and repair services. General Contractor A, Subcontractor 1 and Subcontractor 2 may apply the true object test to each separate order to determine the tax application of each separate order.

2. Subcontractor Record-keeping Requirements. Every subcontractor under a subcontract that is in furtherance of a government contract will be required to maintain suitable records and documentation in order to accurately determine the true object of an order entered into in furtherance of a contract between a prime contractor and a government entity. If the subcontractor determines that the true object of an order is the provision of tangible personal property, the subcontractor must present an ST-10 resale exemption certificate in order to purchase the property exempt of the retail sales and use tax. Every subcontractor will be required to present an ST-10 resale exemption certificate for all such exempt transactions, regardless of how far removed such contractor is from the general contractor. Whenever a prime contractor issues an order to

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a subcontractor in furtherance of a government contract, the prime contractor may provide the subcontractor a task order number, a copy of the task order and the name of the government agency or other such documentation that would allow the subcontractor to prove that the order is in furtherance of a government contract.

Example 17: Contractor A enters into a contract with a state agency for the development of a computer system, which requires Contractor A to furnish computers to the state agency. The state agency issues a task order for the provision of computers. The prime contractor issues a task order to Subcontractor 1, who issues a task order to Subcontractor 2 to provide the computers. Subcontractor 2 will be required to present the vendor with an ST-10 resale exemption certificate. Subcontractor 1 will be required to present an ST-10 resale exemption certificate to Subcontractor 2. The general contractor will be required to present Subcontractor 1 with an ST-10 resale exemption certificate. The state agency will be required to present to the prime contractor an ST-12 government exemption certificate.

J. Mixed invoices. In cases where a single vendor order or invoice for tangible personal property purchased by a government contractor includes items used in fulfilling two or more separate orders issued under a government contract, the government contractor shall determine the sales and use tax application based upon the true object of each of the two or more separate orders. Those items, which will be used to fulfill the order for tangible personal property shall be deemed purchased pursuant to an order for tangible personal property and shall be exempt of the tax for resale. Those items, which will be used to fulfill the order determined to be for the provision of services shall be deemed purchased pursuant to an order for the provision of services and shall be subject to the tax. Tax shall be paid on the cost price of items classified as items that are consumed in providing the services.

Example 18: Contractor E is under contract with a government entity that includes an order to supply 50 computer monitors to the government entity. The same contract contains a separate order requiring Contractor E to provide services to the government entity that require an additional 50 computer monitors for use by Contractor E. Contractor E purchases all 100 computer monitors from the same supplier under the same vendor order. The cost for the 50 monitors that will be supplied to the government will be exempt from the tax because the monitors are purchased pursuant to an order for which the true object is the provision of tangible personal property for resale. The remaining 50 computer monitors, to be used in providing services to the government entity under the contract will be fully taxable because they are purchased pursuant to an order for which the true object is the provision of a taxable service. Contractor E should determine the total cost price of the 50 computer

monitors based on the cost price of the monitors actually provided to the government entity in fulfillment of the service order.

K. Classified contracts. In cases where the true object of an order requires the review of a classified government contract, the Department's authorized Classified Contract Agent will review the order to determine if the order is for the sale of tangible personal property or for the provision of services. In situations where it is impossible or infeasible to obtain a classified contract, the Department may review other sources of information in determining the true object of the order; however, the ultimate burden of proving that the true object of the transaction is the provision of tangible personal property or services rests with the contractor and the government entity. Such other sources of information may include, but are not limited to unclassified statements of work, redacted versions of classified contracts, or other source documents furnished by the government entity and the government contractor in determining the true object of the contract or orders.

L. Consumable goods. A contractor is taxed on the cost price of all office, cleaning, clothing and other supplies used or consumed by the contractor in the performance of any type of government contract, or after June 30, 2006, in the performance of any type of order with a government entity.

Example 19: Contractor A enters into a contract with the federal government to provide chemical analysis of certain water samples. Pencils, paper, and other office supplies to be used in performing the contract will constitute consumable goods and will be subject to sales tax.

M. Record keeping requirements of the contractor. Generally, the Department will rely on the language used in each individual order to determine the true object of the transaction. In cases where the Department is unable to determine the true object of an individual order, the Department may consider other source documents to make its determination. Other documents may include, but are not limited to, the government agency's Request for Proposal, Basic Ordering Agreements, Chart of Accounts, individual transactions performed under a separate order, and confirmation of either goods or services delivered. Despite the change in policy, the underlying contract should also be made available for review. It is the contractor's duty to retain suitable records and documentation in order to accurately determine the true object of an order entered into with government entities.

To determine whether a particular purchase was made to fulfill a particular order, the Department shall rely on the normal books and records kept by the contractor in the ordinary course of its business. For example, if a contractor's books and records show that a purchase of property was charged to an account that identifies a specific order, those purchases should be deemed to be made to fulfill that order.

The contractor may provide other information or documentation to identify the purchases that were made to fulfill that order, but shall not be required to produce any documentation not already kept by the contractor in the ordinary course of business. A particular purchase made by a contractor may be for resale even if the corresponding order does not expressly reference that specific purchase.

N. Audit methodology. All government contractor audits will be conducted in accordance with audit procedures as established by the Department, including but not limited to those procedures outlined in the Department's Field Audit Procedure Manual.

VA.R. Doc. No. R07-745; Filed July 26, 2007, 4:48 p.m

### Fast-Track Regulation

**Title of Regulation:** 23VAC10-240. Motor Vehicle Fuel Sales Tax Regulations (repealing 23VAC10-240-20 through 23VAC10-240-60, 23VAC10-240-100, 23VAC10-240-130, 23VAC10-240-140, 23VAC10-240-150, 23VAC10-240-200, 23VAC10-240-210, 23VAC10-240-240, 23VAC10-240-270, 23VAC10-240-280, 23VAC10-240-300, 23VAC10-240-310, 23VAC10-240-330, 23VAC10-240-340, 23VAC10-240-360, 23VAC10-240-380, 23VAC10-240-400, 23VAC10-240-420, 23VAC10-240-430, 23VAC10-240-450, 23VAC10-240-460).

Statutory Authority: §58.1-203 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comments: Public comments may be submitted until 5 p.m. on September 19, 2007.

Effective Date: October 4, 2007.

Agency Contact: Mark Haskins, Director, Policy Development, Department of Taxation, 600 East Main Street, Richmond, VA 23219, telephone (804) 371-2296, FAX (804) 371-2355, or email mark.haskins@tax.virginia.gov.

Basis: Section 58.1-203 of the Code of Virginia provides that the "Tax Commissioner shall have the power to issue regulations relating to the interpretation and enforcement of the laws of this Commonwealth governing taxes administered by the Department." The authority for the current regulatory action is discretionary.

Purpose: As the result of a comprehensive review of all of its regulations, the department has identified numerous regulations that address statutes that are clear and unambiguous. As they provide no additional guidance, these regulations are being repealed. As these regulations are unnecessary, their repeal will have no effect on the health, safety and welfare of citizens. Repeal of these regulations does not reflect a change in existing departmental policy.

Rationale: As the regulations being repealed are unnecessary, their repeal is not expected to be controversial.

Substance: This regulatory action will repeal 25 Motor Vehicle Fuel Sales Tax Regulations that address statutes that are clear and unambiguous.

Issues: This regulatory action will ease voluntary taxpayer compliance and department's administration of the state tax laws by eliminating unnecessary regulations. As these regulations are unnecessary, their repeal will result in no disadvantage to the public or the Commonwealth.

### Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Regulation. The Department of Taxation proposes to repeal certain sections of the Motor Vehicle Fuel Sales Tax Regulations.

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

Estimated Economic Impact. Currently, Sections 20, 30, 60, 130, 140, 150, 200, 210, 240, 270, 280, 330, 400, 430 and 450 of Administrative Code Chapter 240 specifically list which groups are, and which groups are not, exempt from having to pay motor vehicle fuel taxes. Section 100 defines the rules that dealers must follow when accepting certificates of exemption from customers. These rules explicitly state that certificates that are obviously "incomplete, invalid, infirm or inconsistent" will not be acceptable and require dealers to take care to prevent the giving or receiving of fraudulent or invalid certificates. Section 300 lists penalties and interest that will apply to dealers who fail to file returns in a timely manner.

The Department of Taxation proposes to repeal all of these sections of 23VAC10-240. If all these sections are repealed, this Chapter of the Administrative Code will be shorter and somewhat easier to search. The costs associated with this action will likely vary. Sections 20, 30, 60, 130, 140, 150, 200, 210, 240, 270, 280, 330, 400, 430 and 450 provide guidance to taxpayers and gather into one place the rules that define which groups are exempt from fuel taxes. These sections do not, however, give rights to taxpayers that are not also in the Code of Virginia. Repealing these sections will impose a small cost on taxpayers in that more of their time will have to be spent searching out and understanding the rules in the Code of Virginia than is spent now to find and understand the same rules in this Administrative Code Chapter. This cost will likely be entirely eliminated if the Department of Taxation issues guidance documents for motor vehicle fuel sales taxes.

The penalties and interest that must be paid by dealers who fail to file returns in a timely manner have increased in the Code of Virginia. As a consequence, there is no cost attached to repealing section 300 of this regulation. Taxpayers will, indeed, benefit from the removal of contradictory information from the public domain.

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**Businesses and Entities Affected.** These proposed regulatory changes will likely affect all businesses and individuals who pay or collect fuel taxes and will particularly affect businesses and individuals who use or accept certificates of exemption. There are 859 active motor fuel businesses in the Commonwealth and the Department of Taxation estimates that in excess of 1,000 individuals and businesses handle certificates of exemption.

**Localities Particularly Affected.** These proposed regulatory changes will affect all localities in the Commonwealth.

**Projected Impact on Employment.** These proposed regulatory changes will likely have no measurable effect on employment in the Commonwealth.

**Effects on the Use and Value of Private Property.** To the extent that this regulatory action may make motor vehicle tax information slightly harder to find, affected businesses may incur slight extra costs to ensure they remain in compliance with tax laws. If these costs are incurred, and can not be fully passed on to affected businesses' customers, these businesses' may see their profits decrease (probably by only a miniscule amount).

**Small Businesses: Costs and Other Effects.** To the extent that this regulatory action may make motor vehicle tax information slightly harder to find, affected businesses may incur slight extra costs to ensure they remain in compliance with tax laws. There are 859 active motor fuel businesses in the Commonwealth. Most or all of these are likely small businesses.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** There are likely no alternate methods that will both accomplish the Department of Taxation's goal of shortening regulations and further minimize costs for affected small businesses.

**Legal Mandate.** The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with §2.2-4007 H of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007 H requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, Section 2.2-4007 H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation,

including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

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

Summary:

*This fast-track rulemaking action repeals regulations that have been identified by the department as unnecessary because the regulations address statutes that are clear and unambiguous and provide no additional guidance. Repeal of these regulations does not reflect a change in existing departmental policy.*

**23VAC10-240-20. Agriculture. (Repealed.)**

~~The tax does not apply to motor vehicle fuel sold to farmers for use in farm machinery or motor vehicles, licensed or nonlicensed, used in agricultural production for market if it is to be so used at the time of purchase. The tax also does not apply to harvesters of forest products who use the motor vehicle fuel in commercial tree farming. Any fuel not used in agricultural production is subject to the tax at the time of purchase.~~

**23VAC10-240-30. Airlines operating in intrastate, interstate or foreign commerce. (Repealed.)**

~~This tax does not apply to motor vehicle fuel sold to an airline and used directly in the rendition of its common carrier service in interstate, intrastate or foreign commerce operations providing "scheduled air service." "Scheduled air service" as defined in §58.1-1501, means service provided by a single air carrier consisting of regularly scheduled flights to one or more Virginia airports at least five days per week.~~

**23VAC10-240-40. Bad checks. (Repealed.)**

~~Any person who tenders a bad check and fails to pay the amount of tax due the state within five days after the Department of Taxation has given written notice by registered or certified mail or in person is guilty of a misdemeanor. The person will also be subject to a penalty of \$10 and the civil penalties set out in 23VAC10-240-300.~~

~~A bond may be required of any person who has tendered a bad check.~~

**23VAC10-240-50. Bad debts. (Repealed.)**

~~On any return filed, the dealer may obtain credit for the amount of tax previously reported and paid on accounts found~~

to be worthless during the period covered by the current return.

In computing the credit, prior payments to the dealer on each debt must be allocated to the sales price, the tax and other nontaxable charges based on the percentage that those charges represent to the total debt originally owed. The credit may not exceed the amount of sales price that the dealer is unable to collect. If any part of the sales price for which a credit was taken is paid to the dealer, the appropriate tax must be included in the next return filed.

**23VAC10-240-60. Boats. (Repealed.)**

The tax applies at the time of purchase to motor vehicle fuel for use in a boat. Marine fuel that is subject to the fuel tax imposed under Chapter 21 of Title 58.1 of the Code of Virginia is also subject to this tax. As to a refund, see 23VAC10-240-350.

**23VAC10-240-100. Certificates of exemption. (Repealed.)**

All sales are subject to the tax until the contrary is established. The burden of proving that the tax does not apply rests with the dealer unless he takes, in good faith from the purchaser, a certificate of exemption indicating that the fuel is exempt under the law. The certificate will remain in effect except upon notice from the Department of Taxation that it is no longer acceptable. However, a certificate that is incomplete, invalid, infirm or inconsistent on its face is never acceptable, either before or after notice.

Certificates of exemption in the various categories will be furnished to dealers on request. Each certificate explains its use, and may be reproduced by the dealer for use on purchase orders, sales slips or other documents relating to the transaction.

Reasonable care and judgment must be exercised by all concerned to prevent the giving or receiving of false, fraudulent or bad faith exemption certificates. An exemption certificate cannot be used to make a tax free purchase of fuel not covered by the exact wording of the certificate.

**23VAC10-240-130. Commercial watermen. (Repealed.)**

The tax does not apply to motor vehicle fuel sold to a commercial waterman to operate machinery used in extracting fish, bivalves or crustaceans from water for commercial purposes.

Motor vehicle fuel for use in a boat is taxable at the time of purchase; however, for refunds of tax on fuel for nonhighway use see 23VAC10-240-350.

**23VAC10-240-140. Common carriers. (Repealed.)**

The tax does not apply to motor vehicle fuel sold to a common carrier for direct use in a common carrier operation.

**23VAC10-240-150. Contract carriers. (Repealed.)**

The tax applies to all retail sales of motor vehicle fuel to a contract carrier whereby delivery of such fuel is made within a transportation district. As to refunds for nonhighway use see 23VAC10-240-350.

**23VAC10-240-200. Federal areas. (Repealed.)**

A. Military installations. Motor vehicle fuel sold by or through post exchanges, ship stores, ship service stores, commissaries, filing stations, licensed traders, other similar agencies or by any person located on United States military installations is subject to tax.

B. Washington National Airport. Sales of motor vehicle fuel at Washington National Airport are subject to tax.

**23VAC10-240-210. Governments. (Repealed.)**

A. The tax does not apply to sales to the United States, this state or political subdivisions of this state if the purchases are pursuant to required official purchase orders to be paid for out of public funds.

B. The United States Government National credit card and the Commonwealth of Virginia credit card may be used in lieu of a Certificate of Exemption when purchasing fuel from any retailer or distributor in localities subject to this tax.

(As to sales of fuel made within a "federal area" such as on military installations and at Washington National Airport, see 23VAC10-240-200.)

**23VAC10-240-240. Manufacturing, processing, refining, mining, converting. (Repealed.)**

The tax does not apply to motor vehicle fuel used directly in manufacturing, processing, refining, mining or converting products for sale or resale. The tax applies when the fuel is used indirectly in production. Fuel used in distribution and administration or indirectly in manufacturing, processing, refining, mining or converting is subject to the tax.

**23VAC10-240-270. Motor vehicle rentals. (Repealed.)**

Persons engaged in the business of leasing or renting motor vehicles must pay the tax on all purchases of motor vehicle fuel for use in such motor vehicles.

**23VAC10-240-280. Nonprofit organizations. (Repealed.)**

The tax applies to motor vehicle fuel purchased for use or consumption by churches, religious, charitable, civic and other nonprofit organizations except as set forth below.

The tax does not apply to purchases of motor vehicle fuel for use or consumption by the following organizations provided they are conducted not for profit: (a) college or other institution of learning; (b) a noncommercial educational telecommunications entity; (c) a hospital; (d) a licensed nursing home; (e) a licensed home for adults; (f) a volunteer fire department or volunteer rescue squad; and (g) a hospital

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cooperative or hospital corporation organized and operated for the sole purpose of providing services exclusively to a hospital conducted not for profit; (h) a nonprofit museum of fine arts which is located on property owned by a city in Virginia and which receives more than half of its operating budget from appropriations by the city; (i) nonprofit nutrition programs for elderly qualifying under 42 USC Section 3030(e) through 3030(g), as amended, as administered by the Office of Aging of the Commonwealth of Virginia.

## **23VAC10-240-300. Penalties and interest. (Repealed.)**

A. Penalties. A dealer who fails to file a return and pay the full amount of tax by the required due date is subject to a penalty of five percent of the amount of the tax for each 30 days, or fraction thereof, not to exceed 25%. In no case will the penalty be less than \$10, even if no tax is due for the period.

The penalty may be waived if there is good cause for the failure to file and/or pay on time. Requests for waiver of penalty must be made in writing to the Department of Taxation and must include all pertinent facts to support the request.

B. Interest. Interest at the rate in Section 6621 of the Internal Revenue Code of 1954, as amended, accrues on the tax until paid or until an assessment is issued. At the time the assessment is issued, a bill will be sent to the taxpayer for the tax, penalty and interest, which must be paid within 30 days from the date of the bill. If the bill is not paid in full within the 30 day period, interest at the prescribed rate will accrue from the date of assessment until payment is made. Interest cannot be waived. For bad checks, see 23VAC10-240-40.

## **23VAC10-240-310. Person defined. (Repealed.)**

"Person" includes any individual, firm, partnership, cooperative, non profit membership corporation, joint venture, association, corporation, estate, trust, business trust, trustee in bankruptcy, receiver, auctioneer, syndicate, assignee, club, society, or other group or combination acting as a unit, body politic or political subdivision, whether public or private, or quasi public.

## **23VAC10-240-330. Public service corporations. (Repealed.)**

The tax does not apply to motor vehicle fuel sold to a public service corporation subject to a state franchise or license tax upon gross receipts when the fuel is used directly in the rendition of its public service; nor to motor vehicle fuel sold to a public service corporation engaged in business as a common carrier of property or passengers by motor vehicle when the fuel is used or consumed directly in the rendition of its public service. The tax applies when the fuel is used indirectly in the rendition of the public service. As to fuel purchased by a contract carrier, see 23VAC10-240-150.

## **23VAC10-240-340. Records and their preservation. (Repealed.)**

Every dealer is required to keep and preserve for three years adequate and complete records necessary to determine the amount of tax liability. Such records shall include:

1. A daily record of all cash and credit sales;
2. A record of the amount of all fuel purchased, including a bill of lading, invoice, purchase order or other evidence to substantiate each purchase;
3. A record of all deductions and exemptions claimed in filing tax returns, including exemption and resale certificates and bad debts;
4. A true and complete inventory of the stock on hand and its value, taken at least once each year.

Records must be open for inspection and examination at all reasonable hours of the business day by the Department of Taxation. The dealer may maintain such records on microfilm.

If an assessment has been made and an appeal to the Commissioner or to a court is pending, all records relating to the period covered by such assessment must be preserved until the final disposition of the appeal.

## **23VAC10-240-360. Retail sale defined. (Repealed.)**

"Retail sale" shall mean a sale to any person for any purpose other than for resale.

## **23VAC10-240-380. Sale of business or quitting business; successor business. (Repealed.)**

If any dealer is liable for any tax, penalty or interest and sells his business or stock of goods or quits the business, he must make a final return and payment within 15 days after the date of selling or quitting the business. At that time, he must also return his Certificate of Registration to the Department of Taxation and include a letter explaining the situation. He must report on his final return the full name and address of any successor.

The dealer's successors or assigns, if any, must withhold a sufficient portion of the purchase money to cover the amount of any taxes, penalties and interest due and unpaid until the former owner produces either a receipt from the Department of Taxation showing that payment has been made or a certificate stating that no taxes, penalties or interest are due. If the purchaser of a business or stock of goods fails to withhold a sufficient portion of the purchase money, he becomes personally liable for the payment of the taxes, penalties and interest due and unpaid by any former owner.

Any person, firm or corporation who succeeds a dealer in the operation of a business must apply for a Certificate of Registration. When applying for a Certificate of Registration, the successor dealer must inform the department of the

acquisition of the business previously operated and furnish the name and certificate number of the previous dealer. The successor may request a receipt or certificate from the department showing the amount of tax, or no tax, due by the previous dealer. Such a receipt or certificate will be sufficient evidence to authorize the successor to release to the previous dealer any funds withheld from the purchase price. A Certificate of Registration may not be issued to a successor who has been notified by the department that any tax, penalty or interest is due and unpaid by previous dealers until such amount is paid in full.

**~~23VAC10-240-400. Ships or vessels used or to be used exclusively or principally in interstate or foreign commerce. (Repealed.)~~**

The tax does not apply to motor vehicle fuel for use or consumption aboard ships or vessels engaged in intercoastal trade between ports in this state and ports in other states of the United States; or in foreign commerce between ports in this state and ports in foreign countries when delivered directly to such ships or vessels. The tax does not apply to motor vehicle fuel used directly in the building, conversion or repair of such ships and vessels described.

**~~23VAC10-240-420. Transportation district defined. (Repealed.)~~**

For the purpose of this law, a transportation district shall mean those counties or cities in which a rapid heavy rail commuter mass transportation system operating on an exclusive right of way and a bus commuter mass transportation system are owned, operated or controlled, by an agency or a commission as defined in §15.1-1344 of the Code of Virginia.

**~~23VAC10-240-430. Transportation or delivery charges. (Repealed.)~~**

The tax does not apply to transportation or delivery charges when added to a taxable sale of motor vehicle fuel if the charges are separately stated on the invoice; otherwise the tax must be computed on the total charge. For example, if an independent jobber sells motor vehicle fuel for \$500 to a contractor and delivers the fuel to the contractor's bulk storage tank at a charge of \$25, the \$25 delivery charge is not subject to tax provided it is stated separately from the selling price of the fuel.

**~~23VAC10-240-450. Vending pump sales. (Repealed.)~~**

The tax applies to sales of motor vehicle fuel through vending pumps. The bracket system in 23VAC10-240-80 must be used in computing the proper amount of tax on such sales.

**~~23VAC10-240-460. Withdrawals of motor vehicle fuel from inventory. (Repealed.)~~**

When any person purchases motor vehicle fuel under a certificate of exemption and withdraws from an inventory with a transportation district motor vehicle fuel for a taxable use, he must pay the sales tax on the cost of such fuel. The cost of the fuel shall include the applicable federal tax and state tax on motor fuels before computing the 2.0% tax. As to the requirement for a Certificate of Registration, see 23VAC10-240-110.

VA.R. Doc. No. R07-621; Filed Aug 1, 2007, 11:52 a.m..

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# GENERAL NOTICES/ERRATA

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## STATE BOARD OF AGRICULTURE AND CONSUMER SERVICES

### Notice of Extension of Public Comment Period

**Title of Regulation: 2VAC 5-206. Regulations for Scrapie Eradication (adding 2VAC 5-206-10 through 2VAC 5-206-50).**

The State Board of Agriculture and Consumer Services noticed a public hearing for August 23, 2007, and a public comment period on the proposed Regulations for Scrapie Eradication (2VAC 5-206) in the June 25, 2007, issue of the Virginia Register of Regulations (23:21 VA.R. 3440-3446 June 25, 2007). The board is postponing the public hearing and extending the public comment period on the proposal until December 14, 2007. A notice of the new public hearing date will be published in the Virginia Register and announced on the Virginia Commonwealth Calendar and the Town Hall at a later date.

Agency Contact: Perida Giles, Assistant Director, Office of Policy, Planning & Research, Department of Agriculture and Consumer Services, 102 Governor Street, Richmond, VA 23219, telephone (804) 786-5175, FAX (804) 371-2945 or email perida.giles@vdacs.virginia.gov.

VA.R. Doc. No. R03-237; Filed August 9, 2007; 1:15 p.m.

## DEPARTMENT OF CONSERVATION AND RECREATION

### Total Maximum Daily Load - Upper Clinch River

The Department of Conservation and Recreation and the Department of Environmental Quality (DEQ) is seeking written and oral comments from interested persons on the development of a total maximum daily load (TMDL) implementation plan (IP) to address water quality impairments in the Upper Clinch River watershed. Upper Clinch River was listed as impaired on Virginia's 1998 and 2002 303(d) Total Maximum Daily Load Priority List and Report due to violations of the state's water quality standard of the general standard (aquatic life). The impaired segment is 5.5 miles in length and extends from the Upper Clinch River confluence with Lincolnshire Branch downstream to its confluence with Plum Creek.

Section 62.1-44.19:7 A and C of the Code of Virginia require the development of an IP for approved TMDLs. The IP should provide measurable goals and the date of expected achievement of water quality objectives. The IP should also include the corrective actions needed and their associated costs, benefits, and environmental impacts.

A public meeting on the Draft TMDL Implementation Plan for the Upper Clinch River will be held on Tuesday, August 28, 2007, at 7 p.m. at the Tazewell County PSA (Public

Service Authority) building located at 273 Mile Circle, Tazewell, Virginia. The purpose of the meeting is to discuss the proposed reductions in sediment needed and to present the draft plan.

The public comment period for this phase of the IP development will end on September 27, 2007. A fact sheet on the development of the Upper Clinch River TMDL IP is available upon request or can be viewed on the DEQ website at <http://www.deq.virginia.gov/tmdl>. Questions or information requests should be addressed to Theresa Carter Buckles. Written comments should include the name, address, and telephone number of the person submitting the comments and should be sent to Theresa Carter Buckles, Department of Conservation and Recreation, 252 West Main Street, Ste. 3, Abingdon, VA 24210, telephone (276) 676-5418, FAX (276) 676-5527 or email [theresa.carter@dcr.virginia.gov](mailto:theresa.carter@dcr.virginia.gov).

## STATE CORPORATION COMMISSION

July 16, 2007

Administrative Letter 2007-08

To: All Licensed Property and Casualty Insurers and Rate Service Organizations

Re: Withdrawal of Administrative Letters 1985-5, 1985-17, 1990-11, and 1993-11

The State Corporation Commission Bureau of Insurance is advising all licensed property and casualty insurers and rate service organizations that the following administrative letters either contain filing-related requirements that are no longer applicable or, in the case of Administrative Letter 1985-17, the filing-related requirement has been addressed in a subsequent administrative letter:

Administrative Letter 1985-5 – The filing requirement established by this letter is no longer applicable.

Administrative Letter 1985-17 - This letter duplicates information that is contained in another administrative letter. Refer to Administrative Letter 1998-12 for the most current information on this topic.

Administrative Letter 1990-11 - The filing requirement established by this letter is no longer applicable.

Administrative Letter 1993-11 - The requirement to use the prescribed readability certification, Form VA-CIU, is no longer applicable. Insurers should refer to §38.2-233 of the Code of Virginia for the regulatory requirements applicable to readability and disclosures for credit involuntary unemployment insurance.

Consequently, Administrative Letters 1985-5, 1985-17, 1990-11, and 1993-11 are hereby withdrawn.

Insurers and rate service organizations are encouraged to review the sources of detailed information regarding current rule, rate and form filing requirements (such as the NAIC Product Review Standards State Filing Checklists, NAIC Product Requirements Locator, Virginia Filing Guidelines Handbook, etc.), which can be found on the following link:

<http://www.scc.virginia.gov/division/boi/webpages/boicompany.htm>

Questions pertaining to this letter should be directed to the Property and Casualty Division's Rates and Forms Sections at (804) 371-9965 (Personal Lines) and (804) 371-9298 (Commercial Lines).

/s/ Alfred W. Gross  
Commissioner of Insurance

## DEPARTMENT OF EDUCATION

### School Bus Specifications

The Department of Education is seeking public comment on proposed school bus specifications under review by the Board of Education. Comments must be received by August 30, 2007. The information will be compiled and presented to the Board of Education for its consideration prior to final adoption of the bus specifications at the September 26, 2007, meeting. The proposed specifications may be viewed on the website at:

<http://www.doe.virginia.gov/VDOE/Finance/proposedbusspecs07.pdf>.

Please send comments to: Mrs. June Eanes, Director of Support Services, Department of Education, P.O. Box 2120, Richmond, VA 23218, FAX (804) 786-9417, or by email [june.eanes@doe.virginia.gov](mailto:june.eanes@doe.virginia.gov).

Agency Contact: Dr. Margaret N. Roberts, Office of Policy and Communications, Department of Education, Post Office Box 2120, 101 N. 14th Street, 25th Floor, Richmond, VA 23219, telephone (804) 225-2540, FAX (804) 225-2524, or email [margaret.roberts@doe.virginia.gov](mailto:margaret.roberts@doe.virginia.gov).

## DEPARTMENT OF ENVIRONMENTAL QUALITY

### Proposed Consent Special Order - Bassett Mirror Company, Incorporated

Citizens may comment on a proposed consent order for a facility in Bassett, Virginia.

Public comment period: August 20, 2007, to September 19, 2007.

Purpose of notice: To invite the public to comment on a proposed consent order. A consent order is issued to a business owner or other responsible party to perform specific actions that will bring the entity into compliance with the

relevant law and regulations. It is developed cooperatively with the facility and entered into by mutual agreement.

Project description: The Department of Environmental Quality (DEQ) proposes to issue a consent order to Bassett Mirror Company, Incorporated (Bassett Mirror), to address violations of the Virginia regulations. The location of the facility where the violation occurred is the Bassett Mirror facility at 1290 Philpott Drive in Bassett, Virginia. The consent order describes a settlement to resolve effluent limit and monitoring deficiencies. It requires payment of a civil charge and performance of a Supplemental Environmental Project.

How a decision is made: After public comments have been considered, DEQ will make a final decision.

How to comment: DEQ accepts comments from the public by email, fax or postal mail. All comments must include the name, address and telephone number of the person commenting and be received by DEQ within the comment period.

To review the consent order: The public may review the proposed consent order at the DEQ West Central Regional Office every work day by appointment or on the DEQ website at [www.deq.virginia.gov](http://www.deq.virginia.gov).

Contact for public comments, document requests and additional information: Robert Steele, Department of Environmental Quality, West Central Regional Office, 3019 Peters Creek Road, Roanoke, VA 24019, telephone (540) 562-6777, FAX (540) 562-6725, or email [rpsteele@deq.virginia.gov](mailto:rpsteele@deq.virginia.gov).

### Restore Water Quality - Amelia and Nottoway Counties

Public meeting: Amelia County Office Building, 16360 Dunn Street, Amelia, Virginia, on August 30, 2007, from 7 p.m. to 9 p.m. In case of inclement weather, check the DEQ website for a rescheduled date.

Purpose of notice: The Virginia Department of Environmental Quality and the Department of Conservation and Recreation are announcing the start of a study to restore water quality, a public comment opportunity, and a public meeting.

Meeting description: First public meeting to develop a TMDL implementation plan for restoring water quality.

Description of study: Virginia agencies are working to identify sources of the bacterial contamination in selected waterbodies located in Amelia and Nottoway Counties.

Stream Name	Locality	Length (mi.)	Impairment
Nibbs Creek	Amelia	5.43	Bacteria
Flat Creek	Amelia	3.99	Bacteria

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## General Notices/Errata

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West Creek	Amelia	7.22	Bacteria
Deep Creek	Amelia & Nottoway	11.19	Bacteria

These streams are impaired for failure to meet the primary contact (recreational) designated use because of bacterial standard violations.

A TMDL study was completed for these streams in 2004. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, bacterial levels have to be reduced to the TMDL amount. The TMDL implementation plan will focus on identifying the conservation efforts to meet the TMDL water quality goals.

How a decision is made: The development of a TMDL implementation plan includes a public comment period, including public meetings. After public comments have been considered and addressed, DEQ will submit the TMDL implementation plan report to the Virginia State Water Control Board for approval.

How to comment: DEQ accepts written comments by email, fax or postal mail. Written comments should include the name, address and telephone number of the person commenting and be received by DEQ during the comment period, August 30, 2007, to October 1, 2007. DEQ also accepts written and oral comments at the public meeting announced in this notice.

Contact for additional information: Chris French, TMDL Coordinator, Virginia Department of Environmental Quality, Piedmont Regional Office, 4949A Cox Road, Glen Allen, VA 23060, telephone (804) 527-5124, FAX (804)-527-5106, or email [rcfrench@deq.virginia.gov](mailto:rcfrench@deq.virginia.gov).

### Restore Water Quality - Cockrell Creek

Public meeting: Northumberland Public Library, 7204 Northumberland Highway, Heathsville, Virginia on September 5, 2007, from 6 p.m. to 8 p.m. In case of inclement weather, check the DEQ website for a rescheduled date. A Technical Advisory meeting will be held on August 21, 2007, in the Northumberland Public Library meeting room from 3 p.m. until 5 p.m.

Purpose of notice: The Virginia Department of Environmental Quality and the Department of Conservation and Recreation are announcing the start of a study to restore water quality, a public comment opportunity, and a public meeting.

Meeting description: Final public meeting and technical advisory committee meeting on a study to restore water quality.

Description of study: Virginia agencies are working to identify sources of the bacterial contamination in the waters of Cockrell Creek in Northumberland County. This stream is

impaired for failure to meet the shellfish consumption designated use because of bacterial standard violations.

The study reports the sources of bacterial contamination and recommends total maximum daily loads, or TMDLs, for the impaired waters. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, bacterial levels have to be reduced to the TMDL amount.

How a decision is made: The development of a TMDL includes a public comment period, including public meetings. After public comments have been considered and addressed, DEQ will submit the TMDL report to the U.S. Environmental Protection Agency for approval.

How to comment: DEQ accepts written comments by email, fax or postal mail. Written comments should include the name, address and telephone number of the person commenting and be received by DEQ during the comment period, September 5, 2007, to October 5, 2007. DEQ also accepts written and oral comments at the public meeting announced in this notice.

Contact for additional information: Chris French, TMDL Coordinator, Virginia Department of Environmental Quality, Piedmont Regional Office, 4949A Cox Road, Glen Allen, VA 23060, telephone (804) 527-5124, FAX (804)-527-5106, or email [rcfrench@deq.virginia.gov](mailto:rcfrench@deq.virginia.gov).

### Total Maximum Daily Load - East River and Put-in Creek

The Department of Environmental Quality (DEQ), Virginia Department of Health and the Department of Conservation and Recreation seek written and oral comments from interested persons on the development of a total maximum daily load (TMDL) for fecal coliform bacteria in two shellfish propagation waters located in Mathews County, Virginia.

The impaired segments are located in VDH Growing Area 41 containing the East River and Put-in Creek. The East River is a tributary to Mobjack Bay and Chesapeake Bay.

The affected water body segments are identified in Virginia's 1998 303(d) TMDL Priority List and Report as impaired due to violations of the state's water quality standard for fecal coliform bacteria in shellfish waters. Section 303(d) of the Clean Water Act and §62.1-44.19:7 C of the Code of Virginia, require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's 303(d) TMDL Priority List and Report.

This is the second public meeting to provide information and solicit participation of citizens and local government in the review and comment of the draft fecal coliform TMDL. The meeting will be held on September 6, 2007, from 6 p.m. to 8 p.m. at the Mathews County Memorial Library, John Cooke Conference Center, 251 Main Street, Mathews, Virginia

23109. The phone number is (804) 725-5747. Directions can be obtained by calling Chester Bigelow at (804) 698-4554. A copy of the draft TMDL is available on line at

[http://gisweb.deq.virginia.gov/tmdlapp/tmdl\\_draft\\_reports.cfm](http://gisweb.deq.virginia.gov/tmdlapp/tmdl_draft_reports.cfm).

The public comment period will begin on September 6, 2007, and end on October 5, 2007. Questions or information requests should be addressed to Chester Bigelow and should include the name, address, and telephone number of the person submitting the comments. Requests should be sent to Chester Bigelow, Department of Environmental Quality, 629 East Main Street, Richmond, VA 23240, telephone (804) 698-4554, FAX (804) 698-4116, or email [ccbigeLOW@deq.virginia.gov](mailto:ccbigeLOW@deq.virginia.gov).

### **Total Maximum Daily Load - Lower Nansemond River**

The Department of Environmental Quality (DEQ), Virginia Department of Health, and the Department of Conservation and Recreation seek written and oral comments from interested persons on the development of a total maximum daily load (TMDL) for fecal coliform bacteria in shellfish propagation waters located in the Lower Nansemond River in the City of Suffolk, Virginia.

Shellfish restrictions have been placed in VDH Growing Area #46 (063-046 Lower Nansemond River). The condemned area includes Section 46A Bennett Creek, Section 46B Knotts Creek, and Section 46C Bleakhorn Creek. All waters are tributaries to the Chesapeake Bay.

The affected water body segments were identified in Virginia's 1998 303(d) TMDL Priority List and Report as impaired due to violations of the state's water quality standard for fecal coliform bacteria in shellfish waters. Section 303(d) of the Clean Water Act and §62.1-44.19:7 C of the Code of Virginia, require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's 303(d) TMDL Priority List and Report. Virginia agencies are working to identify sources of bacteria contamination in the Lower Nansemond River watershed.

During the study, DEQ will develop a total maximum daily load for the impaired waters. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, pollutant levels have to be reduced to the TMDL amount.

The first public meeting is scheduled for Wednesday, August 22, 2007, at 7 p.m. in the Suffolk City Council Chambers, Municipal Bldg, 2nd Floor, 441 Market St, Suffolk. The purpose of the meeting is to discuss the TMDL development process and to share information on bacteria sources in the watershed. A Technical Advisory Committee will also form and meet immediately after the public meeting. The purpose of the TAC is to provide technical input and insight for the

project, and to assist with stakeholder and public participation.

The public comment period on materials presented at this meeting will extend from August 22, 2007, to September 21, 2007. Questions or information requests will be accepted by email, fax, or mail. Written comments should include the name, address, and telephone number of the person submitting the comments.

For additional information: Jennifer Howell, Virginia Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Blvd, Virginia Beach, VA 23462, telephone (757) 518-2111, FAX (757) 518-2003, or email [jshowell@deq.virginia.gov](mailto:jshowell@deq.virginia.gov).

Information from this meeting will be made available on the DEQ TMDL web site at: <http://www.deq.virginia.gov/tmdl/>.

### **Total Maximum Daily Load - Mathews County**

The Department of Environmental Quality (DEQ) will hold a public meeting for interested persons on the review of the final draft total maximum daily load (TMDL) Report for eight fecal coliform bacteria impaired shellfish propagation waters located in Mathews County, Virginia.

The impaired segments are located in:

1) VDH Growing Areas 36 and 37: Growing Area 36 containing the Edwards Creek condemnation 36-197A on Gwynn's Island; and Growing Area 37 containing Queens Creek condemnation 37-99A, Stutts Creek condemnation 37-61A, Morris Creek condemnation 37-99B and Billups Creek condemnation 37-204 tributaries to Milford Haven and the Chesapeake Bay; and

2) VDH Growing Areas 39 and 40: Growing Area 39-26 containing Horn Harbor condemnation and 39-100 Doctors Creek condemnation; and Growing Area 40 containing Davis Creek condemnation 40-85. All are tributaries to the Chesapeake Bay.

The affected water body segments are identified in Virginia's 1998 303(d) TMDL Priority List and Report as impaired due to violations of the state's water quality standard for fecal coliform bacteria in shellfish waters. Section 303(d) of the Clean Water Act and §62.1-44.19:7 C of the Code of Virginia require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's 303(d) TMDL Priority List and Report.

This is a meeting of concerned citizens, state and local government, to discuss the final draft report and possible implementation options of the TMDL. The meeting will be held on September 11, 2007, from 6:30 to 8:30 p.m. at the Old Mathews Courthouse, 27 Court Street, Mathews, Virginia 23109. A copy of the draft TMDL may be found on the DEQ website at <http://www.deq.virginia.gov/tmdl> in the draft reports section. A 30-day public comment period will follow

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this meeting. Public comment dates are from September 11, 2007, through October 10, 2007. Questions or information requests should be addressed to Chester Bigelow and should include the name, address, and telephone number of the person submitting the comments. Requests should be sent to Chester Bigelow, Department of Environmental Quality, 629 East Main Street, Richmond, VA 23240, telephone (804) 698-4554, FAX (804) 698-4116.

### **Total Maximum Daily Load - Mill Creek and Powhatan Creek**

The Department of Environmental Quality (DEQ), Virginia Department of Conservation and Recreation (DCR), and the Department of Health (VDH) seek written and oral comments from interested persons on the development of a total maximum daily load (TMDL) for fecal coliform bacteria in waters located in the James City County, Virginia.

Mill Creek was identified in Virginia's 2002 Water Quality Assessment 305(b) Report. Sufficient exceedances of Virginia's water quality standards for fecal coliform and enterococci bacteria assessed segment VAT-G10E-03 as not supporting the recreation use.

Powhatan Creek has two segments that have been identified as impaired and do not support the Recreation Use. Segment VAT-G10E-01 was listed in Virginia's 1998 303(d) TMDL Priority List and Report because of violations of the fecal coliform and enterococci water quality standard. In the 2002 Water Quality Assessment 305(b) Report, segment VAT-G10R-02 was documented as impaired due to violations of the state's water quality standard for fecal coliform bacteria.

Section 303(d) of the Clean Water Act and §62.1-44.19:7 C of the Code of Virginia require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's 303(d) TMDL Priority List and Report and subsequent Water Quality Assessment Reports. Virginia agencies are working to identify sources of bacteria contamination in the watersheds of both Mill and Powhatan Creeks.

During the study, DEQ will develop a total maximum daily load for the impaired waters. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, pollutant levels have to be reduced to the TMDL amount.

The first public meeting is scheduled for Tuesday, September 18, 2007, at 7 p.m. in the James City Williamsburg Community Center, 5301 Longhill Road, Williamsburg. The purpose of the meeting is to discuss the TMDL development process and to share information on bacteria sources in the watershed. A Technical Advisory Committee will also form and meet immediately after the public meeting. The purpose of the TAC is to provide technical input and insight for the

project, and to assist with stakeholder and public participation.

The public comment period on materials presented at this meeting will extend from September 18, 2007, to October 18, 2007. Questions or information requests will be accepted by email, fax, or mail. Written comments should include the name, address, and telephone number of the person submitting the comments.

For additional information and to submit comments: Jennifer Howell, Virginia Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Blvd, Virginia Beach, VA 23462, telephone (757) 518-2111, FAX (757) 518-2003, or email [jshowell@deq.virginia.gov](mailto:jshowell@deq.virginia.gov).

Information from this meeting will be made available on the DEQ TMDL website at <http://www.deq.virginia.gov/tmdl/>.

## **STATE LOTTERY DEPARTMENT**

### **Director's Orders**

The following Director's Orders of the State Lottery Department were filed with the Virginia Registrar of Regulations on August 1, 2007, and August 2, 2007. The orders may be viewed at the State Lottery Department, 900 E. Main Street, Richmond, Virginia, or at the office of the Registrar of Regulations, 910 Capitol Street, 2nd Floor, Richmond, Virginia.

Final Rules for Game Operation:

[Director's Order Number Thirty-Four \(07\)](#)

Virginia's Instant Game Lottery 798; "Blackjack Doubler" (effective 7/24/07)

[Director's Order Number Thirty-Six \(07\)](#)

Virginia's Instant Game Lottery 800; "Trick or Treat Doubler" (effective 7/24/07)

[Director's Order Number Thirty-Seven \(07\)](#)

Virginia's Instant Game Lottery 801; "Pumpkin Patch Cash Tripler" (effective 7/25/07)

[Director's Order Number Thirty-Eight \(07\)](#)

Virginia's Instant Game Lottery 804; "Extreme 7's" (effective 7/25/07)

[Director's Order Number Thirty-Nine \(07\)](#)

Virginia's Instant Game Lottery 787; "Cashword" (effective 7/30/07)

[Director's Order Number Forty \(07\)](#)

Virginia's Instant Game Lottery 334; "Lucky 7's Bingo" (effective 7/30/07)

## Director's Order Number Forty-One (07)

Virginia's Instant Game Lottery 803; "Deal Or No Deal" (effective 7/30/07)

### **DEPARTMENT OF SOCIAL SERVICES**

#### **Periodic Review of Regulations**

Pursuant to Executive Order Number 36 (2006), the Department of Social Services is currently reviewing the regulation 22VAC40-470, Exemptions Applicable to Public Assistance Programs, to determine if it should be terminated, amended, or retained in its current form. The review will be guided by the principles listed in Executive Order Number 36 (2006) and in the department's Plan for Review of Existing Agency Regulations.

The department seeks public comment regarding the regulation's interference in private enterprise and life, essential need of the regulation, less burdensome and intrusive alternatives to the regulation, specific and measurable goals that the regulation is intended to achieve, and whether the regulation is clearly written and easily understandable.

Written comments may be submitted until September 10, 2007, in care of Walter S. Burton, Jr., Assistant Director, Division of Benefit Programs, Department of Social Services, 7 North 8th Street, Richmond, Virginia 23219-1849, by email to [walter.burton@dss.virginia.gov](mailto:walter.burton@dss.virginia.gov), or by facsimile to (804) 726-7357.

#### **Periodic Review of Regulations**

Pursuant to Executive Order Number 36 (2006), the Department of Social Services is currently reviewing the regulation 22VAC40-890, Human Subject Research Regulations, to determine if it should be terminated, amended, or retained in its current form. The review will be guided by the principles listed in Executive Order Number 36 (2006) and in the department's Plan for Review of Existing Agency Regulations.

The department seeks public comment regarding the regulation's interference in private enterprise and life, essential need of the regulation, less burdensome and intrusive alternatives to the regulation, specific and measurable goals that the regulation is intended to achieve, and whether the regulation is clearly written and easily understandable.

Written comments may be submitted until September 10, 2007, in care of Todd W. Areson, Coordinator, VDSS Institutional Review Board, Office of Research, Department of Social Services, 7 North 8th Street, Richmond, Virginia 23219-1849, by email to [todd.areson@dss.virginia.gov](mailto:todd.areson@dss.virginia.gov), or by facsimile to (804) 726-7088.

#### **Periodic Review of Regulations**

Pursuant to Executive Order Number 36 (2006), the Department of Social Services is currently reviewing the regulation 22VAC40-910, General Provisions for Maintaining and Disclosing Confidential Information of Public Assistance and Social Services Records to determine if it should be terminated, amended, or retained in its current form. The review will be guided by the principles listed in Executive Order Number 36 (2006) and in the department's Plan for Review of Existing Agency Regulations.

The department seeks public comment regarding the regulation's interference in private enterprise and life, essential need of the regulation, less burdensome and intrusive alternatives to the regulation, specific and measurable goals that the regulation is intended to achieve, and whether the regulation is clearly written and easily understandable.

Written comments may be submitted until September 10, 2007, in care of Jan Sigler, Senior Policy Analyst, Office of Legislative and Regulatory Affairs, Department of Social Services, 7 North 8th Street, Richmond, Virginia 23219-1849, by email to [jan.sigler@dss.virginia.gov](mailto:jan.sigler@dss.virginia.gov), or by facsimile to (804) 726-7906.

### **STATE WATER CONTROL BOARD**

#### **Proposed Consent Special Order - Aqua Utilities, Inc.**

Purpose of notice: To invite citizens to comment on a proposed amended consent order for a facility in Caroline County, Virginia.

Public comment period: August 21, 2007, through September 20, 2007.

Consent order description: The State Water Control Board proposes to issue an amended consent order to the Aqua Utilities, Inc. to address alleged violations of the Virginia Pollutant Discharge Elimination System Permit No. VA0060887 and the original order. The location of the facility where the alleged violations occurred is at 198 Kent Drive, Ruther Glen, Virginia. The amended consent order describes a settlement to resolve permit effluent limit violations and changes to the terms and dates of the original order.

How to comment: DEQ accepts comments from the public by email, fax or postal mail. All comments must include the name, address and telephone number of the person commenting and be received by DEQ within the comment period. The public may review the proposed amended consent order at the DEQ office named below or on the DEQ website at [www.deq.virginia.gov](http://www.deq.virginia.gov).

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Contact for public comments, document requests and additional information: Sarah Baker, Department of Environmental Quality, Northern Virginia Regional Office, 13901 Crown Court, Woodbridge, VA 22193, telephone (703) 583-3850, FAX (703) 583-3871, or email [sbaker@deq.virginia.gov](mailto:sbaker@deq.virginia.gov).

### **Proposed Consent Special Order - B&J Enterprises, L.C.**

Citizens may comment on a proposed consent order for a facility located in Montgomery County, Virginia.

Public comment period: August 20, 2007, to September 19, 2007.

Purpose of notice: To invite the public to comment on a proposed consent order.

A consent order is issued to a business owner or other responsible party to perform specific actions that will bring the entity into compliance with the relevant law and regulations. It is developed cooperatively with the facility and entered into by mutual agreement.

Consent order description: The State Water Control Board proposes to issue a consent order to B&J Enterprises, L.C., owner of the Blacksburg Country Club STP (Facility) to address alleged violations of the facility's VPDES Permit and the Virginia Regulations. The location of the facility where the alleged violations occurred is in Montgomery County, Virginia. The consent order describes a settlement to resolve violations associated with discharges from the facility and the associated sewer collection system. It requires the signatories to pay a civil penalty, institute a plan for repairs and improvements to the sewer collection system, and comply with the VPDES Permit and the Virginia Regulations.

How a decision is made: After public comments have been considered, the DEQ director will make a final decision.

How to comment: DEQ accepts comments from the public by email, fax or postal mail. All comments must include the name, address and telephone number of the person commenting and be received by DEQ within the comment period.

To review the consent order: The public may review the proposed consent order at the DEQ West Central Regional Office in Roanoke, VA every work day by appointment or on the DEQ website at [www.deq.virginia.gov](http://www.deq.virginia.gov).

Contact for public comments, document requests and additional information: Jerry Ford, Jr., Department of Environmental Quality, West Central Regional Office, 3019 Peters Creek Road, Roanoke, VA 24019, telephone (540) 562-6700, FAX (540) 562-6725, or email [jrford@deq.virginia.gov](mailto:jrford@deq.virginia.gov).

### **Proposed Consent Special Order- Bristow Manor Golf Club**

Purpose of notice: To invite citizens to comment on a proposed consent order for a Waste Water Treatment Plant in Prince William County, Virginia.

Public comment period: August 21, 2007, through September 20, 2007.

Consent order description: The State Water Control Board proposes to issue a consent order to Bristow Manor Golf Club to address alleged violations of Virginia's regulations. The Bristow Manor Golf Club and Waste Water Treatment Plant that serves the Golf Club and approximately 22 residences is located in Bristow, Virginia, in Prince William County. The consent order describes a settlement to resolve permit violations of the Waste Water Treatment Plant.

How to comment: DEQ accepts comments from the public by email, fax, or postal mail. All comments must include the name, address, and telephone number of the person commenting and be received by DEQ within the comment period. The public may review the proposed consent order at the DEQ office named below or on the DEQ website at [www.deq.virginia.gov](http://www.deq.virginia.gov).

Contact for public comments, document requests, and additional information: Stephanie Bellotti, Department of Environmental Quality, Northern Virginia Regional Office, 13901 Crown Court, Woodbridge, VA 22193, telephone (703) 583-3857, FAX (703) 583-3841, or email [sabellotti@deq.virginia.gov](mailto:sabellotti@deq.virginia.gov).

### **Proposed Consent Order - F.L. Hatcher and Son, Inc.**

Citizens may comment on a proposed consent order for a facility located in Roanoke, Virginia.

Public comment period: August 20, 2007, to September 19, 2007.

Purpose of notice: To invite the public to comment on a proposed consent order.

A consent order is issued to a business owner or other responsible party to perform specific actions that will bring the entity into compliance with the relevant law and regulations. It is developed cooperatively with the facility and entered into by mutual agreement.

Consent order description: The State Water Control Board proposes to issue a consent order to F.L. Hatcher and Son, Inc., to address alleged violations of the Virginia regulations pertaining to Aboveground Storage Tanks, Underground Storage Tanks and Financial Assurance requirements. The location of the facility where the alleged violations occurred is Roanoke City, Virginia. The consent order describes a settlement to resolve violations associated with operation and

maintenance of the facility and failure to demonstrate financial assurance. It requires the signatories to pay a civil penalty and institute a plan for repairs and improvements at the facility.

How a decision is made: After public comments have been considered, the DEQ director will make a final decision.

How to comment: DEQ accepts comments from the public by email, fax or postal mail. All comments must include the name, address and telephone number of the person commenting and be received by DEQ within the comment period.

To review the consent order: The public may review the proposed consent order at the DEQ West Central Regional Office in Roanoke, Virginia every work day by appointment or on the DEQ website at [www.deq.virginia.gov](http://www.deq.virginia.gov).

Contact for public comments, document requests and additional information: Jerry Ford, Jr., Department of Environmental Quality, West Central Regional Office, 3019 Peters Creek Road VA 24019, telephone (540) 562-6700, FAX (540) 562-6725, or email [jrford@deq.virginia.gov](mailto:jrford@deq.virginia.gov).

### **Proposed Consent Special Order - Henrico County**

The State Water Control Board proposes to amend a consent special order issued to Henrico County on January 7, 2003, to address sanitary sewer overflows from its collection system. The proposed amendment requires Henrico County to add the Fourmile Creek Trunk Sewer rehabilitation project to the Order's schedule.

On behalf of the State Water Control Board, the Department of Environmental Quality will receive for 30 days from the date of publication of this notice written comments related to the proposed consent special order. Comments should be addressed to Frank Lupini, Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060-6295, or sent to the email address of [felupini@deq.virginia.gov](mailto:felupini@deq.virginia.gov). All comments received by email must include your name, address and phone number. A copy of the order may be obtained in person or by mail from the above office.

### **Proposed Consent Special Order - Huff Petroleum Company, Inc.**

Citizens may comment on a proposed consent order for multiple facilities located in Roanoke County, Montgomery County, and Pulaski County, Virginia.

Public comment period: August 20, 2007, to September 19, 2007.

Purpose of notice: To invite the public to comment on a proposed consent order.

A consent order is issued to a business owner or other responsible party to perform specific actions that will bring the entity into compliance with the relevant law and regulations. It is developed cooperatively with the facility and entered into by mutual agreement.

Consent order description: The State Water Control Board proposes to issue a consent order to Huff Petroleum Company, Inc. and eight associated LLCS (White Dublin, L.L.C d/b/a Express Stop # 2; White Orange, L.L.C d/b/a Express Stop #3; White/Pulaski-Main, L.L.C d/b/a Express Stop #4; White 99, L.L.C d/b/a Express Stop #5; White Newbern, L.L.C d/b/a Express Stop #6; White/Christiansburg-Skyview, L.L.C d/b/a Express Stop #8; Cedar Valley General Store, L.L.C d/b/a Express Stop #9; NSCS, L.L.C. d/b/a Northside Chevron), to address alleged violations of the Virginia regulations pertaining to Underground Storage Tanks and Financial Assurance. The locations of the facilities where the alleged violations occurred are Roanoke County, Montgomery County, and Pulaski County, Virginia. The consent order describes a settlement to resolve violations associated with operation and maintenance of the facilities and failure to demonstrate financial assurance. It requires the signatories to pay a civil penalty and fund a Supplemental Environmental Project.

How a decision is made: After public comments have been considered, the DEQ director will make a final decision.

How to comment: DEQ accepts comments from the public by email, fax or postal mail. All comments must include the name, address and telephone number of the person commenting and be received by DEQ within the comment period.

To review the consent order: The public may review the proposed consent order at the DEQ West Central Regional Office in Roanoke, Virginia every work day by appointment or on the DEQ website at [www.deq.virginia.gov](http://www.deq.virginia.gov).

Contact for public comments, document requests and additional information: Jerry Ford, Jr., Department of Environmental Quality, West Central Regional Office, 3019 Peters Creek Road, Roanoke, VA 24019, telephone (540) 562-6700, FAX (540) 562-6725, or email [jrford@deq.virginia.gov](mailto:jrford@deq.virginia.gov).

### **Proposed Consent Special Order - Omega Protein, Inc.**

Purpose of notice: To seek public comment on a proposed consent order from the Department of Environmental Quality for a facility in Reedville, Virginia.

Public comment period: August 20, 2007, to September 20, 2007.

Consent order description: The State Water Control Board proposes to issue a consent order to Omega Protein, Inc. to

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## General Notices/Errata

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address violations of its VPDES Permit No. VA0003867. The location of the facility where the violation occurred is the end of Virginia State Highway 659 in Reedville, Virginia. The consent order describes a settlement to resolve wastewater permit discharge violations that occurred at the facility. The order requires wastewater treatment system modifications and payment of a civil charge.

How to comment: DEQ accepts comments from the public by email, fax or postal mail. All comments must include the name, address and telephone number of the person commenting and be received by DEQ within the comment period. The public may review the proposed consent order at the DEQ office named below or on the DEQ website at [www.deq.virginia.gov](http://www.deq.virginia.gov).

Contact for public comments, document requests and additional information: Frank Lupini, Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, telephone (804) 527-5093, FAX (804) 527-5106, or email [felupini@deq.virginia.gov](mailto:felupini@deq.virginia.gov).

### **Proposed Consent Special Order - Powhatan County**

Purpose of notice: To seek public comment on a proposed consent order from the Department of Environmental Quality for the Dutoy Creek Wastewater Treatment Plant (WWTP), owned by Powhatan County, Virginia.

Public comment period: August 20, 2007, to September 19, 2007.

Consent order description: The State Water Control Board proposes to issue a consent order to Powhatan County to address alleged violations of VPDES regulations. The location of the facility where the violations occurred is at 2040 Anderson Hwy., off Rt. 60, Powhatan County, Virginia. The consent order settles noncompliance with the VPDES regulations and includes the payment of a civil charge.

How to comment: DEQ accepts comments from the public by email, fax or postal mail. All comments must include the name, address and telephonenumber of the person commenting and be received by DEQ within the comment period. The public may review the proposed consent order at the DEQ office named below or on the DEQ website at [www.deq.virginia.gov](http://www.deq.virginia.gov).

Contact for public comments, document requests and additional information: Cynthia Akers, Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, telephone (804) 527-5079, FAX (804) 527-5106, or email [ecakers@deq.virginia.gov](mailto:ecakers@deq.virginia.gov).

### **Proposed Consent Special Order - Smith-Midland, Inc.**

Purpose of notice: To invite citizens to comment on a proposed consent order for a Sewage Treatment Plant in Fauquier County, Virginia.

Public comment period: August 21, 2007, through September 20, 2007.

Consent order description: The State Water Control Board proposes to issue a consent order to Smith-Midland, Inc. to address alleged violations of Virginia's regulations. Smith-Midland's Sewage Treatment Plant serves Smith-Midland, Inc. which produces pre-cast concrete products. Smith-Midland, Inc. is located in Fauquier County, Virginia. The consent order describes a settlement to resolve permit violations of the Sewage Treatment Plant.

How to comment: DEQ accepts comments from the public by email, fax, or postal mail. All comments must include the name, address, and telephone number of the person commenting and be received by DEQ within the comment period. The public may review the proposed consent order at the DEQ office named below or on the DEQ web site at [www.deq.virginia.gov](http://www.deq.virginia.gov).

Contact for public comments, document requests, and additional information: Stephanie Bellotti, Department of Environmental Quality, Northern Virginia Regional Office, 13901 Crown Court, Woodbridge, VA 22193, telephone (703) 583-3857, FAX (703) 583-3841, or email [sabellotti@deq.virginia.gov](mailto:sabellotti@deq.virginia.gov).

### **Proposed Consent Order – Town of South Boston**

Purpose of notice: To seek public comment on a proposed consent order from the Department of Environmental Quality (DEQ) for a facility operated by the Town of South Boston, Virginia.

Public comment period: August 20, 2007, to September 19, 2007.

Consent order description: The State Control Board proposes to issue a consent order to the Town of South Boston to address alleged violations of Virginia State Water Control Law. The location of the facility where the alleged violations occurred is 500 Maple Avenue, South Boston, Virginia. The consent order describes a settlement to resolve alleged violations of the facility Virginia Pollutant Discharge Elimination System Permit.

How to comment: DEQ accepts comments from the public by email, fax, or postal mail. All comments must include the name, address, and telephone number of the person commenting and be received by DEQ within the comment period. The public may review the proposed consent order at the DEQ office named below or on the DEQ website at [www.deq.virginia.gov](http://www.deq.virginia.gov).

Contact for public comments, document requests, and additional information: G. Marvin Booth, III, Department of Environmental Quality, South Central Regional Office, 7705 Timberlake Rd., Lynchburg, VA 24502, telephone (434) 582-6237, FAX (434) 582-5125, or email gmbooth@deq.virginia.gov.

## **Proposed Consent Special Order - Spotsylvania County Regarding the Massaponax Interceptor Sewer**

Purpose of notice: To invite citizens to comment on a proposed consent order for a site in Spotsylvania County, Virginia.

Public comment period: August 21, 2007, through September 20, 2007.

Consent order description: The State Water Control Board proposes to issue a consent order to Spotsylvania County regarding the Massaponax Interceptor Sewer. The site where the alleged violation occurred is between Leavells Road and Jefferson Davis Highway. The consent order describes a settlement to resolve discharge of sewage into state waters without a permit.

How to comment: DEQ accepts comments from the public by email, fax, or postal mail. All comments must include the name, address, and telephone number of the person commenting and be received by DEQ within the comment period. The public may review the proposed consent order at the DEQ office named below or on the DEQ website at [www.deq.virginia.gov](http://www.deq.virginia.gov).

Contact for public comments, document requests, and additional information: Sarah Baker, Department of Environmental Quality, Northern Virginia Regional Office, 13901 Crown Court, Woodbridge, VA 22193, telephone (703) 583-3850, FAX (703) 583-3871, or email sbaker@deq.virginia.gov.

## **VIRGINIA CODE COMMISSION**

### **Elimination of the Calendar of Events Section**

Effective July 1, 2007, the Calendar of Events section will no longer be published in the Virginia Register of Regulations. Chapter 300 of the 2007 Acts of Assembly amended the Administrative Process Act by eliminating the requirement that all state agency meeting notices be published in the Virginia Register. In lieu of publication in the Virginia Register, the Virginia Freedom of Information Act was amended to require that agencies post meeting notices on the agency's website and on the Commonwealth Calendar maintained by the Virginia Information Technologies Agency. To access the Commonwealth Calendar, please visit the Commonwealth of Virginia's homepage at [www.virginia.gov](http://www.virginia.gov) and click on the calendar on the right side

of the screen. Public hearing information will still be published in the Register and can be found with the corresponding proposed regulation.

## **Notice to State Agencies**

**Mailing Address:** Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219.

## **Filing Material for Publication in the Virginia Register of Regulations**

Agencies are required to use the Regulation Information System (RIS) when filing regulations for publication in the Virginia Register of Regulations. The Office of the Virginia Register of Regulations implemented a new web-based application called RIS for filing regulations and related items for publication in the Virginia Register. The Registrar's office has worked closely with the Department of Planning and Budget (DPB) to coordinate the new system with DPB's latest upgrade to the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information. The new system was released on July 3, 2007.

Advantages of RIS include:

- Daily updates to the online version of the Virginia Administrative Code (VAC) will provide access to a "real time" administrative code database.
- Agencies will draft regulation sections using the always current VAC database through each stage of the regulatory process.
- Agencies will eventually be able to file most notices and regulatory actions electronically.

The Office of the Virginia Register is working toward the eventual elimination of the requirement that agencies file print copies of regulatory packages. Until that time, agencies may file petitions for rulemaking, notices of intended regulatory actions and general notices in electronic form only; however, until further notice, agencies must continue to file print copies of proposed, final, fast-track and emergency regulatory packages.

## **ERRATA**

### **DEPARTMENT OF TAXATION**

Title of Regulation: **23VAC10-210. Retail Sales and Use Tax (amending 23VAC10-210-6041, 23VAC10-210-6042, 23VAC10-210-6043).**

Publication: 23:24 VA.R. 4068 August 6, 2007.

Correction to Final Regulation:

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The effective date for the regulation is September 6, 2007.

VA.R. Doc. No. R07-710

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Title of Regulation: **23VAC10-210. Retail Sales and Use Tax (amending 23VAC10-210-485).**

Publication: 23:24 VA.R. 4069 August 6, 2007.

Correction to Final Regulation:

The effective date for the regulation is September 6, 2007.

VA.R. Doc. No. R07-711