



# Virginia Register of Regulations

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OCTOBER 15, 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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### October 2007 through September 2008

| <u>Volume: Issue</u>     | <u>Material Submitted By Noon*</u>   | <u>Will Be Published On</u> |
|--------------------------|--------------------------------------|-----------------------------|
| 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, 2007           |
| 24:9                     | December 18, 2007 ( <b>Tuesday</b> ) | 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               |
| 24:22                    | June 18, 2008                        | July 7, 2008                |
| 24:23                    | July 2, 2008                         | July 21, 2008               |
| 24:24                    | July 16, 2008                        | August 4, 2008              |
| 24:25                    | July 30, 2008                        | August 18, 2008             |
| 24:26                    | August 13, 2008                      | September 1, 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 Spring 2007 VAC Supplement includes final regulations published through *Virginia Register* Volume 23, Issue 9, dated January 8, 2007). 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 1. Administration</b>          |          |                       |                |
| 1 VAC 55-30-10 through 1 VAC 55-30-90   | Added    | 23:26 VA.R. 4413-4416 | 10/3/07        |
| <b>Title 2. Agriculture</b>             |          |                       |                |
| 2 VAC 5-110 (Forms)                     | Amended  | 23:26 VA.R. 4452      | --             |
| 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 5-580-10 through 2 VAC 5-580-310  | Repealed | 24:2 VA.R. 72         | 10/16/07       |
| 2 VAC 5-585-10 through 2 VAC 5-585-4070 | Added    | 24:2 VA.R. 72-133     | 10/16/07       |
| 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 5-50-40                           | Amended  | 23:25 VA.R. 4107      | *              |
| 3 VAC 5-50-50                           | Amended  | 23:25 VA.R. 4108      | *              |
| 3 VAC 5-50-80                           | Amended  | 23:25 VA.R. 4108      | *              |
| 3 VAC 5-50-100                          | Amended  | 23:25 VA.R. 4108      | *              |

\* Objection to Fast-Track Rulemaking 24:1

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

| SECTION NUMBER                                     | ACTION  | CITE             | EFFECTIVE DATE |
|--|---------|------------------|----------------|
| 3 VAC 5-50-130                                     | Amended | 23:25 VA.R. 4109 | *              |
| 3 VAC 5-50-140                                     | Amended | 23:25 VA.R. 4110 | *              |
| 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         |
| 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        |

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

| SECTION NUMBER                            | ACTION   | CITE                  | EFFECTIVE DATE  |
|---|----------|-----------------------|-----------------|
| 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  |
| 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 20-755-10                           | Amended  | 24:2 VA.R. 133        | 9/1/07          |
| 4 VAC 20-755-20                           | Amended  | 24:2 VA.R. 133        | 9/1/07          |
| 4 VAC 20-755-30                           | Amended  | 24:2 VA.R. 136        | 9/1/07          |
| 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         |

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| 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          |
| 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 20-120-40                                  | Amended  | 23:25 VA.R. 4177      | 9/19/07         |
| 6 VAC 35-20-37 emer                              | Amended  | 23:25 VA.R. 4178      | 8/1/07-7/31/08  |
| 6 VAC 35-190-10 through 6VAC35-190-110           | Added    | 24:2 VA.R. 137-139    | 10/31/07        |
| 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 20-21-10 through 8 VAC 20-21-730           | Repealed | 23:25 VA.R. 4179      | 9/21/07         |
| 8 VAC 20-22-10 through 8 VAC 20-22-760           | Added    | 23:25 VA.R. 4179-4214 | 9/21/07         |
| 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 20-541-10 through 8 VAC 20-541-60          | Repealed | 23:25 VA.R. 4214      | 9/21/07         |
| 8 VAC 20-542-10 through 8 VAC 20-542-600         | Added    | 23:25 VA.R. 4214-4270 | 9/21/07         |
| 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 35-60-10                                   | Added    | 24:1 VA.R. 25         | 8/28/07         |
| 8 VAC 35-60-20                                   | Added    | 24:1 VA.R. 25         | 8/28/07         |
| 8 VAC 35-60-30                                   | Added    | 24:1 VA.R. 25         | 8/28/07         |
| 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          |

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| 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        |
| 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      | --             |

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| 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        |
| 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 25-260-30                          | Amended  | 24:2 VA.R. 139        | 9/11/07        |
| 9 VAC 25-260-30                          | Amended  | 24:2 VA.R. 140        | 9/11/07        |
| 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 25-720-50                          | Amended  | 24:2 VA.R. 140        | 11/15/07       |

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| 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 25-720-90                                     | Amended  | 24:2 VA.R. 147        | 11/15/07       |
| 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        |
| <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         |

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| 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         |
| 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         |

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| 12 VAC 5-410-1380 | Amended | 23:10 VA.R. 1561 | 3/1/07         |
| 12 VAC 5-421-10   | Amended | 24:2 VA.R. 149   | 10/16/07       |
| 12 VAC 5-421-90   | Amended | 24:2 VA.R. 157   | 10/16/07       |
| 12 VAC 5-421-100  | Amended | 24:2 VA.R. 157   | 10/16/07       |
| 12 VAC 5-421-120  | Amended | 24:2 VA.R. 158   | 10/16/07       |
| 12 VAC 5-421-140  | Amended | 24:2 VA.R. 158   | 10/16/07       |
| 12 VAC 5-421-160  | Amended | 24:2 VA.R. 159   | 10/16/07       |
| 12 VAC 5-421-170  | Amended | 24:2 VA.R. 159   | 10/16/07       |
| 12 VAC 5-421-180  | Amended | 24:2 VA.R. 159   | 10/16/07       |
| 12 VAC 5-421-190  | Amended | 24:2 VA.R. 159   | 10/16/07       |
| 12 VAC 5-421-200  | Amended | 24:2 VA.R. 160   | 10/16/07       |
| 12 VAC 5-421-230  | Amended | 24:2 VA.R. 160   | 10/16/07       |
| 12 VAC 5-421-250  | Amended | 24:2 VA.R. 160   | 10/16/07       |
| 12 VAC 5-421-270  | Amended | 24:2 VA.R. 160   | 10/16/07       |
| 12 VAC 5-421-295  | Added   | 24:2 VA.R. 160   | 10/16/07       |
| 12 VAC 5-421-300  | Amended | 24:2 VA.R. 160   | 10/16/07       |
| 12 VAC 5-421-330  | Amended | 24:2 VA.R. 161   | 10/16/07       |
| 12 VAC 5-421-340  | Amended | 24:2 VA.R. 161   | 10/16/07       |
| 12 VAC 5-421-350  | Amended | 24:2 VA.R. 161   | 10/16/07       |
| 12 VAC 5-421-360  | Amended | 24:2 VA.R. 161   | 10/16/07       |
| 12 VAC 5-421-430  | Amended | 24:2 VA.R. 162   | 10/16/07       |
| 12 VAC 5-421-440  | Amended | 24:2 VA.R. 162   | 10/16/07       |
| 12 VAC 5-421-450  | Amended | 24:2 VA.R. 162   | 10/16/07       |
| 12 VAC 5-421-460  | Added   | 24:2 VA.R. 162   | 10/16/07       |
| 12 VAC 5-421-500  | Amended | 24:2 VA.R. 162   | 10/16/07       |
| 12 VAC 5-421-520  | Amended | 24:2 VA.R. 163   | 10/16/07       |
| 12 VAC 5-421-530  | Amended | 24:2 VA.R. 163   | 10/16/07       |
| 12 VAC 5-421-550  | Amended | 24:2 VA.R. 163   | 10/16/07       |
| 12 VAC 5-421-560  | Amended | 24:2 VA.R. 163   | 10/16/07       |
| 12 VAC 5-421-570  | Amended | 24:2 VA.R. 163   | 10/16/07       |
| 12 VAC 5-421-580  | Amended | 24:2 VA.R. 163   | 10/16/07       |
| 12 VAC 5-421-590  | Amended | 24:2 VA.R. 164   | 10/16/07       |
| 12 VAC 5-421-600  | Amended | 24:2 VA.R. 164   | 10/16/07       |
| 12 VAC 5-421-620  | Amended | 24:2 VA.R. 164   | 10/16/07       |
| 12 VAC 5-421-670  | Amended | 24:2 VA.R. 164   | 10/16/07       |
| 12 VAC 5-421-680  | Amended | 24:2 VA.R. 164   | 10/16/07       |
| 12 VAC 5-421-700  | Amended | 24:2 VA.R. 164   | 10/16/07       |
| 12 VAC 5-421-720  | Amended | 24:2 VA.R. 166   | 10/16/07       |
| 12 VAC 5-421-760  | Amended | 24:2 VA.R. 166   | 10/16/07       |
| 12 VAC 5-421-765  | Added   | 24:2 VA.R. 166   | 10/16/07       |
| 12 VAC 5-421-780  | Amended | 24:2 VA.R. 166   | 10/16/07       |
| 12 VAC 5-421-790  | Amended | 24:2 VA.R. 166   | 10/16/07       |
| 12 VAC 5-421-800  | Amended | 24:2 VA.R. 167   | 10/16/07       |
| 12 VAC 5-421-820  | Amended | 24:2 VA.R. 167   | 10/16/07       |
| 12 VAC 5-421-830  | Amended | 24:2 VA.R. 167   | 10/16/07       |
| 12 VAC 5-421-840  | Amended | 24:2 VA.R. 169   | 10/16/07       |
| 12 VAC 5-421-850  | Amended | 24:2 VA.R. 169   | 10/16/07       |
| 12 VAC 5-421-860  | Amended | 24:2 VA.R. 170   | 10/16/07       |
| 12 VAC 5-421-870  | Amended | 24:2 VA.R. 170   | 10/16/07       |
| 12 VAC 5-421-880  | Added   | 24:2 VA.R. 171   | 10/16/07       |
| 12 VAC 5-421-890  | Added   | 24:2 VA.R. 171   | 10/16/07       |

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|-------------------|---------|----------------|----------------|
| 12 VAC 5-421-900  | Added   | 24:2 VA.R. 171 | 10/16/07       |
| 12 VAC 5-421-910  | Added   | 24:2 VA.R. 171 | 10/16/07       |
| 12 VAC 5-421-920  | Added   | 24:2 VA.R. 171 | 10/16/07       |
| 12 VAC 5-421-930  | Added   | 24:2 VA.R. 171 | 10/16/07       |
| 12 VAC 5-421-940  | Amended | 24:2 VA.R. 172 | 10/16/07       |
| 12 VAC 5-421-950  | Amended | 24:2 VA.R. 172 | 10/16/07       |
| 12 VAC 5-421-960  | Amended | 24:2 VA.R. 173 | 10/16/07       |
| 12 VAC 5-421-970  | Amended | 24:2 VA.R. 173 | 10/16/07       |
| 12 VAC 5-421-990  | Amended | 24:2 VA.R. 173 | 10/16/07       |
| 12 VAC 5-421-1000 | Amended | 24:2 VA.R. 173 | 10/16/07       |
| 12 VAC 5-421-1010 | Amended | 24:2 VA.R. 173 | 10/16/07       |
| 12 VAC 5-421-1020 | Amended | 24:2 VA.R. 173 | 10/16/07       |
| 12 VAC 5-421-1030 | Amended | 24:2 VA.R. 173 | 10/16/07       |
| 12 VAC 5-421-1040 | Amended | 24:2 VA.R. 173 | 10/16/07       |
| 12 VAC 5-421-1070 | Amended | 24:2 VA.R. 174 | 10/16/07       |
| 12 VAC 5-421-1090 | Amended | 24:2 VA.R. 174 | 10/16/07       |
| 12 VAC 5-421-1120 | Amended | 24:2 VA.R. 174 | 10/16/07       |
| 12 VAC 5-421-1200 | Amended | 24:2 VA.R. 174 | 10/16/07       |
| 12 VAC 5-421-1260 | Amended | 24:2 VA.R. 174 | 10/16/07       |
| 12 VAC 5-421-1270 | Amended | 24:2 VA.R. 174 | 10/16/07       |
| 12 VAC 5-421-1300 | Amended | 24:2 VA.R. 174 | 10/16/07       |
| 12 VAC 5-421-1310 | Amended | 24:2 VA.R. 174 | 10/16/07       |
| 12 VAC 5-421-1320 | Amended | 24:2 VA.R. 175 | 10/16/07       |
| 12 VAC 5-421-1330 | Amended | 24:2 VA.R. 175 | 10/16/07       |
| 12 VAC 5-421-1340 | Amended | 24:2 VA.R. 175 | 10/16/07       |
| 12 VAC 5-421-1350 | Amended | 24:2 VA.R. 175 | 10/16/07       |
| 12 VAC 5-421-1360 | Amended | 24:2 VA.R. 175 | 10/16/07       |
| 12 VAC 5-421-1370 | Amended | 24:2 VA.R. 176 | 10/16/07       |
| 12 VAC 5-421-1460 | Amended | 24:2 VA.R. 176 | 10/16/07       |
| 12 VAC 5-421-1510 | Amended | 24:2 VA.R. 176 | 10/16/07       |
| 12 VAC 5-421-1520 | Amended | 24:2 VA.R. 176 | 10/16/07       |
| 12 VAC 5-421-1530 | Amended | 24:2 VA.R. 177 | 10/16/07       |
| 12 VAC 5-421-1540 | Amended | 24:2 VA.R. 177 | 10/16/07       |
| 12 VAC 5-421-1620 | Amended | 24:2 VA.R. 177 | 10/16/07       |
| 12 VAC 5-421-1640 | Amended | 24:2 VA.R. 177 | 10/16/07       |
| 12 VAC 5-421-1660 | Amended | 24:2 VA.R. 177 | 10/16/07       |
| 12 VAC 5-421-1670 | Amended | 24:2 VA.R. 178 | 10/16/07       |
| 12 VAC 5-421-1680 | Amended | 24:2 VA.R. 178 | 10/16/07       |
| 12 VAC 5-421-1690 | Amended | 24:2 VA.R. 178 | 10/16/07       |
| 12 VAC 5-421-1700 | Amended | 24:2 VA.R. 178 | 10/16/07       |
| 12 VAC 5-421-1710 | Amended | 24:2 VA.R. 179 | 10/16/07       |
| 12 VAC 5-421-1720 | Amended | 24:2 VA.R. 179 | 10/16/07       |
| 12 VAC 5-421-1730 | Amended | 24:2 VA.R. 179 | 10/16/07       |
| 12 VAC 5-421-1750 | Amended | 24:2 VA.R. 179 | 10/16/07       |
| 12 VAC 5-421-1760 | Amended | 24:2 VA.R. 179 | 10/16/07       |
| 12 VAC 5-421-1780 | Amended | 24:2 VA.R. 179 | 10/16/07       |
| 12 VAC 5-421-1810 | Amended | 24:2 VA.R. 180 | 10/16/07       |
| 12 VAC 5-421-1820 | Amended | 24:2 VA.R. 180 | 10/16/07       |
| 12 VAC 5-421-1880 | Amended | 24:2 VA.R. 180 | 10/16/07       |
| 12 VAC 5-421-1890 | Amended | 24:2 VA.R. 180 | 10/16/07       |
| 12 VAC 5-421-1900 | Amended | 24:2 VA.R. 180 | 10/16/07       |

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| 12 VAC 5-421-1960                         | Amended | 24:2 VA.R. 181        | 10/16/07       |
| 12 VAC 5-421-2010                         | Amended | 24:2 VA.R. 181        | 10/16/07       |
| 12 VAC 5-421-2080                         | Amended | 24:2 VA.R. 181        | 10/16/07       |
| 12 VAC 5-421-2190                         | Amended | 24:2 VA.R. 181        | 10/16/07       |
| 12 VAC 5-421-2200                         | Amended | 24:2 VA.R. 181        | 10/16/07       |
| 12 VAC 5-421-2210                         | Amended | 24:2 VA.R. 181        | 10/16/07       |
| 12 VAC 5-421-2270                         | Amended | 24:2 VA.R. 181        | 10/16/07       |
| 12 VAC 5-421-2310                         | Amended | 24:2 VA.R. 182        | 10/16/07       |
| 12 VAC 5-421-2320                         | Amended | 24:2 VA.R. 182        | 10/16/07       |
| 12 VAC 5-421-2520                         | Amended | 24:2 VA.R. 182        | 10/16/07       |
| 12 VAC 5-421-2630                         | Amended | 24:2 VA.R. 182        | 10/16/07       |
| 12 VAC 5-421-2680                         | Amended | 24:2 VA.R. 182        | 10/16/07       |
| 12 VAC 5-421-2710                         | Amended | 24:2 VA.R. 182        | 10/16/07       |
| 12 VAC 5-421-2790                         | Amended | 24:2 VA.R. 182        | 10/16/07       |
| 12 VAC 5-421-2810                         | Amended | 24:2 VA.R. 182        | 10/16/07       |
| 12 VAC 5-421-2820                         | Amended | 24:2 VA.R. 183        | 10/16/07       |
| 12 VAC 5-421-2840                         | Amended | 24:2 VA.R. 183        | 10/16/07       |
| 12 VAC 5-421-2850                         | Amended | 24:2 VA.R. 183        | 10/16/07       |
| 12 VAC 5-421-2870                         | Amended | 24:2 VA.R. 183        | 10/16/07       |
| 12 VAC 5-421-2880                         | Amended | 24:2 VA.R. 183        | 10/16/07       |
| 12 VAC 5-421-2930                         | Amended | 24:2 VA.R. 183        | 10/16/07       |
| 12 VAC 5-421-2990                         | Amended | 24:2 VA.R. 184        | 10/16/07       |
| 12 VAC 5-421-3040                         | Amended | 24:2 VA.R. 184        | 10/16/07       |
| 12 VAC 5-421-3120                         | Amended | 24:2 VA.R. 184        | 10/16/07       |
| 12 VAC 5-421-3200                         | Amended | 24:2 VA.R. 184        | 10/16/07       |
| 12 VAC 5-421-3210                         | Amended | 24:2 VA.R. 184        | 10/16/07       |
| 12 VAC 5-421-3230                         | Amended | 24:2 VA.R. 184        | 10/16/07       |
| 12 VAC 5-421-3310                         | Amended | 24:2 VA.R. 184        | 10/16/07       |
| 12 VAC 5-421-3370                         | Amended | 24:2 VA.R. 185        | 10/16/07       |
| 12 VAC 5-421-3380                         | Amended | 24:2 VA.R. 185        | 10/16/07       |
| 12 VAC 5-421-3450                         | Amended | 24:2 VA.R. 185        | 10/16/07       |
| 12 VAC 5-421-3510                         | Amended | 24:2 VA.R. 185        | 10/16/07       |
| 12 VAC 5-421-3560                         | Amended | 24:2 VA.R. 185        | 10/16/07       |
| 12 VAC 5-421-3580                         | Amended | 24:2 VA.R. 185        | 10/16/07       |
| 12 VAC 5-421-3590                         | Amended | 24:2 VA.R. 186        | 10/16/07       |
| 12 VAC 5-421-3620                         | Amended | 24:2 VA.R. 186        | 10/16/07       |
| 12 VAC 5-421-3660                         | Amended | 24:2 VA.R. 186        | 10/16/07       |
| 12 VAC 5-421-3700                         | Amended | 24:2 VA.R. 186        | 10/16/07       |
| 12 VAC 5-421-3750                         | Amended | 24:2 VA.R. 187        | 10/16/07       |
| 12 VAC 5-421-3760                         | Amended | 24:2 VA.R. 188        | 10/16/07       |
| 12 VAC 5-421-3800                         | Amended | 24:2 VA.R. 188        | 10/16/07       |
| 12 VAC 5-421-3815                         | Added   | 24:2 VA.R. 188        | 10/16/07       |
| 12 VAC 5-421-3860                         | Amended | 24:2 VA.R. 188        | 10/16/07       |
| 12 VAC 5-421-3900                         | Amended | 24:2 VA.R. 188        | 10/16/07       |
| 12 VAC 5-421-3960                         | Amended | 24:2 VA.R. 189        | 10/16/07       |
| 12 VAC 5-421-3970                         | Amended | 24:2 VA.R. 189        | 10/16/07       |
| 12 VAC 5-421-4000                         | Amended | 24:2 VA.R. 189        | 10/16/07       |
| 12 VAC 5-421-4035                         | Added   | 24:2 VA.R. 190        | 10/16/07       |
| 12 VAC 5-421-4050                         | Amended | 24:2 VA.R. 191        | 10/16/07       |
| 12 VAC 5-421-4070                         | Amended | 24:2 VA.R. 191        | 10/16/07       |
| 12 VAC 5-585-760 through 12 VAC 5-585-830 | Added   | 23:25 VA.R. 4298-4301 | 10/1/07        |

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| 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 30-10-820      | Added   | 24:2 VA.R. 191   | 10/31/07        |
| 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  |
| 12 VAC 30-60-500 emer | Added   | 23:26 VA.R. 4427 | 8/8/07-8/7/08   |
| 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          |

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| 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        |
| 12 VAC 30-135-100 through 12VAC30-135-360     | Added    | 24:2 VA.R. 196-218    | 12/1/07        |
| 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 35-115-10 through 12 VAC 35-115-250    | Amended  | 23:25 VA.R. 4301-4340 | 9/19/07        |
| 12 VAC 35-115-145                             | Added    | 23:25 VA.R. 4329      | 9/19/07        |
| 12 VAC 35-115-146                             | Added    | 23:25 VA.R. 4330      | 9/19/07        |
| 12 VAC 35-115-160                             | Repealed | 23:25 VA.R. 4332      | 9/19/07        |
| 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      | --             |

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| 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 25-90-1910.6                                 | Amended  | 24:1 VA.R. 26         | 12/15/07       |
| 16 VAC 25-90-1910.66 Appendix D                     | Amended  | 24:1 VA.R. 26         | 12/15/07       |
| 16 VAC 25-90-1910.134                               | Amended  | 23:12 VA.R. 1997      | 3/21/07        |
| 16 VAC 25-90-1910.268 (b) (7)                       | Repealed | 23:21 VA.R. 3545      | 7/26/07        |
| 16 VAC 25-90-1910.302 through 16 VAC 25-90-1910.308 | Amended  | 24:1 VA.R. 26         | 12/15/07       |
| 16 VAC 25-90-1910.399 Subpart S Appendix A          | Amended  | 24:1 VA.R. 26         | 12/15/07       |
| 16 VAC 25-90-1910.1000                              | Amended  | 23:12 VA.R. 1996      | 3/21/07        |
| 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        |

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| 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 41-70-10 through 18 VAC 41-70-280                 | Added    | 23:25 VA.R. 4349-4359 | 9/20/07        |
| 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         |
| 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         |

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| 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 65-10-10 through 18VAC65-10-80     | Amended  | 24:2 VA.R. 226-228    | 11/15/07       |
| 18 VAC 65-10-100                          | Amended  | 24:2 VA.R. 228        | 11/15/07       |
| 18 VAC 65-10-110                          | Amended  | 24:2 VA.R. 228        | 11/15/07       |
| 18 VAC 65-10-120                          | Amended  | 24:2 VA.R. 228        | 11/15/07       |
| 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 85-20-140                          | Amended  | 24:1 VA.R. 27         | 10/17/07       |
| 18 VAC 85-20-235                          | Amended  | 23:11 VA.R. 1692      | 4/21/07        |
| 18 VAC 85-20-235                          | Amended  | 23:25 VA.R. 4360      | 9/20/07        |
| 18 VAC 85-20-235                          | Amended  | 23:25 VA.R. 4361      | 9/20/07        |
| 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 85-20-400 through 18 VAC 85-20-420 | Adding   | 23:25 VA.R. 4362-4363 | 9/20/07        |
| 18 VAC 85-40-61                           | Amended  | 24:1 VA.R. 28         | 10/17/07       |
| 18 VAC 85-40-61                           | Amended  | 24:1 VA.R. 29         | 10/18/07       |

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|--|---------|-----------------------|----------------|
| 18 VAC 85-40-65                            | Amended | 24:1 VA.R. 28         | 10/17/07       |
| 18 VAC 85-50-58                            | Amended | 24:1 VA.R. 29         | 10/18/07       |
| 18 VAC 85-80-72                            | Amended | 24:1 VA.R. 29         | 10/18/07       |
| 18 VAC 85-101-50                           | Amended | 23:15 VA.R. 2511      | 5/2/07         |
| 18 VAC 85-101-152                          | Amended | 24:1 VA.R. 30         | 10/18/07       |
| 18 VAC 85-110-155                          | Amended | 24:1 VA.R. 30         | 10/18/07       |
| 18 VAC 85-120-130                          | Amended | 24:2 VA.R. 229        | 10/31/07       |
| 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 90-20-30                            | Amended | 23:25 VA.R. 4363      | 10/1/07        |
| 18 VAC 90-20-60                            | Amended | 23:12 VA.R. 2033      | 3/21/07        |
| 18 VAC 90-20-225                           | Added   | 23:25 VA.R. 4364      | 10/1/07        |
| 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 95-10-10 through 18VAC95-10-80      | Amended | 24:2 VA.R. 231-232    | 11/15/07       |
| 18 VAC 95-10-100                           | Amended | 24:2 VA.R. 232        | 11/15/07       |
| 18 VAC 95-10-110                           | Amended | 24:2 VA.R. 232        | 11/15/07       |
| 18 VAC 95-10-120                           | Amended | 24:2 VA.R. 232        | 11/15/07       |
| 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        |

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

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|--|----------|-----------------------|----------------|
| 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         |
| 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        |

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|--|---------|-----------------------|----------------|
| 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 135-30 (Forms)                              | Amended | 24:1 VA.R. 41         | --             |
| 18 VAC 135-40 (Forms)                              | Amended | 24:1 VA.R. 43         | --             |
| 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        |
| 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         |
| 19 VAC 30-170-15                                   | Amended | 24:2 VA.R. 233        | 10/1/07        |
| 19 VAC 30-170-50                                   | Amended | 24:2 VA.R. 233        | 10/1/07        |
| <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        |

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| 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 40-72-930                           | Amended  | 24:1 VA.R. 38         | 11/1/07          |
| 22 VAC 40-72-960                           | Amended  | 24:1 VA.R. 39         | 11/1/07          |
| 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           |
| 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 40-770-10 through 22 VAC 40-770-160 | Repealed | 24:2 VA.R. 234        | 11/1/07          |
| 22 VAC 40-771-10 through 22 VAC 40-771-160 | Added    | 24:2 VA.R. 234-242    | 11/1/07          |
| 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 10-210-693 emer                     | Amended  | 23:25 VA.R. 4364      | 7/26/07-07/25/08 |
| 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           |
| 23 VAC 10-240-20 through 23 VAC 10-240-60  | Repealed | 23:25 VA.R. 4372-4373 | 10/04/07         |
| 23 VAC 10-240-100                          | Repealed | 23:25 VA.R. 4373      | 10/04/07         |
| 23 VAC 10-240-130                          | Repealed | 23:25 VA.R. 4373      | 10/04/07         |
| 23 VAC 10-240-140                          | Repealed | 23:25 VA.R. 4373      | 10/04/07         |
| 23 VAC 10-240-150                          | Repealed | 23:25 VA.R. 4373      | 10/04/07         |
| 23 VAC 10-240-200                          | Repealed | 23:25 VA.R. 4373      | 10/04/07         |
| 23 VAC 10-240-210                          | Repealed | 23:25 VA.R. 4373      | 10/04/07         |
| 23 VAC 10-240-240                          | Repealed | 23:25 VA.R. 4373      | 10/04/07         |
| 23 VAC 10-240-270                          | Repealed | 23:25 VA.R. 4373      | 10/04/07         |
| 23 VAC 10-240-280                          | Repealed | 23:25 VA.R. 4373      | 10/04/07         |
| 23 VAC 10-240-300                          | Repealed | 23:25 VA.R. 4374      | 10/04/07         |
| 23 VAC 10-240-310                          | Repealed | 23:25 VA.R. 4374      | 10/04/07         |

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| 23 VAC 10-240-330                                  | Repealed | 23:25 VA.R. 4374      | 10/04/07       |
| 23 VAC 10-240-340                                  | Repealed | 23:25 VA.R. 4374      | 10/04/07       |
| 23 VAC 10-240-360                                  | Repealed | 23:25 VA.R. 4374      | 10/04/07       |
| 23 VAC 10-240-380                                  | Repealed | 23:25 VA.R. 4374      | 10/04/07       |
| 23 VAC 10-240-400                                  | Repealed | 23:25 VA.R. 4375      | 10/04/07       |
| 23 VAC 10-240-420                                  | Repealed | 23:25 VA.R. 4375      | 10/04/07       |
| 23 VAC 10-240-430                                  | Repealed | 23:25 VA.R. 4375      | 10/04/07       |
| 23 VAC 10-240-450                                  | Repealed | 23:25 VA.R. 4375      | 10/04/07       |
| 23 VAC 10-240-460                                  | Repealed | 23:25 VA.R. 4375      | 10/04/07       |
| <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 30-45-10                                    | Added    | 24:2 VA.R. 243        | 10/1/07        |
| 24 VAC 30-45-20                                    | Added    | 24:2 VA.R. 243        | 10/1/07        |
| 24 VAC 30-45-30                                    | Added    | 24:2 VA.R. 244        | 10/1/07        |
| 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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## TITLE 4. CONSERVATION AND NATURAL RESOURCES

### SOIL AND WATER CONSERVATION BOARD

#### Withdrawal of Notice of Intended Regulatory Action

Notice is hereby given that the Soil and Water Conservation Board has WITHDRAWN the Notice of Intended Regulatory Action for **4VAC50-60, Virginia Stormwater Management Program (VSMP) Permit Regulations**, which was published in 13:16 VA.R. 1782 April 28, 1997.

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

VA.R. Doc. No. R06-34; Filed September 26, 2007, 2:00 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 the following regulations: **12VAC5-391, Regulations for the Licensure of Hospice**. The purpose of the proposed action is to carry out the mandate of HB 1965 (2007), specifically to adopt appropriate standards for patient care and safety, physical plant requirements, emergency preparedness, etc.

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

Statutory Authority: §§32.1-12 and 32.1-162.5 of the Code of Virginia.

Public comments: Public comments may be submitted until November 14, 2007.

Agency Contact: Carrie Eddy, Policy Analyst, Department of Health, 3600 W. Broad St., Richmond, VA telephone 804 367-5100, FAX , or email carrie.eddy@vdh.virginia.gov.

VA.R. Doc. No. R08-964; Filed September 24, 2007, 11:24 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 Department of Medical Assistance Services intends to consider amending the following regulations: **12VAC30-80, Methods and Standards for Establishing Payment Rates; Other Types of Care**. The purpose of the proposed action is to add a new requirement to the federal Medicaid reimbursement process for prescription drugs. The new mandate, P.L. 110-28, part of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007, prohibits federal financial participation for outpatient drugs where the written prescription for the drug was not written on a tamper-resistant prescription pad. The provision aims to save the federal Medicaid program money and prevent patients from illegally obtaining drugs. This regulatory action will bring state Medicaid pharmacy reimbursement in line with the new federal mandate by implementing the requirement that all Medicaid-covered prescription drugs based upon a written prescription must be supported by a prescription executed on a tamper-resistant pad.

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 and 42 USC §1396.

Agency Contact: Rachel Cain, Project Manager, Health Care Services Division, Pharmacy Unit, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone 804-371-0918, FAX 804-786-1680, or email rachel.cain@dmas.virginia.gov.

VA.R. Doc. No. R08-883; Filed September 24, 2007, 3:00 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 4. CONSERVATION AND NATURAL RESOURCES

### VIRGINIA SOIL AND WATER CONSERVATION BOARD

#### Proposed Regulation

**REGISTRAR'S NOTICE:** The following regulation filed by the Virginia Soil and Water Conservation 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 Virginia Soil and Water Conservation Board pursuant to the Virginia Stormwater Management Act (§10.1-603.1 et seq.) of Title 10.1, 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:** 4VAC50-60. Virginia Stormwater Management Program (VSMP) Permit Regulations (amending 4VAC50-60-10, 4VAC50-60-1200 through 4VAC50-60-1240).

**Statutory Authority:** §10.1-603.4 of the Code of Virginia.

**Public Hearing Information:**

December 4, 2007 - 1:30 p.m. - Roanoke City Council Chambers, Noel C. Taylor Municipal Building, 215 Church Avenue, Southwest, Roanoke, VA

December 6, 2007 - 1:30 p.m. - Virginia Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, VA

**Public comments:** Public comments may be submitted until 5 p.m. on December 14, 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.

#### Summary

*This regulatory action amends the General Virginia Stormwater Management Program (VSMP) Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems (small MS4s). This action is authorized under the federal Clean Water Act (33 USC §1251 et seq.) and the Virginia Stormwater Management Act (§10.1-603.1 et seq. of the Code of Virginia), and is necessary to update and reissue the general permit, as the current permit expires on December 9, 2007 (coverage under the current permit will be administratively continued until the proposed permit becomes effective provided that current coverage holders submit a registration statement by December 7, 2007). The proposed amendments serve to advance water quality protections to the maximum extent practicable, forward water quality improvements where a wasteload allocation from a TMDL has been assigned to an MS4 prior to the effective date of the permit (unless reopened), provide greater clarity to facility operators as how to administer and improve/advance their MS4 programs, allow for greater consistency in program application between facility operators, and specify sampling protocols and necessary reporting requirements where applicable.*

*The key changes to this permit include:*

- 1. Updating and adding needed definitions such as "maximum extent practicable," "TMDL," "wasteload allocation" and "MS4 program plan."*
- 2. Updating exemptions and special situations associated with general permit coverage such as de minimis discharges, discharges resulting from spills beyond the operator's control, and portions of an MS4 covered under an industrial stormwater discharge VPDES permit.*
- 3. Updating registration statement requirements such as submittal deadlines and filing information (type of facility, HUC codes that receive discharges, acreage of drainage area discharging to impaired waters, and listing any wasteload allocations to the MS4) including specifying the elements of an MS4 Program Plan (proposed best management practices to be implemented, their associated goals, and an implementation schedule that is established by the MS4).*
- 4. Specifying special procedures within the general permit that a regulated small MS4 shall employ if a wasteload allocation (WLA) as part of a TMDL has been assigned to*

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*the MS4 prior to the effective date of the permit (unless reopened), including:*

*a. MS4 Program Plan updates within 18 months of permit coverage to include measurable goals, strategies and implementation schedules to address the WLA;*

*b. Review of ordinances, policies, plans, procedures and contracts that are applicable to reducing the pollutant;*

*c. Outfall reconnaissance procedures for outfalls discharging to the surface water to which the WLA has been assigned;*

*d. For operator-owned or operated property, pollutant identification and sampling procedures; and*

*e. An estimated annual characterization of the volume of stormwater discharged and the quantity of the pollutant identified in the WLA discharged.*

*5. Specifying that a Municipal Separate Storm Sewer System Management Program shall reduce pollutants from the MS4 to the maximum extent practicable, address impaired waters that the MS4 discharges into, protect water quality, and address WLAs, as well as establish a schedule for MS4 Program Plan Review and submittal and the public notice procedures for the plan.*

*6. Clarifying and expanding minimum criteria within the general permit associated with the six minimum control practices that are:*

*a. Public education and outreach. Requires the operator to increase individual and household knowledge of steps to reduce stormwater pollution; increase public employee, business and general public knowledge of the hazards associated with illegal discharges and improper disposal of waste; increase local involvement in water quality improvement initiatives; increase strategies to reach diverse, disadvantaged, and minority audiences as well as special concerns related to children, and target strategies towards local groups of commercial, industrial, and institutional entities likely to have stormwater impacts.*

*b. Public involvement/participation. Requires the operator to promote the availability of the MS4 Program Plan, provide public access to the annual report, and to participate in local activities aimed at increasing public participation in the reduction of stormwater pollutant loads and in improving water quality.*

*c. Illicit discharge detection and elimination. Requires the operator to develop, implement and enforce an illicit discharge detection and elimination program, maintain a storm sewer system map, effectively prohibit nonstormwater discharges into the storm sewer system, develop procedures to detect and address nonstormwater discharges, and prevent to the maximum extent*

*practicable the discharge of hazardous substances or oil in stormwater discharges.*

*d. Construction site stormwater runoff control. Requires program consistency with the Erosion and Sediment Control Law and attendant regulations.*

*e. Postconstruction stormwater management in new development and redevelopment. Requires program consistency with the Virginia Stormwater Management Act and attendant regulations.*

*f. Pollution prevention/good housekeeping for municipal operations. Requires municipal operations to reduce pollutant discharges, eliminate illicit discharges, dispose of waste materials properly, protect soluble or erodible materials from precipitation, apply fertilizers and pesticides appropriately, and for state agencies to develop and implement nutrient management plans.*

*7. Establishing a program self-evaluation requirement once every five years in accordance with EPA guidance.*

*8. Clarifying minimum reporting requirements such as submittal of MS4 Program Plan updates, WLA pollutant reduction estimates, number of illicit discharges identified and how they were eliminated, information regarding new stormwater management facilities brought online, and a list of agreements with third parties for the implementation of control measures, as well as establishing a time schedule for reporting (by October 1st of each year for the previous July 1 – June 30).*

*9. Refining the basic EPA boilerplate language that applies to all VSMP permits.*

*10. Updating the incorporated General Permit Registration Statement form to track the amended regulation.*

## **4VAC50-60-10. Definitions.**

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

"Adequate channel" means a channel that will convey the designated frequency storm event without overtopping the channel bank nor causing erosive damage to the channel bed or banks.

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

"Applicable standards and limitations" means all state, interstate, and federal standards and limitations to which a discharge or a related activity is subject under the Clean Water Act (CWA) (33 USC §1251 et seq.) and the Act, including effluent limitations, water quality standards, standards of performance, toxic effluent standards or

prohibitions, best management practices, and standards for sewage sludge use or disposal under §§301, 302, 303, 304, 306, 307, 308, 403 and 405 of CWA.

"Approval authority" means the Virginia Soil and Water Conservation Board or their designee.

"Approved program" or "approved state" means a state or interstate program that has been approved or authorized by EPA under 40 CFR Part 123 (2000).

"Aquatic bench" means a 10- to 15-foot wide bench around the inside perimeter of a permanent pool that ranges in depth from zero to 12 inches. Vegetated with emergent plants, the bench augments pollutant removal, provides habitats, conceals trash and water level fluctuations, and enhances safety.

"Average land cover condition" means a measure of the average amount of impervious surfaces within a watershed, assumed to be 16%. Note that a locality may opt to calculate actual watershed-specific values for the average land cover condition based upon 4VAC50-60-110.

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

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

"Best management practice (BMP)" means schedules of activities, prohibitions of practices, including both a structural or nonstructural practice, maintenance procedures, and other management practices to prevent or reduce the pollution of surface waters and groundwater systems from the impacts of land-disturbing activities. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

"Bioretention basin" means a water quality BMP engineered to filter the water quality volume through an engineered planting bed, consisting of a vegetated surface layer (vegetation, mulch, ground cover), planting soil, and sand bed, and into the in-situ material.

"Bioretention filter" means a bioretention basin with the addition of a sand filter collector pipe system beneath the planting bed.

"Board" means the Virginia Soil and Water Conservation Board.

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

"Channel" means a natural or manmade waterway.

"Constructed wetlands" means areas intentionally designed and created to emulate the water quality improvement function of wetlands for the primary purpose of removing pollutants from stormwater.

"Construction activity" means any clearing, grading or excavation associated with large construction activity or associated with small construction activity.

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

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

"Control measure" means any best management practice or other method used to prevent or reduce the discharge of pollutants to surface waters.

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

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

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

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

"Department" means the Department of Conservation and Recreation.

"Development" means a tract of land developed or to be developed as a unit under single ownership or unified control which is to be used for any business or industrial purpose or is to contain three or more residential dwelling units.

"Direct discharge" means the discharge of a pollutant.

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"Director" means the Director of the Department of Conservation and Recreation or his designee.

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

"Discharge of a pollutant" means:

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

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

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

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

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

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

"Environmental Protection Agency (EPA)" means the United States Environmental Protection Agency.

"Existing permit" means for the purposes of this chapter a permit issued by the permit-issuing authority and currently held by a permit applicant.

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

"Facilities or equipment" means buildings, structures, process or production equipment or machinery that form a permanent part of a new source and that will be used in its

operation, if these facilities or equipment are of such value as to represent a substantial commitment to construct. It excludes facilities or equipment used in connection with feasibility, engineering, and design studies regarding the new source or water pollution treatment for the new source.

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

"Flooding" means a volume of water that is too great to be confined within the banks or walls of the stream, water body or conveyance system and that overflows onto adjacent lands, causing or threatening damage.

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

"Grassed swale" means an earthen conveyance system which is broad and shallow with erosion resistant grasses and check dams, engineered to remove pollutants from stormwater runoff by filtration through grass and infiltration into the soil.

"Hazardous substance" means any substance designated under the Code of Virginia and 40 CFR Part 116 (2000) pursuant to §311 of the CWA.

"Hydrologic Unit Code" or "HUC" means a watershed unit established in the most recent version of Virginia's 6th Order National Watershed Boundary Dataset.

"Illicit discharge" means any discharge to a municipal separate storm sewer that is not composed entirely of stormwater, except discharges pursuant to a VPDES or VSMP permit (other than the VSMP permit for discharges from the municipal separate storm sewer), discharges resulting from fire fighting activities, and discharges identified by and in compliance with 4VAC50-60-1220 C 2.

"Impervious cover" means a surface composed of any material that significantly impedes or prevents natural infiltration of water into soil. Impervious surfaces include, but are not limited to, roofs, buildings, streets, parking areas, and any concrete, asphalt, or compacted gravel surface.

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

"Indian country" means (i) all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; (ii) all dependent Indian communities with the borders of the United States whether within the originally or subsequently acquired territory thereof, and whether within or without the limits of a state; and (iii) all Indian allotments, the Indian

titles to which have not been extinguished, including rights-of-way running through the same.

"Indirect discharger" means a nondomestic discharger introducing "pollutants" to a "publicly owned treatment works (POTW)."

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

"Infiltration facility" means a stormwater management facility that temporarily impounds runoff and discharges it via infiltration through the surrounding soil. While an infiltration facility may also be equipped with an outlet structure to discharge impounded runoff, such discharge is normally reserved for overflow and other emergency conditions. Since an infiltration facility impounds runoff only temporarily, it is normally dry during nonrainfall periods. Infiltration basin, infiltration trench, infiltration dry well, and porous pavement shall be considered infiltration facilities.

"Inspection" means an on-site review of the project's compliance with the permit, the local stormwater management program, and any applicable design criteria, or an on-site review to obtain information or conduct surveys or investigations necessary in the enforcement of the Act and this chapter.

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

"Land disturbance" or "land-disturbing activity" means a manmade change to the land surface that potentially changes its runoff characteristics including any clearing, grading, or excavation associated with a construction activity regulated pursuant to the federal Clean Water Act, the Act, and this chapter.

"Large construction activity" means construction activity including clearing, grading and excavation, except operations that result in the disturbance of less than five acres of total land area. Large construction activity also includes the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more.

"Large municipal separate storm sewer system" means all municipal separate storm sewers that are either:

1. Located in an incorporated place with a population of 250,000 or more as determined by the ~~latest~~ 1990

decennial census by the Bureau of Census (40 CFR Part 122 Appendix F (2000));

2. Located in the counties listed in 40 CFR Part 122 Appendix H (2000), except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties;

3. Owned or operated by a municipality other than those described in subdivision 1 or 2 of this definition and that are designated by the board as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under subdivision 1 or 2 of this definition. In making this determination the board may consider the following factors:

- a. Physical interconnections between the municipal separate storm sewers;
- b. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in subdivision 1 of this definition;
- c. The quantity and nature of pollutants discharged to surface waters;
- d. The nature of the receiving surface waters; and
- e. Other relevant factors.

4. The board may, upon petition, designate as a large municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a stormwater management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in this definition.

"Linear development project" means a land-disturbing activity that is linear in nature such as, but not limited to, (i) the construction of electric and telephone utility lines, and natural gas pipelines; (ii) construction of tracks, rights-of-way, bridges, communication facilities and other related structures of a railroad company; and (iii) highway construction projects.

"Local stormwater management program" or "local program" means a statement of the various methods employed by a locality to manage the quality and quantity of runoff resulting from land-disturbing activities and shall include such items as local ordinances, permit requirements, policies and guidelines, technical materials, inspection, enforcement, and evaluation consistent with the Act and this chapter. The ordinance shall include provisions to require the control of after-development stormwater runoff rate of flow, the proper maintenance of stormwater management facilities, and minimum administrative procedures.

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# Regulations

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"Locality" means a county, city, or town.

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

"Major modification" means, for the purposes of this chapter, the modification or amendment of an existing permit before its expiration that is not a minor modification as defined in this regulation.

"Major municipal separate storm sewer outfall (or major outfall)" means a municipal separate storm sewer outfall that discharges from a single pipe with an inside diameter of 36 inches or more or its equivalent (discharge from a single conveyance other than circular pipe which is associated with a drainage area of more than 50 acres); or for municipal separate storm sewers that receive stormwater from lands zoned for industrial activity (based on comprehensive zoning plans or the equivalent), with an outfall that discharges from a single pipe with an inside diameter of 12 inches or more or from its equivalent (discharge from other than a circular pipe associated with a drainage area of two acres or more).

"Manmade" means constructed by man.

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

"Maximum extent practicable" or "MEP" means the technology-based discharge standard for municipal separate storm sewer systems established by CWA §402(p). MEP is achieved, in part, by selecting and implementing effective structural and nonstructural best management practices (BMPs) and rejecting BMPs only when the BMPs would not be technically feasible or the cost would be prohibitive and unreasonable. MEP is an iterative standard, which evolves over time as urban runoff management knowledge increases. As such, the operator's MS4 program must continually be assessed and modified to incorporate improved programs, control measures, BMPs, etc., to maintain compliance with water quality standards.

"Medium municipal separate storm sewer system" means all municipal separate storm sewers that are either:

1. Located in an incorporated place with a population of 100,000 or more but less than 250,000 as determined by the ~~latest~~ 1990 decennial census by the Bureau of Census (40 CFR Part 122 Appendix G (2000));
2. Located in the counties listed in 40 CFR Part 122 Appendix I (2000), except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties;
3. Owned or operated by a municipality other than those described in subdivision 1 or 2 of this definition and that are designated by the board as part of the large or medium municipal separate storm sewer system due to the

interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under subdivision 1 or 2 of this definition. In making this determination the board may consider the following factors:

- a. Physical interconnections between the municipal separate storm sewers;
- b. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in subdivision 1 of this definition;
- c. The quantity and nature of pollutants discharged to surface waters;
- d. The nature of the receiving surface waters; or
- e. Other relevant factors.

4. The board may, upon petition, designate as a medium municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a stormwater management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in subdivisions 1, 2 and 3 of this definition.

"Minor modification" means, for the purposes of this chapter, minor modification or amendment of an existing permit before its expiration as specified in 4VAC50-60-640. Minor modification for the purposes of this chapter also means other modifications and amendments not requiring extensive review and evaluation including, but not limited to, changes in EPA promulgated test protocols, increasing monitoring frequency requirements, changes in sampling locations, and changes to compliance dates within the overall compliance schedules. A minor permit modification or amendment does not substantially alter permit conditions, substantially increase or decrease the amount of surface water impacts, increase the size of the operation, or reduce the capacity of the facility to protect human health or the environment.

"Municipal separate storm sewer" means a conveyance or system of conveyances otherwise known as a municipal separate storm sewer system, including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains:

1. Owned or operated by a federal, state, city, town, county, district, association, or other public body, created by or pursuant to state law, having jurisdiction or delegated authority for erosion and sediment control and stormwater management, or a designated and approved management agency under §208 of the CWA that discharges to surface waters;

2. Designed or used for collecting or conveying stormwater;
3. That is not a combined sewer; and
4. That is not part of a publicly owned treatment works.

"Municipal separate storm sewer system" or "MS4" means all separate storm sewers that are defined as "large" or "medium" or "small" municipal separate storm sewer systems or designated under 4VAC50-60-380 A 1.

"Municipal Separate Storm Sewer System Management Program" or "MS4 Program" means a management program covering the duration of a permit for a municipal separate storm sewer system that includes a comprehensive planning process that involves public participation and intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the CWA and regulations and the Virginia Stormwater Management Act and attendant regulations, using management practices, control techniques, and system, design and engineering methods, and such other provisions that are appropriate.

"Municipality" means a city, town, county, district, association, or other public body created by or under state law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under §208 of the CWA.

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

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

1. From which there is or may be a discharge of pollutants;
2. That did not commence the discharge of pollutants at a particular site prior to August 13, 1979;
3. Which is not a new source; and
4. Which has never received a finally effective VPDES or VSMP permit for discharges at that site.

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

and gas exploratory drilling rig or coastal mobile oil and gas developmental drilling rig that commences the discharge of pollutants after August 13, 1979.

"New permit" means, for the purposes of this chapter, a permit issued by the permit-issuing authority to a permit applicant that does not currently hold and has never held a permit of that type, for that activity, at that location.

"New source," means any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

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

"Nonpoint source pollution" means pollution such as sediment, nitrogen and phosphorous, hydrocarbons, heavy metals, and toxics whose sources cannot be pinpointed but rather are washed from the land surface in a diffuse manner by stormwater runoff.

"Nonpoint source pollutant runoff load" or "pollutant discharge" means the average amount of a particular pollutant measured in pounds per year, delivered in a diffuse manner by stormwater runoff.

"Operator" means the owner or operator of any facility or activity subject to regulation under the VSMP program. In the context of stormwater associated with a large or small construction activity, operator means any person associated with a construction project that meets either of the following two criteria: (i) the person has direct operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications or (ii) the person has day-to-day operational control of those activities at a project that are necessary to ensure compliance with a stormwater pollution prevention plan for the site or other permit conditions (i.e., they are authorized to direct workers at a site to carry out activities required by the stormwater pollution prevention plan or comply with other permit conditions).

"Outfall" means, when used in reference to municipal separate storm sewers, a point source at the point where a municipal separate storm sewer discharges to surface waters and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other surface waters and are used to convey surface waters.

"Overburden" means any material of any nature, consolidated or unconsolidated, that overlies a mineral

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deposit, excluding topsoil or similar naturally occurring surface materials that are not disturbed by mining operations.

"Owner" means the Commonwealth or any of its political subdivisions including, but not limited to, sanitation district commissions and authorities, and any public or private institution, corporation, association, firm or company organized or existing under the laws of this or any other state or country, or any officer or agency of the United States, or any person or group of persons acting individually or as a group that owns, operates, charters, rents, or otherwise exercises control over or is responsible for any actual or potential discharge of sewage, industrial wastes, or other wastes to state waters, or any facility or operation that has the capability to alter the physical, chemical, or biological properties of state waters in contravention of §62.1-44.5 of the Code of Virginia, the Act and this chapter.

"Percent impervious" means the impervious area within the site divided by the area of the site multiplied by 100.

"Permit" means an approval issued by the permit-issuing authority for the initiation of a land-disturbing activity or for stormwater discharges from an MS4. Permit does not include any permit that has not yet been the subject of final permit-issuing authority action, such as a draft permit or a proposed permit.

"Permit-issuing authority" means the board, the department, or a locality that is delegated authority by the board to issue, deny, revoke, terminate, or amend stormwater permits under the provisions of the Act and this chapter.

"Permittee" means the person or locality to which the permit is issued, including any operator whose construction site is covered under a construction general permit.

"Person" means any individual, corporation, partnership, ~~firm~~, association, ~~joint venture, public or private or municipal corporation, trust, estate, state, municipality,~~ commission, board, ~~public or private institution, utility, cooperative,~~ county, city, town or other political subdivision of ~~the Commonwealth, any a state, governmental body (including but not limited to a federal, state, or local entity), any interstate or governmental~~ body or any other legal entity.

"Planning area" means a designated portion of the parcel on which the land development project is located. Planning areas shall be established by delineation on a master plan. Once established, planning areas shall be applied consistently for all future projects.

"Point source" means any discernible, confined, and discrete conveyance including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel, or other floating craft from which pollutants are or may be discharged. This term does

not include return flows from irrigated agriculture or agricultural stormwater runoff.

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

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

"Pollution" means such alteration of the physical, chemical or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the State Water Control Board, are "pollution" for the terms and purposes of this chapter.

"Post-development" refers to conditions that reasonably may be expected or anticipated to exist after completion of the land development activity on a specific site or tract of land.

"Pre-development" refers to the conditions that exist at the time that plans for the land development of a tract of land are approved by the plan approval authority. Where phased development or plan approval occurs (preliminary grading, roads and utilities, etc.), the existing conditions at the time prior to the first item being approved or permitted shall establish pre-development conditions.

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

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

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

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

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

"Regional (watershed-wide) stormwater management facility" or "regional facility" means a facility or series of facilities designed to control stormwater runoff from a specific watershed, although only portions of the watershed may experience land development.

"Regional (watershed-wide) stormwater management plan" or "regional plan" means a document containing material describing how runoff from open space, existing development and future planned development areas within a watershed will be controlled by coordinated design and implementation of regional stormwater management facilities.

"Revoked permit" means, for the purposes of this chapter, an existing permit that is terminated by the board before its expiration.

"Runoff coefficient" means the fraction of total rainfall that will appear at a conveyance as runoff.

"Runoff" or "stormwater runoff" means that portion of precipitation that is discharged across the land surface or through conveyances to one or more waterways.

"Sand filter" means a contained bed of sand that acts to filter the first flush of runoff. The runoff is then collected beneath the sand bed and conveyed to an adequate discharge point or infiltrated into the in-situ soils.

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

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

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

"Shallow marsh" means a zone within a stormwater extended detention basin that exists from the surface of the normal pool to a depth of six to 18 inches, and has a large surface area and, therefore, requires a reliable source of baseflow, groundwater supply, or a sizeable drainage area, to maintain the desired water surface elevations to support emergent vegetation.

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

"Single jurisdiction" means, for the purposes of this chapter, a single county or city. The term county includes incorporated towns which are part of the county.

"Site" means the land or water area where any facility or activity is physically located or conducted, a parcel of land being developed, or a designated planning area in which the land development project is located.

"Small construction activity" means:

1. Construction activities including clearing, grading, and excavating that results in land disturbance of equal to or greater than one acre, or equal to or greater than 2,500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations adopted pursuant to the Chesapeake Bay Preservation Act, and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility. The board may waive the otherwise applicable requirements in a general permit for a stormwater discharge from construction activities that disturb less than five acres

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where stormwater controls are not needed based on a "total maximum daily load" (TMDL) approved or established by EPA that addresses the pollutant(s) of concern or, for nonimpaired waters that do not require TMDLs, an equivalent analysis that determines allocations for small construction sites for the pollutant(s) of concern or that determines that such allocations are not needed to protect water quality based on consideration of existing in-stream concentrations, expected growth in pollutant contributions from all sources, and a margin of safety. For the purpose of this subdivision, the pollutant(s) of concern include sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the construction activity. The operator must certify to the board that the construction activity will take place, and stormwater discharges will occur, within the drainage area addressed by the TMDL or equivalent analysis.

2. Any other construction activity designated by the either the board or the EPA regional administrator, based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to surface waters.

"Small municipal separate storm sewer system" or "small MS4" means all separate storm sewers that are (i) owned or operated by the United States, a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under §208 of the CWA that discharges to surface waters and (ii) not defined as "large" or "medium" municipal separate storm sewer systems or designated under 4VAC50-60-380 A 1. This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highway and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.

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

"State" means the Commonwealth of Virginia.

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

"State project" means any land development project that is undertaken by any state agency, board, commission, authority or any branch of state government, including state-supported institutions of higher learning.

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

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

"Stormwater" means precipitation that is discharged across the land surface or through conveyances to one or more waterways and that may include stormwater runoff, snow melt runoff, and surface runoff and drainage.

"Stormwater detention basin" or "detention basin" means a stormwater management facility that temporarily impounds runoff and discharges it through a hydraulic outlet structure to a downstream conveyance system. While a certain amount of outflow may also occur via infiltration through the surrounding soil, such amounts are negligible when compared to the outlet structure discharge rates and are, therefore, not considered in the facility's design. Since a detention facility impounds runoff only temporarily, it is normally dry during nonrainfall periods.

"Stormwater discharge associated with construction activity" means a discharge of pollutants in stormwater runoff from areas where land-disturbing activities (e.g., clearing, grading, or excavation); construction materials or equipment storage or maintenance (e.g., fill piles, borrow area, concrete truck washout, fueling); or other industrial stormwater directly related to the construction process (e.g., concrete or asphalt batch plants) are located.

"Stormwater discharge associated with large construction activity" means the discharge of stormwater from large construction activities.

"Stormwater discharge associated with small construction activity" means the discharge of stormwater from small construction activities.

"Stormwater extended detention basin" or "extended detention basin" means a stormwater management facility that temporarily impounds runoff and discharges it through a hydraulic outlet structure over a specified period of time to a downstream conveyance system for the purpose of water quality enhancement or stream channel erosion control. While a certain amount of outflow may also occur via infiltration through the surrounding soil, such amounts are negligible when compared to the outlet structure discharge rates and, therefore, are not considered in the facility's design. Since an extended detention basin impounds runoff only temporarily, it is normally dry during nonrainfall periods.

"Stormwater extended detention basin-enhanced" or "extended detention basin-enhanced" means an extended

detention basin modified to increase pollutant removal by providing a shallow marsh in the lower stage of the basin.

"Stormwater management facility" means a device that controls stormwater runoff and changes the characteristics of that runoff including, but not limited to, the quantity and quality, the period of release or the velocity of flow.

"Stormwater management plan" means a document containing material for describing how existing runoff characteristics will be maintained by a land-disturbing activity and methods for complying with the requirements of the local program or this chapter.

"Stormwater Management Program" means a program established by a locality that is consistent with the requirements of the Virginia Stormwater Management Act, this chapter and associated guidance documents.

"Stormwater Pollution Prevention Plan" (SWPPP) or "plan" means a document that is prepared in accordance with good engineering practices and that identifies potential sources of pollution that may reasonably be expected to affect the quality of stormwater discharges from the construction site or its associated land-disturbing activities. In addition the document shall describe and ensure the implementation of best management practices, and shall include, but not be limited to the inclusion of, or the incorporation by reference of, an erosion and sediment control plan, a post-construction stormwater management plan, a spill prevention control and countermeasure (SPCC) plan, and other practices that will be used to reduce pollutants in stormwater discharges from land-disturbing activities and to assure compliance with the terms and conditions of this chapter. All plans incorporated by reference into the SWPPP shall be enforceable under the permit issued.

"Stormwater retention basin" or "retention basin" means a stormwater management facility that includes a permanent impoundment, or normal pool of water, for the purpose of enhancing water quality and, therefore, is normally wet, even during nonrainfall periods. Storm runoff inflows may be temporarily stored above this permanent impoundment for the purpose of reducing flooding, or stream channel erosion.

"Stormwater retention basin I" or "retention basin I" means a retention basin with the volume of the permanent pool equal to three times the water quality volume.

"Stormwater retention basin II" or "retention basin II" means a retention basin with the volume of the permanent pool equal to four times the water quality volume.

"Stormwater retention basin III" or "retention basin III" means a retention basin with the volume of the permanent pool equal to four times the water quality volume with the addition of an aquatic bench.

"Subdivision" means the same as defined in §15.2-2201 of the Code of Virginia.

"Surface waters" means:

1. All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide;
2. All interstate waters, including interstate wetlands;
3. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:
  - a. That are or could be used by interstate or foreign travelers for recreational or other purposes;
  - b. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
  - c. That are used or could be used for industrial purposes by industries in interstate commerce.
4. All impoundments of waters otherwise defined as surface waters under this definition;
5. Tributaries of waters identified in subdivisions 1 through 4 of this definition;
6. The territorial sea; and
7. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in subdivisions 1 through 6 of this definition.

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

"Total dissolved solids" means the total dissolved (filterable) solids as determined by use of the method specified in 40 CFR Part 136 (2000).

"Total maximum daily load" or "TMDL" means the sum of the individual wasteload allocations for point sources, load allocations (LAs) for nonpoint sources, natural background loading and usually a safety factor. TMDLs can be expressed in terms of either mass per time, toxicity, or other appropriate measure. The TMDL process provides for point versus nonpoint source trade-offs.

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

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"Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee operator. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

"Variance" means any mechanism or provision under §301 or §316 of the CWA or under 40 CFR Part 125 (2000), or in the applicable effluent limitations guidelines that allows modification to or waiver of the generally applicable effluent limitation requirements or time deadlines of the CWA. This includes provisions that allow the establishment of alternative limitations based on fundamentally different factors or on §301(c), §301(g), §301(h), §301(i), or §316(a) of the CWA.

"Vegetated filter strip" means a densely vegetated section of land engineered to accept runoff as overland sheet flow from upstream development. It shall adopt any natural vegetated form, from grassy meadow to small forest. The vegetative cover facilitates pollutant removal through filtration, sediment deposition, infiltration and absorption, and is dedicated for that purpose.

"Virginia Pollutant Discharge Elimination System (VPDES) permit" or "VPDES permit" means a document issued by the State Water Control Board pursuant to the State Water Control Law authorizing, under prescribed conditions, the potential or actual discharge of pollutants from a point source to surface waters and the use or disposal of sewage sludge.

"Virginia Stormwater Management Act" or "Act" means Article 1.1 (§10.1-603.1 et seq.) of Chapter 6 of Title 10.1 of the Code of Virginia.

"Virginia Stormwater Management Program (VSMP)" means the Virginia program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing requirements pursuant to the federal Clean Water Act, the Virginia Stormwater Management Act, this chapter, and associated guidance documents.

"Virginia Stormwater Management Program (VSMP) permit" means a document issued by the permit-issuing authority pursuant to the Virginia Stormwater Management Act and this chapter authorizing, under prescribed conditions, the potential or actual discharge of pollutants from a point source to surface waters. Under the approved state program, a VSMP permit is equivalent to a NPDES permit.

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

"Wasteload allocation" or "wasteload" or "WLA" means the portion of a receiving surface water's loading or assimilative capacity allocated to one of its existing or future point sources of pollution. WLAs are a type of water quality-based effluent limitation.

"Water quality standards" or "WQS" means narrative statements that describe water quality requirements in general terms, and numeric limits for specific physical, chemical, biological or radiological characteristics of water. These narrative statements and numeric limits describe water quality necessary to meet and maintain reasonable and beneficial uses such as swimming and other water-based recreation, public water supply and the propagation and growth of aquatic life.

"Water quality volume" means the volume equal to the first 1/2 inch of runoff multiplied by the impervious surface of the land development project.

"Watershed" means a defined land area drained by a river or stream or system of connecting rivers or streams such that all surface water within the area flows through a single outlet.

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

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

## **4VAC50-60-1200. Definitions.**

The words and terms used in this part shall have the meanings defined in the Act and this chapter unless the context clearly indicates otherwise, except that for the purposes of this part:

"Date brought on line" means the date when the operator determines that a new stormwater management facility is properly functioning to meet its designed pollutant load reduction.

~~"Infiltration" means water other than wastewater that enters a sewer system (including sewer service connections and foundation drains) from the ground through such means as defective pipes, pipe joints, connections, or manholes. Infiltration does not include, and is distinguished from, inflow.~~

~~"Inflow" means water other than wastewater that enters a sewer system (including sewer service connections) from sources such as, but not limited to, roof leaders, cellar drains, yard drains, area drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers,~~

~~stormwaters, surface runoff, street wash waters, or drainage. Inflow does not include, and is distinguished from, infiltration.~~

"MS4 Program Plan" means the completed registration statement and all approved additions, changes and modifications detailing the comprehensive program implemented by the operator under this permit to reduce the pollutants in the stormwater discharged from its municipal separate storm sewer system (MS4) that has been submitted and accepted by the director.

"Physically interconnected" means that a MS4 directly discharges to a second MS4.

**4VAC50-60-1210. Purpose; delegation of authority; effective date of the permit.**

A. This VSMP general permit regulation governs stormwater discharges from regulated small municipal separate storm sewer systems (regulated small MS4s) to surface waters of the Commonwealth of Virginia.

1. Unless the small MS4 qualifies for a waiver under subdivision 3 of this subsection, ~~owners~~ operators are regulated if they operate a small MS4, including but not limited to systems operated by federal, state, tribal, and local governments, including the Virginia Department of Transportation; and:

a. The small MS4 is located in an urbanized area as determined by the latest Decennial Census by the Bureau of the Census. If the small MS4 is not located entirely within an urbanized area, only the portion that is within the urbanized area is regulated; or

b. The small MS4 is designated by the board, including where the designation is pursuant to 40 CFR Part 123.35 (b)(3) or (b)(4) (2001), or is based upon a petition under 4VAC50-60-380 D.

2. ~~A~~ A small MS4 may be the subject of a petition pursuant to 4VAC50-60-380 D to the board to require a VSMP permit for their discharge of stormwater. If the board determines that ~~an~~ a small MS4 needs a permit and the ~~owner~~ operator applies for coverage under this general permit, the ~~owner~~ operator is required to comply with the requirements of 4VAC50-60-1210.

3. The board may waive the requirements otherwise applicable to a regulated small MS4 if it meets the criteria of subdivision 4 or 5 of this subsection. If a waiver is received under this subsection, the ~~owner~~ operator may subsequently be required to seek coverage under a VSMP permit in accordance with 4VAC50-60-400 C 1 if circumstances change. (See also 40 CFR Part 123.35 (b) (2001))

4. The board may waive permit coverage if the regulated small MS4 serves a population of less than 1,000 within the urbanized area and meets the following criteria:

a. The system is not contributing substantially to the pollutant loadings of a physically interconnected MS4 that is regulated by the VSMP stormwater program; and

b. ~~If pollutants~~ Pollutants are discharged that have been identified as a cause of impairment of any water body to which the regulated small MS4 discharges, but stormwater controls are not needed based on wasteload allocations that are part of a State Water Control Board established and EPA approved "total maximum daily load" (TMDL) that addresses the pollutants of concern.

5. The board may waive permit coverage if the regulated small MS4 serves a population under 10,000 and meets the following criteria:

a. ~~The board~~ State Water Control Board has evaluated all surface waters, including small streams, tributaries, lakes, and ponds, that receive a discharge from the regulated small MS4;

b. For all such waters, the board has determined that stormwater controls are not needed based on wasteload allocations that are part of a State Water Control Board established and EPA approved TMDL that addresses the pollutants of concern or, if a TMDL has not been developed and approved, an equivalent analysis that determines sources and allocations for the pollutants of concern;

c. For the purpose of this subdivision, the pollutants of concern include biochemical oxygen demand (BOD), sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation), pathogens, oil and grease, and any pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the regulated small MS4; and

d. The board has determined that future discharges from the regulated small MS4 do not have the potential to result in exceedances of water quality standards, including impairment of designated uses, or other significant water quality impacts, including habitat and biological impacts.

B. This general permit will become effective on ~~December 9, 2002~~ July 1, 2008, and will expire five years from the effective date.

**4VAC50-60-1220. Authorization to discharge.**

A. Any ~~owner~~ operator governed by this general permit is hereby authorized to discharge stormwater from the regulated small MS4 to surface waters of the Commonwealth of Virginia provided that the ~~owner~~ operator files and receives acceptance of the registration statement of 4VAC50-60-1230

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by the director, ~~and~~ files the permit ~~fee~~ fees required by Part XIII (4VAC50-60-700 et seq.) of this chapter, and provided that the ~~owner~~ operator shall not have been required to obtain an individual permit according to 4VAC50-60-410 B.

B. The ~~owner~~ operator shall not be authorized by this general permit to discharge to state waters specifically named in other State Water Control Board or board regulations or policies that prohibit such discharges.

C. Nonstormwater discharges or flows into the regulated small MS4 are authorized by this permit and do not need to be addressed in the ~~Stormwater Management~~ MS4 Program required under 4VAC50-60-1240, Section II B 3, if:

1. The nonstormwater discharges or flows are covered by a separate individual or general VPDES or VSMP permit for nonstormwater discharges; ~~or~~

2. The individual nonstormwater discharges or flows have been identified in writing by the Department of Environmental Quality as de minimis discharges that are not significant sources of pollutants to state waters and do not require a VPDES permit;

3. Nonstormwater discharges or flows in the following categories have not been identified by the ~~permittee~~ operator, State Water Control Board, or by the board as significant contributors of pollutants to the regulated small MS4: water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration, uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, street wash water, and discharges or flows from fire fighting activities; ~~or~~

4. The discharge of materials resulting from a spill is necessary to prevent loss of life, personal injury, or severe property damage. The operator shall take, or ensure that the responsible party takes, all reasonable steps to minimize or prevent any adverse effect on human health or the environment. This permit does not transfer liability for a spill itself from the party(ies) responsible for the spill to the operator nor relieve the party(ies) responsible for a spill from the reporting requirements of 40 CFR Part 117 and 40 CFR Part 302 (2001).

In the event the operator is unable to meet certain conditions of this permit due to circumstances beyond the operator's control, a written explanation of the circumstances that prevented permit compliance shall be submitted to the department in the annual report. Circumstances beyond the control of the operator may include abnormal climatic conditions; weather conditions that make certain requirements unsafe or impracticable; or unavoidable equipment failures

caused by weather conditions or other conditions beyond the reasonable control of the operator (operator error is not a condition beyond the control of the operator). The failure to provide adequate program funding, staffing or equipment maintenance shall not be an acceptable explanation for failure to meet permit conditions. The board will determine, at its sole discretion, whether the reported information will result in an enforcement action.

D. Discharges that are excluded from obtaining a VSMP permit pursuant to 4VAC50-60-300 are exempted from the regulatory requirements of this permit.

E. Pursuant to 40 CFR Part 122.34 (c) (2001), for those portions of a regulated small MS4 that are covered under a VPDES permit for industrial stormwater discharges, the operator shall follow the conditions established under the VPDES permit. Upon termination of VPDES permit coverage, discharges from previously VPDES authorized outfalls shall meet the conditions of this permit provided it has been determined by the board that an individual MS4 permit is not required.

F. Stormwater discharges from specific MS4 outfalls that have been granted conditional exclusion for "no exposure" of industrial activities and materials to stormwater under the VPDES permitting program shall obtain coverage under this VSMP general permit. The Department of Environmental Quality is responsible for determining compliance with the conditional exclusion under the State Water Control Law and attendant regulations.

~~D. G.~~ Receipt of this VSMP general permit does not relieve any ~~owner~~ operator of the responsibility to comply with any other applicable federal, state or local statute, ordinance or regulation.

## **4VAC50-60-1230. Permit application (registration statement).**

A. Deadline for submitting a registration statement

~~1. Owners of regulated small MS4's designated under 4VAC50-60-1210 A 1 a, that are applying for coverage under this VSMP general permit must submit a complete Registration Statement to the department by March 10, 2003, unless the MS4 serves a jurisdiction with a population under 10,000 and the board has established a schedule for phasing in permit coverage with a final deadline of March 8, 2007.~~

~~2. Owners~~ 1. Operators of regulated small MS4's MS4s designated under 4VAC50-60-1210 A 1 b, that are applying for coverage under this VSMP general permit must submit a complete registration statement to the department within 180 days of notice of designation, unless the board grants a later date.

2. In order to continue uninterrupted coverage under the VSMP general permit, operators of regulated small MS4s

shall submit a new registration statement at least 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.

B. Registration statement.

The registration statement shall include the following information:

1. The name and location (county or city name) of the regulated small MS4 for which the registration statement is submitted;
2. The name, type (city, county, incorporated town, unincorporated town, college or university, local school board, military installation, transportation system, federal or state facility, or other), and address, and telephone number of the owner operator of the regulated small MS4;
3. The name(s) of the receiving water(s) Hydrologic Unit Code(s) as identified in the most recent version of Virginia's 6th Order National Watershed Boundary Dataset (available online at <http://www.dcr.virginia.gov/soil & water/hu.shtml>) currently receiving discharges or that have potential to receive discharges from the regulated small MS4;
4. The best management practices (BMPs) that the owner or another entity proposes to implement for each of the stormwater minimum control measures at 4VAC50-60-1240, Section II B The estimated drainage area, in acres, served by the regulated small MS4 discharging to any impaired receiving surface waters listed in the most recent Virginia 305(b)/303(d) Water Quality Assessment Integrated Report, and a description of the land use for each such drainage area;
5. The measurable goals for each of the BMPs including, as appropriate, the years in which the required actions will be undertaken, including interim milestones and the frequency of the action; and A listing of any TMDL wasteloads allocated to the regulated small MS4. This information may be found at: <http://www.deq.state.va.us/tmdl/develop.html>;
6. The person or persons responsible for implementing or coordinating the stormwater management program. The name(s) of any regulated physically interconnected MS4s to which the regulated small MS4 discharges;
7. A copy of the MS4 Program Plan that includes:
  - a. A list of best management practices (BMPs) that the operator proposes to implement for each of the stormwater minimum control measures and their associated measurable goals pursuant to 4VAC50-60-1240, Section II B, that includes:

(1) A list of the existing policies, ordinances, schedules, inspection forms, written procedures, and other documents necessary for best management practice implementation; and

(2) The individual, department, division, or unit responsible for implementing the best management practices;

b. The objective and expected results of each best management practice in meeting the measurable goals of the stormwater minimum control measures;

c. The implementation schedule including any interim milestones for the implementation of a proposed new best management practice; and

d. The method that will be utilized to determine the effectiveness of each best management practice and the MS4 Program as a whole;

8. A list of all existing signed agreements between the operator and any applicable third parties where the operator has entered into an agreement in order to implement minimum control measures or portions of minimum control measures;

9. The name, address, telephone number and email address of either the principal executive officer or ranking elected official as defined in 4VAC50-60-370;

10. The name, position title, address, telephone number and email address of any duly authorized representative as defined in 4VAC50-60-370; and

7. 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."

C. The registration statement shall be signed by the principal executive officer or ranking elected official in accordance with 4VAC50-60-370.

D. An owner operator may file his its own registration statement, or the owner operator and other municipalities or governmental entities operators of regulated small MS4s may jointly submit a registration statement. If responsibilities for meeting the stormwater minimum control measures will be shared with other municipalities or governmental entities, the registration statement must describe which stormwater minimum control measures the owner operator will

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implement and identify the entities that will implement the other stormwater minimum control measures within the area served by the regulated small MS4.

E. Where to submit. The registration statement shall be submitted to ~~DCR's Urban Program's Section of the Division of Soil and Water Conservation~~ :

Department of Conservation and Recreation

Division of Soil and Water Conservation

Stormwater Permitting

203 Governor Street, Suite 206

Richmond, VA 23219

## **4VAC50-60-1240. General permit.**

Any ~~owner~~ operator whose registration statement is accepted by the director will receive coverage under the following permit and shall comply with the requirements therein and be subject to all applicable requirements of the Virginia Stormwater Management Act (~~Chapter 6~~, (Article 1.1 (§10.1-603.1 et seq.) of Chapter 6 of Title 10.1 of the Code of Virginia) and the Virginia Stormwater Management Program (VSMP) Permit Regulations (4VAC50-60).

General Permit No.: ~~DCR02 VAR04~~

Effective Date: ~~December 9, 2002~~ July 1, 2008

Expiration Date: ~~December 9, 2007~~ June 30, 2013

### GENERAL PERMIT FOR STORMWATER DISCHARGES OF STORMWATER FROM SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEMS

### AUTHORIZATION TO DISCHARGE UNDER THE VIRGINIA STORMWATER MANAGEMENT PROGRAM AND THE VIRGINIA STORMWATER MANAGEMENT ACT

In compliance with the provisions of the Clean Water Act, as amended and pursuant to the Virginia Stormwater Management Act and regulations adopted pursuant thereto, this permit authorizes operators of small municipal separate storm sewer systems to discharge to surface waters within the boundaries of the Commonwealth of Virginia, except those waters specifically named in State Water Control Board and Virginia Soil and Water Conservation Board regulations or policies which prohibit such discharges.

The authorized discharge shall be in accordance with this cover page, Section I—Discharge Authorization and Special Conditions, ~~Section II—Stormwater Management~~ Section II—MS4 Program and Section III—Conditions Applicable To All VSMP Permits, as set forth herein.

## SECTION I

### DISCHARGE AUTHORIZATION AND SPECIAL CONDITIONS

A. Coverage under this permit. During the period beginning with the date of coverage under this general permit and lasting until the permit's expiration date, the permittee operator is authorized to discharge stormwater from the small municipal separate storm sewer system identified in the registration statement.

B. Special Conditions. A total maximum daily load (TMDL) approved by the State Water Control Board may include a wasteload allocation to the regulated small MS4 that identifies the pollutant for which stormwater controls are necessary for the surface waters to meet water quality standards. The pollutant identified in a wasteload allocation as of the effective date of this permit must be addressed through the measurable goals of the MS4 Program Plan. A wasteload allocation does not establish that the operator of a regulated small MS4 is out of compliance with the conditions of this permit.

~~1. Total Maximum Daily Load (TMDL) allocations. If a TMDL is approved for any waterbody into which the small MS4 discharges, the board will review the TMDL to determine whether the TMDL includes requirements for control of stormwater discharges. If discharges from the MS4 are not meeting the TMDL allocations, the board will notify the permittee of that finding and may require that the Stormwater Management Program required in Section II be modified to implement the TMDL within a timeframe consistent with the TMDL. Any such new requirement will constitute a case decision by the board.~~

~~2. Releases of hazardous substances or oil in excess of reportable quantities. The discharge of hazardous substances or oil in the stormwater discharge(s) from the small MS4 shall be prevented or minimized to the maximum extent practicable in accordance with the applicable Stormwater Management Program required in Section II. Where a release containing a hazardous substance or oil in an amount equal to or in excess of a reportable quantity established under either 40 CFR Part 110 (2002), 40 CFR Part 117 (2002) or 40 CFR Part 302 (2002) occurs during a 24 hour period, the permittee is required to notify the Department of Environmental Quality and the Department of Conservation and Recreation in accordance with the requirements of Section III-G as soon as he has knowledge of the discharge. In addition, the Stormwater Management Program required under Section II of this permit must be reviewed to identify measures to prevent the reoccurrence of such releases and to respond to such releases, and the program must be modified where appropriate. This permit does not relieve the permittee of the reporting requirements of 40 CFR Part~~

110 (2001), 40 CFR Part 117 (2001) and 40 CFR Part 302 (2001) or §62.1-44.34:19 of the Code of Virginia.

1. The operator shall update its MS4 Program Plan to include measurable goals, schedules, and strategies to ensure MS4 Program consistency with the TMDL within 18 months of permit coverage; or, within 18 months of the effective date of any reopening of this permit to include wasteloads allocated to the regulated small MS4 after issuance of permit coverage.

2. The measurable goals, schedules, strategies, and other best management practices (BMPs), required in an updated MS4 Program Plan to assure MS4 Program consistency with an approved TMDL for the pollutant identified in a WLA are, at a minimum:

a. The operator shall develop a list of its current ordinances and legal authorities, policies, plans, procedures and contracts implemented as part of the MS4 Program that are applicable to reducing the pollutant identified in a WLA.

b. The operator shall evaluate existing ordinances and legal authorities, policies, plans, procedures and contracts of the existing MS4 Program to determine the effectiveness of the MS4 Program to address reduction of the pollutant identified in the WLA. The evaluation shall identify any weakness or limitation in the MS4 Program to reduce the pollutant identified in the WLA in a manner consistent with the TMDL.

c. The operator shall develop a schedule to implement procedures and strategies to address the MS4 Program weaknesses including a timetable to update the existing ordinances and legal authorities, policies, plans, procedures and contracts to ensure consistency with the TMDL. When possible, source elimination shall be prioritized over load reduction.

3. The operator shall implement the schedule established in Section I B 2 c.

4. The operator shall integrate an awareness campaign into its existing public education and outreach program that promotes methods to eliminate and reduce discharges of the pollutant identified in the WLA. This may include additional employee training regarding the sources and methods to eliminate and minimize the discharge of the pollutant identified in the WLA.

5. The operator is encouraged to participate as a stakeholder in the development of any implementation plans developed to address the TMDL and shall incorporate applicable best management practices identified in the TMDL implementation plan in their MS4 Program Plan.

6. The operator shall develop and implement outfall reconnaissance procedures to identify and eliminate the

discharge of the pollutant identified in the WLA from anthropogenic activities. The operator shall annually conduct reconnaissance on a minimum of 15% of its known MS4 outfalls discharging to the surface water for which the WLA has been assigned. Reconnaissance shall be performed on all outfalls at least once during this permit period. The department recommends that the operator review the publication entitled "Illicit Discharge Detection and Elimination: A Guidance Manual for Program Development and Technical Assessments," EPA cooperative agreement number X-82907801-0, for guidance in implementing its outfall reconnaissance procedures.

7. The operator shall evaluate all properties owned or operated by the MS4 operator for potential sources of the pollutant identified in the WLA. Within three years of updating the MS4 Program Plan, the operator shall conduct a site evaluation and characterize the runoff for those properties where it determines that the pollutant identified in the WLA is currently stored, or has been transferred, transported or historically disposed of in a manner that would expose it to precipitation in accordance with the following schedule:

a. The operator shall collect a total of two samples from a representative outfall for each identified municipal property during each of the following six-month periods: October through March, and April through September.

b. All collected samples shall be grab samples and collected within the first 30 minutes of a runoff producing event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previous measurable (greater than 0.1 inch rainfall) storm event. The required 72-hour storm event interval is waived where the preceding measurable storm event did not result in a measurable discharge from the property. The required 72-hour storm event interval may also be waived where the operator documents that less than a 72-hour interval is representative for local storm events during the season when sampling is being conducted. Analytical methods shall be conducted according to procedures approved under 40 CFR Part 136 or alternative methods approved by the Environmental Protection Agency (EPA). Where an approved 40 CFR Part 136 method does not exist, the operator must use a method consistent with the TMDL.

c. For properties where there is found to be a discharge of the pollutant identified in the WLA, the operator shall develop and implement a schedule to minimize the discharge of the pollutant identified in the WLA in a manner consistent with the approved TMDL.

8. The operator shall conduct an annual characterization that estimates the volume of stormwater discharged, in gallons, and the quantity of pollutant identified in the

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WLA, in a unit consistent with the WLA, discharged by the regulated small MS4.

9. As part of the annual evaluation, the operator shall update the MS4 Program Plan to include any new information regarding the TMDL in order to ensure consistency with the TMDL.

10. Along with reporting requirements in Section II E, the operator shall include the following with each annual report:

a. Copies of any updates to the MS4 Program Plan completed during the reporting cycle and any new information regarding the TMDL in order to evaluate its ability to assure the consistency of its discharge with the WLA.

b. The estimate of the volume of stormwater discharged, in gallons, and the quantity of pollutant identified in the WLA, in a unit consistent with the WLA discharged by the regulated small MS4 for each WLA.

## SECTION II

### ~~STORMWATER~~ MUNICIPAL SEPARATE STORM SEWER SYSTEM MANAGEMENT PROGRAM

A. ~~The permittee operator of a regulated small MS4 must develop, implement, and enforce a stormwater management program~~ MS4 Program designed to reduce the discharge of pollutants from the regulated small MS4 to the maximum extent practicable (MEP), to protect water quality, to improve waters that the regulated small MS4 discharges into that are identified as impaired in the 2006 305(b)/303(d) Water Quality Assessment Integrated Report (<http://www.deq.state.va.us/wqa/ir2006.html>), and to satisfy the appropriate water quality requirements of the Clean Water Act and regulations and the Virginia Stormwater Management Act and attendant regulations. ~~The stormwater management program~~ MS4 Program must include the minimum control measures described in paragraph B of this section. For purposes of this section, narrative effluent limitations requiring implementation of best management practices (BMPs) are generally the most appropriate form of effluent limitations when designed to satisfy technology requirements (including reductions of pollutants to the maximum extent practicable) and to protect water quality. Implementation of best management practices consistent with the provisions of the ~~stormwater management program~~ MS4 Program required pursuant to this ~~Part~~ section constitutes compliance with the standard of reducing pollutants to the "maximum extent practicable." ~~The stormwater management program must be developed and implemented in accordance with the Act by July 1, 2006, or by a later date if specified by the board, and protects water quality in the absence of a TMDL wasteload allocation. The requirements of this section and those special conditions set out in Section I B also apply where a WLA is applicable.~~

Within 180 days of the effective date of this general permit, the operator shall review its existing MS4 Program Plan and submit a schedule to develop and implement programs to meet the conditions established by this permit. For operators of regulated small MS4s that are applying for initial coverage under this general permit, the schedule to develop and implement the MS4 Program Plan shall be submitted with the completed registration statement.

Prior to submittal of the MS4 Program Plan and proposed schedule to the department, each operator must provide public notification and provide for receipt of public comments. Public notice shall allow at least 30 days for public comment. Public notice shall be given by any method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation. Copies of all comments received shall be submitted with the proposed schedule to the department.

#### B. Minimum control measures.

1. Public education and outreach on stormwater impacts. Implement a public education program to distribute educational materials to the community or conduct equivalent outreach activities about the impacts of stormwater discharges on water bodies and the steps that the public can take to reduce pollutants in stormwater runoff. The operator may review the Environmental Protection Agency (EPA) publication entitled "Getting in Step: A Guide for Conducting Watershed Outreach Campaigns," publication number EPA 841-B-03-002, for guidance in developing a public education program.

The operator shall identify, schedule, implement, evaluate and modify, as necessary, BMPs to meet the following public education and outreach measurable goals:

a. Increased individual and household knowledge about the steps that they can take to reduce stormwater pollution, placing priority on reducing impacts to impaired waters and other local water pollution concerns;

b. Increased public employee, business, and general public knowledge of hazards associated with illegal discharges and improper disposal of waste, including pertinent legal implications;

c. Increased individual and group involvement in local water quality improvement initiatives including the promotion of local restoration and clean up projects, programs, groups, meetings and other opportunities for public involvement;

d. Increased range of diverse strategies to target audiences specific to the area serviced by the regulated small MS4;

e. Improved outreach program to address viewpoints and concerns of target audiences, particularly minority and

disadvantaged audiences as well as special concerns relating to children; and

f. Targeted strategies towards local groups of commercial, industrial, and institutional entities likely to have significant stormwater impacts.

2. Public involvement/participation. At a minimum, comply with applicable state, tribal, and local public notice requirements when implementing the ~~stormwater management program~~ MS4 Program.

The operator shall identify, schedule, implement, evaluate and modify, as necessary, BMPs to meet the following public involvement/participation measurable goals:

a. Promote the availability of the operator's MS4 Program Plan for public review and comment. Provide access to or copies of the MS4 Program Plan upon request of interested parties in compliance with all applicable freedom of information regulations;

b. Provide access to or copies of the annual report upon request of interested parties in compliance with all applicable freedom of information regulations; and

c. Participate, through promotion, sponsorship, or other involvement, in local activities aimed at increasing public participation to reduce stormwater pollutant loads and improve water quality.

3. Illicit discharge detection and elimination. The MS4 Program shall:

a. Develop, implement and enforce a program to detect and eliminate illicit discharges, as defined at 4VAC50-60-1200 4VAC50-60-10, into the regulated small MS4. The department recommends that the operator review the publication entitled "Illicit Discharge Detection and Elimination: A Guidance Manual for Program Development and Technical Assessments," Environmental Protection Agency (EPA) cooperative agreement number X-82907801-0, for guidance in implementing and evaluating its illicit discharge detection and elimination program;

b. ~~(1)~~ Develop, if not already completed, and maintain, an updated a storm sewer system map, showing the location of all major known outfalls of the regulated small MS4 including those physically interconnected to a regulated MS4, the associated HUCs, and the names and location locations of all impaired surface waters that receive discharges from those outfalls. The operator shall also estimate the acreage within the regulated small MS4 discharging to each HUC and impaired water;

~~(2)~~ c. To the extent allowable under state, tribal or local law or other regulatory mechanism, effectively prohibit, through ordinance, or other regulatory mechanism, nonstormwater discharges into the storm sewer system

and implement appropriate enforcement procedures and actions;

The following categories of nonstormwater discharges or flows (i.e., illicit discharges) must be addressed only if they are identified by the operator, the State Water Control Board, or by the board as significant contributors of pollutants to the regulated small MS4: water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration, uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, street wash water, discharges or flows from fire fighting activities, and flows that have been identified in writing by the Department of Environmental Quality as de minimis discharges that are not significant sources of pollutants to state waters and not requiring a VPDES permit;

~~(3)~~ d. Develop and implement a plan procedures to detect and address nonstormwater discharges, including illegal dumping, to the system regulated small MS4; and

~~(4)~~ Inform public employees, businesses, and the general public of hazards associated with illegal discharges and improper disposal of waste.

~~e. The following categories of nonstormwater discharges or flows (i.e., illicit discharges) must be addressed only if they are identified by the permittee or by the board as significant contributors of pollutants to the small MS4: water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration, uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, street wash water, and discharges or flows from fire fighting activities.~~

e. Prevent or minimize to the maximum extent practicable, the discharge of hazardous substances or oil in the stormwater discharge(s) from the regulated small MS4. In addition, the MS4 Program must be reviewed to identify measures to prevent the recurrence of such releases and to respond to such releases, and the program must be modified where appropriate. This permit does not relieve the operator or the responsible part(ies) of any reporting requirements of 40 CFR Part 110 (2001), 40 CFR Part 117 (2001) and 40 CFR Part 302 (2001) or §62.1-44.34:19 of the Code of Virginia;

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f. Track the number of illicit discharges identified, provide narrative on how they were eliminated, and submit the information in accordance with Section II E 2; and

g. Notify, in writing, any downstream regulated MS4 to which the small regulated MS4 is physically interconnected of the small regulated MS4's connection to that system.

#### 4. Construction site stormwater runoff control.

a. ~~Develop~~ The operator shall develop, implement, and enforce a program procedures to reduce pollutants in any stormwater runoff to the regulated small MS4 from construction activities that result in a land disturbance of greater than or equal to one acre or equal to or greater than 2,500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations adopted pursuant to the Chesapeake Bay Preservation Act. Additionally, reduction of stormwater discharges from construction activity disturbing less than one acre must be included in the program if that construction activity is part of a larger common plan of development or sale that would disturb one acre or more. ~~If the board waives requirements for stormwater discharges associated with small construction activity in accordance with the definition in 4VAC50-60-10, the permittee is not required to develop, implement, and/or enforce a program to reduce pollutant discharges from such sites.~~

b. ~~The program procedures~~ must include the development and implementation of, at a minimum:

(1) An ordinance or other ~~regulatory~~ mechanism to require erosion and sediment controls, as well as sanctions to ensure compliance with the Erosion and Sediment Control Law and attendant regulations, to the extent allowable under state, tribal, or local law. Such ordinances and other mechanisms shall be updated as necessary;

(2) Requirements for construction site operators to implement ~~appropriate erosion and sediment control best management practices~~ an erosion and sediment control plant that is consistent with the Erosion and Sediment Control Law and attendant regulations and other applicable requirements of state, tribal, or local law;

(3) Requirements for construction site operators to ~~control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality; or procedures to ensure that construction site operators have secured or will secure authorization to discharge stormwater from construction activities under a VSMP construction permit for construction activities that result in a land disturbance of~~

greater than or equal to one acre or equal to or greater than 2,500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations adopted pursuant to the Chesapeake Bay Preservation Act. Additionally, reduction of stormwater discharges from construction activity disturbing less than one acre must be included in the procedures if that construction activity is part of a larger common plan of development or sale that would disturb one acre or more;

~~(4) Procedures for site plan review which incorporate consideration of potential water quality and quantity impacts and ensures compliance with the Chesapeake Bay Preservation Act as implemented in Tidewater Virginia localities;~~

~~(5)~~ (4) Procedures for receipt and consideration of information submitted by the public; and

~~(6)~~ (5) Procedures for site inspection and enforcement of control measures.

b. The operator shall ensure that plan reviewers, inspectors, program administrators and construction site operators obtain the appropriate certifications as required under the Erosion and Sediment Control Law;

c. ~~Track~~ The operator shall track regulated land-disturbing activities and submit the following information for the reporting period ~~with the annual report required in accordance with~~ Section II E 2:

(1) Total number of regulated land-disturbing activities; and

(2) Total disturbed acreage.

#### 5. Post-construction stormwater management in new development and redevelopment.

a. ~~Develop~~ The operator shall develop, implement, and enforce a program procedures to address stormwater runoff to the regulated small MS4 from new development and redevelopment projects that disturb greater than or equal to one acre or equal to or greater than 2,500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations adopted pursuant to the Chesapeake Bay Preservation Act, including projects less than one acre that are part of a larger common plan of development or sale, that discharge into the regulated small MS4. The ~~program procedures~~ must ensure that controls are in place that would prevent or minimize water quality and quantity impacts in accordance with this section.

b. The operator shall:

(1) Develop and implement strategies which include a combination of structural and/or nonstructural best

management practices (BMPs) appropriate for ~~your~~ the local community. The operator shall encourage the use of low-impact development where determined appropriate by the operator;

(2) Use an ordinance or other ~~regulatory~~ mechanism to address post-construction runoff from new development and redevelopment projects to ensure compliance with the Virginia Stormwater Management Act (§10.1-603.1 et seq. of the Code of Virginia) and attendant regulations, and to the extent allowable under state, tribal or local law. Such ordinances and other mechanisms shall be updated as necessary; and

(3) Require construction site operators to secure authorization to discharge stormwater from construction activities under a VSMP permit for new development and redevelopment projects that result in a land disturbance of greater than or equal to one acre or equal to or greater than 2,500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations adopted pursuant to the Chesapeake Bay Preservation Act. Additionally, reduction of stormwater discharges from construction activity disturbing less than one acre must be included in the procedures if that construction activity is part of a larger common plan of development or sale that would disturb one acre or more;

~~(3)~~ (4) Ensure adequate long-term operation and maintenance by the owner of BMPs structural stormwater management facilities through requiring the owner to develop a recorded inspection schedule and maintenance agreement or some other mechanism that achieves an equivalent objective. The operator shall additionally develop, through the maintenance agreement or other method, a mechanism for enforcement of maintenance responsibilities by the operator if they are neglected by the owner;

(5) Conduct site inspection and enforcement measures consistent with the Virginia Stormwater Management Act and attendant regulations;

(6) Track number of acres per HUC developed utilizing low-impact development principles; and

~~(4)~~ (7) If the MS4 discharges to the Chesapeake Bay watershed, track Track all known permanent BMP's installed in the MS4 (structural and nonstructural), stormwater management facilities that discharge to the regulated small MS4 and submit the following information with the annual report required in accordance with Section II E 2:

(a) Type of BMP structural stormwater management facility installed as defined in the Virginia Stormwater Management Handbook;

(b) Geographic location (Hydrologic Unit Code) (HUC);

(c) Waterbody Where applicable, the impaired surface water that the BMP stormwater management facility is discharging into; and

(d) Number of acres treated to the nearest one-tenth acre;

~~(e) Whether the BMP is inspected or maintained; and~~

~~(f) How often the BMP is maintained (quarterly, annually, etc.);~~

6. Pollution prevention/good housekeeping for municipal operations. Develop and implement an operation and maintenance program that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations. Using training materials that are including those available from EPA, state, tribe, or other organizations, the program must shall include employee training to prevent and reduce stormwater pollution from activities such as park and open space maintenance, fleet and building maintenance, new construction and land disturbances, and stormwater system MS4 maintenance. The operator is encouraged to review the Environmental Protection Agency's (EPA's) National Menu of Stormwater Best Management Practices for ideas and strategies to incorporate into its program. The menu can be accessed at <http://cfpub.epa.gov/npdes/stormwater/menuofbmps/index.cfm>.

a. The operator shall identify, implement, evaluate and modify, as necessary, BMPs to meet the following pollution prevention/good housekeeping for municipal operations measurable goals:

(1) Operation and maintenance programs including activities, schedules, and inspection procedures shall include provisions and controls to reduce pollutant discharges into the regulated small MS4;

(2) Illicit discharges shall be eliminated from storage yards, fleet or maintenance shops, outdoor storage areas, rest areas, waste transfer stations, and other municipal facilities;

(3) Waste materials shall be disposed of properly;

(4) Materials that are soluble or erodible shall be protected from exposure to precipitation;

(5) Materials, including but not limited to fertilizers and pesticides, that have the potential to pollute receiving surface waters shall be applied according to manufacturer's recommendations; and

(6) For state agencies with lands where nutrients are applied, nutrient management plans shall be developed and implemented in accordance with the requirements of §10.1-104.4 of the Code of Virginia.

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~~C. Qualifying state, tribal or local program.~~ If an existing ~~qualifying local~~ program requires the implementation of one or more of the minimum control measures of Section II B, the ~~permittee operator, with the approval of the board,~~ may follow that ~~qualifying~~ program's requirements rather than the requirements of Section II B. A ~~qualifying local~~ program is ~~that may be considered includes, but is not limited to,~~ a local, state or tribal ~~municipal stormwater management~~ program that imposes, at a minimum, the relevant requirements of Section II B.

The ~~permittee's stormwater management program must~~ operator's MS4 Program Plan shall identify and fully describe any ~~qualifying local~~ program that will be used to satisfy one or more of the minimum control measures of Section II B.

If the ~~qualifying local~~ program the ~~permittee operator~~ is using requires the approval of a third party, the program must be fully approved by the third party, or the ~~permittee operator~~ must be working towards getting full approval. Documentation of the ~~qualifying local~~ program's approval status, or the progress towards achieving full approval, must be included in the annual report required by Section II E 2.

~~D. Sharing responsibility.~~ The ~~permittee operator~~ may rely on another entity to satisfy the VSMP permit obligations to implement a minimum control measure if: (i) the other entity, in fact, implements the control measure; (ii) the particular control measure, or component thereof, is at least as stringent as the corresponding VSMP permit requirement; and (iii) the other entity agrees to implement the control measure on behalf of the ~~permittee operator~~. The agreement between the parties must be documented in writing and retained by the ~~permittee operator~~ with the ~~Stormwater Management MS4 Program Plan~~ for the duration of this permit.

In the annual reports that must be submitted under Section II E 2, the ~~permittee operator~~ must specify that another entity is being relied on to satisfy some of the permit obligations.

If the ~~permittee operator~~ is relying on another governmental entity regulated under 4VAC50-60-380 to satisfy all of the permit obligations, including the obligation to file periodic reports required by Section II E 2, the ~~permittee operator~~ must note that fact in the registration statement, but is not required to file the periodic reports.

The ~~permittee operator~~ remains responsible for compliance with the permit obligations if the other entity fails to implement the control measure (or component thereof).

## E. Evaluation and assessment.

### 1. Evaluation.

~~a. The permittee operator must annually evaluate:~~

~~program (1) Program~~ compliance,

~~the (2) The~~ appropriateness of the identified best management practices BMPs, and

~~progress (3) Progress~~ towards achieving the identified measurable goals.

~~b. The operator must evaluate its MS4 Program once during the permit cycle using the "Municipal Stormwater Program Evaluation Guidance," Environmental Protection Agency EPA-833-R-07-003. Such information shall be utilized when reapplying for permit coverage. Results of this evaluation shall be kept on file and made available during audits and inspections.~~

2. Annual reports. The ~~permittee operator~~ must submit an annual report ~~for the reporting period of July 1 through June 30~~ to the director by ~~the annual anniversaries of the date of coverage under this permit~~ the following October 1. The reports ~~must shall~~ include:

a. The status of compliance with permit conditions, an assessment of the appropriateness of the identified best management practices and progress towards achieving the identified measurable goals for each of the minimum control measures;

b. Results of information collected and analyzed, including monitoring data, if any, during the reporting period;

c. A summary of the stormwater activities the ~~permittee operator~~ plans to undertake during the next reporting cycle;

d. A change in any identified best management practices or measurable goals for any of the minimum control measures;

e. Notice that the ~~permittee operator~~ is relying on another government entity to satisfy some of the permit obligations (if applicable), ~~and;~~

f. The approval status of any ~~qualifying local~~ programs pursuant to Section II C (if appropriate), or the progress towards achieving full approval of these programs;

~~g. Information required pursuant to Section I B 10;~~

~~h. The number of illicit discharges identified and the narrative on how they were eliminated pursuant to Section II B 3 f;~~

~~i. Regulated land-disturbing activities data tracked under Section II 4 c;~~

~~j. All known permanent stormwater management facility data tracked under Section II B 5 b (6) and (7) submitted in a database format to be prescribed by the department. Upon filing of this list, subsequent reports shall only include those new stormwater management facilities that have been brought online; and~~

~~k. A list of any new or terminated signed agreements between the operator and any applicable third parties where the operator has entered into an agreement in order~~

to implement minimum control measures or portions of minimum control measures.

F. Program Plan modifications. The ~~department board~~ may require modifications to the ~~Stormwater Management MS4 Program Plan~~ as needed to address adverse impacts on receiving surface water quality caused, or contributed to, by discharges from the regulated small MS4. Modifications ~~requested~~ required by the ~~department board~~ shall be made in writing and set forth the time schedule to develop and implement the modification. The permittee operator may propose alternative program modifications and time schedules to meet the objective of the ~~requested~~ required modification. The ~~department board~~ retains the authority to require any modifications it determines are necessary.

SECTION III

CONDITIONS APPLICABLE TO ALL VSMP PERMITS

~~NOTE: Monitoring is not required for this permit. If you choose to monitor your stormwater discharges or BMP's in support of your Stormwater Management Program, you must comply with the requirements of subsections A, B, and C, as appropriate.~~

A. Monitoring.

1. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
2. Monitoring shall be conducted according to procedures approved under 40 CFR Part 136 (2001) or alternative methods approved by the U.S. Environmental Protection Agency, unless other procedures have been specified in this permit.
3. The permittee operator shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will insure accuracy of measurements.

B. Records.

1. ~~Records of monitoring information~~ Monitoring records/reports 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. The permittee operator 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 operator, or as requested by the board.

C. Reporting monitoring results.

1. The permittee operator shall submit the results of the monitoring required by this permit ~~not later than the 10th day of the month after monitoring takes place, with the annual report~~ unless another reporting schedule is specified elsewhere in this permit. ~~Monitoring results shall be submitted to the department's Urban Program's Section of the Division of Soil and Water Conservation.~~
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 operator monitors any pollutant specifically addressed by this permit more frequently than required by this permit using test procedures approved under 40 CFR Part 136 (2001) 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 that require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this permit.

D. Duty to provide information. The permittee operator shall furnish to the department, within a reasonable time, any information that 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 operator 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 surface waters, or such other information as may be necessary to accomplish the purposes of the CWA and Virginia Stormwater Management Act. The permittee operator 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.

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F. Unauthorized discharges. Except in compliance with this permit, or another permit issued by the board or State Water Control Board, it shall be unlawful for any person to:

1. Discharge into state surface 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 surface waters and make them detrimental to the public health, or to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, or for recreation, or for other uses.

G. Reports of unauthorized discharges. Any permittee operator of a regulated small MS4 who discharges or causes or allows a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance or a hazardous substance or oil in an amount equal to or in excess of a reportable quantity established under either 40 CFR Part 110 (2002), 40 CFR Part 117 (2002) or 40 CFR Part 302 (2002) that occurs during a 24-hour period into or upon state surface waters in violation of Section III F; or who discharges or causes or allows a discharge that may reasonably be expected to enter state surface waters in violation of Section III F, shall notify the Department of Environmental Quality ~~and the Department of Conservation and Recreation~~ of the discharge immediately upon discovery of the discharge, but in no case later than within 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted to the Department of Environmental Quality and the Department of Conservation and Recreation, 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 of Environmental Quality and the Department of Conservation and Recreation 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 facility and the discharge enters or

could be expected to enter state surface waters, the permittee operator shall promptly notify, in no case later than within 24 hours, the Department of Environmental Quality and the Department of Conservation and Recreation 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 operator shall reduce the report to writing and shall submit it to the Department of Environmental Quality and the Department of Conservation and Recreation within five days of discovery of the discharge in accordance with Section III 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 facilities; and
4. Flooding or other acts of nature.

I. Reports of noncompliance. The permittee operator shall report any noncompliance which may adversely affect state surface waters or may endanger public health.

1. An oral report shall be provided within 24 hours to the Department of Environmental Quality and the Department of Conservation and Recreation from the time the permittee operator becomes aware of the circumstances. The following shall be included as information ~~that~~ which shall be reported within 24 hours under this paragraph:

- 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 or its designee may waive the written report on a case-by-case basis for reports of noncompliance under Section III I if the oral report has been received within 24 hours and no adverse impact on state surface waters has been reported.

3. The permittee operator shall report all instances of noncompliance not reported under Sections III I 1 or 2, in writing, at the time the next monitoring reports are

submitted. The reports shall contain the information listed in Section III I 2.

NOTE: The immediate (within 24 hours) reports required to be provided to the Department of Environmental Quality in Sections III G, H and I may be made to the ~~department's Urban Program's Section of the Division of Soil and Water Conservation~~ appropriate Department of Environmental Quality's Regional Office Pollution Response Program as found at <http://www.deq.virginia.gov/prep/homepage.html#>.

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.

4. Where the ~~permittee operator~~ becomes aware ~~that it failed of a failure~~ to submit any relevant facts in a permit application, or ~~submitted~~ submitted ~~submittal of~~ incorrect information in a permit application or in any report to the department or the Department of Environmental Quality, it shall promptly submit such facts or correct information.

#### J. Notice of planned changes.

1. The ~~permittee operator~~ 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 operator~~ 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 Clean Water Act that are applicable to such source; or

(2) After proposal of standards of performance in accordance with §306 of Clean Water Act that are applicable to such source, but only if the standards are promulgated in accordance with §306 within 120 days of their proposal;

b. The operator plans alteration or addition ~~could that would~~ significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are not subject to effluent limitations in this permit; or

2. The ~~permittee operator~~ shall give advance notice to the department of any planned changes in the permitted facility or activity; ~~that which~~ that 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 subsection, 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- 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 which 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 subsection, a principal executive officer of a public agency includes:

(1) The chief executive officer of the agency, or

(2) 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 Section III 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 Section III 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 operator~~ operator. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.); and

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c. The written authorization is submitted to the department.

3. Changes to authorization. If an authorization under Section III 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 Section III 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 Sections III 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 operator shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Virginia Stormwater Management Act and the Clean Water Act, except that noncompliance with certain provisions of this permit may constitute a violation of the Virginia Stormwater Management Act 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 operator shall comply with effluent standards or prohibitions established under §307(a) of the Clean Water Act for toxic pollutants 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 operator wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee operator shall submit a new registration statement at least 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 operator 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 "bypassing" (Section III U), and "upset" (Section III V) nothing in this permit shall be construed to relieve the permittee operator 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 operator from any responsibilities, liabilities, or penalties to which the permittee operator 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 operator shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) ~~that~~ , which are installed or used by the permittee operator 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 ~~that~~ , which are installed by the permittee operator 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 operator shall take all reasonable steps to minimize or prevent any discharge in violation of this permit that 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 an operator~~ 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 operator may allow any bypass to occur that does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient

operation. These bypasses are not subject to the provisions of Sections III U 2 and U 3.

## 2. Notice.

a. Anticipated bypass. If the permittee operator 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 operator shall submit notice of an unanticipated bypass as required in Section III I.

## 3. Prohibition of bypass.

a. Bypass is prohibited, and the board or its designee may take enforcement action against a permittee an operator 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 that occurred during normal periods of equipment downtime or preventive maintenance; and

(3) The permittee operator submitted notices as required under Section III U 2.

b. The board or its designee may approve an anticipated bypass, after considering its adverse effects, if the board determines that it will meet the three conditions listed above in Section III 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 Section III 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~~ An operator 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 operator can identify the cause(s) of the upset;

b. The permitted facility was at the time being properly operated;

c. The permittee operator submitted notice of the upset as required in Section III I; and

d. The permittee operator complied with any remedial measures required under Section III S.

3. In any enforcement proceeding the permittee operator seeking to establish the occurrence of an upset has the burden of proof.

W. Inspection and entry. The permittee operator shall allow the director as the board's designee, or an authorized representative (including an authorized contractor acting as a representative of the administrator), upon presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's operator'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 Virginia Stormwater Management Act, 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 operator 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 Section III Y 2, a permit may be transferred by the permittee operator 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 operator and incorporate such other requirements as may be necessary under the Virginia Stormwater Management Act and the Clean Water Act.

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2. As an alternative to transfers under Section III Y 1, this permit may be automatically transferred to a new permittee operator if:

- a. The current permittee operator notifies the department at least two 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 operators containing a specific date for transfer of permit responsibility, coverage, and liability between them; and
- c. The board does not notify the existing permittee operator and the proposed new permittee operator 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 Section III 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.

**NOTICE:** The forms used in administering 4VAC50-60, Virginia Stormwater Management Program (VSMP) Permit 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 Conservation and Recreation, 203 Governor Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

## FORMS

Application Form 1-General Information, Consolidated Permits Program, EPA Form 3510-1 (~~June 1980~~) (August 1990) (DCR 199-149).

Department of Conservation and Recreation Permit Application Fee Form, (DCR 199-145) (09/04).

VSMP General Permit Registration Statement for Construction Activity Stormwater Discharges, (DCR01), (DCR 199-146) (09/04).

VSMP General Permit Notice of Termination for Construction Activity Stormwater Discharges, (DCR01), (DCR 199-147) (09/04).

VSMP General Permit Registration Statement for Stormwater Discharges From Small Municipal Separate Storm Sewer Systems (~~DCR02~~) (VAR04), (DCR 199-148) (~~09/04~~) (09/07).

## DOCUMENTS INCORPORATED BY REFERENCE

Illicit Discharge Detection and Elimination – A Guidance Manual for Program Development and Technical

Assessments, EPA Cooperative Agreement X-82907801-0, October 2004, by Center for Watershed Protection and Robert Pitt, University of Alabama, available on the Internet at [http://www.cwp.org/idde\\_verify.htm](http://www.cwp.org/idde_verify.htm).

Getting in Step – A Guide for Conducting Watershed Outreach Campaigns, EPA-841-B-03-002, December 2003, U.S. Environmental Protection Agency, Office of Wetlands, Oceans, and Watersheds, available on the Internet at <http://www.epa.gov/owow/watershed/outreach/documents/getnstep.pdf>, or may be ordered from National Service Center for Environmental Publications, telephone 1-800-490-9198.

Municipal Stormwater Program Evaluation Guidance, EPA-833-R-07-003, January 2007 (field test version), U.S. Environmental Protection Agency, Office of Wastewater Management, available on the Internet at [http://cfpub.epa.gov/npdes/docs.cfm?program\\_id=6&view=alprog&sort=name#ms4\\_guidance](http://cfpub.epa.gov/npdes/docs.cfm?program_id=6&view=alprog&sort=name#ms4_guidance), or may be ordered from National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, telephone 1-800-553-6847 or (703) 605-6000.

VA.R. Doc. No. R07-147; Filed September 25, 2007, 3:11 p.m.

## TITLE 9. ENVIRONMENT

### STATE WATER CONTROL BOARD

#### Final Regulation

**REGISTRAR'S NOTICE:** The State Water Control Board 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 State Water Control Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** 9VAC25-31. Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (amending 9VAC25-31-120).

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

**Effective Date:** November 14, 2007.

**Agency Contact:** Burton R. Tuxford, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA, 23218, telephone 804-698-4086, FAX 804-698-4032, or email [brtuxford@deq.virginia.gov](mailto:brtuxford@deq.virginia.gov).

## Summary:

*The 2006 General Assembly enacted legislation requiring applications for new or modified VPDES permits (both individual and general) for new municipal solid waste landfills that discharge stormwater directly or indirectly into a local watershed protection district (that was established and designated as such by city ordinance prior to January 1, 2006) to contain a certification from the local governing body that the discharge is consistent with the city's ordinance that established and designated the local watershed protection district in order for the application to be considered complete. The VPDES permit regulation has been amended to add this requirement.*

### **9VAC25-31-120. Storm water discharges.**

#### A. Permit requirements.

1. Prior to October 1, 1994, discharges composed entirely of storm water shall not be required to obtain a VPDES permit except:

- a. A discharge with respect to which a permit has been issued prior to February 4, 1987;
- b. A discharge associated with industrial activity; or
- c. A discharge which either the board or the regional administrator determines to contribute to a violation of a water quality standard or is a significant contributor of pollutants to surface waters. This designation may include a discharge from any conveyance or system of conveyances used for collecting and conveying storm water run-off, except for those discharges from conveyances which do not require a permit under subdivision 2 of this subsection or agricultural storm water run-off which is exempted from the definition of point source.

2. The board may not require a permit for discharges of storm water run-off from mining operations or oil and gas exploration, production, processing or treatment operations, or transmission facilities, composed entirely of flows which are from conveyances or systems of conveyances (including but not limited to pipes, conduits, ditches, and channels) used for collecting and conveying precipitation run-off and which are not contaminated by contact with or that has not come into contact with, any overburden, raw material, intermediate products, finished product, by-product or waste products located on the site of such operations.

3. In addition to meeting the requirements of subsection B of this section, an operator of a storm water discharge associated with industrial activity which discharges through a large or medium municipal separate storm sewer system shall submit, to the operator of the municipal separate storm sewer system receiving the discharge no later than May 15, 1991, or 180 days prior to commencing

such discharge: the name of the facility; a contact person and phone number; the location of the discharge; a description, including Standard Industrial Classification, which best reflects the principal products or services provided by each facility; and any existing VPDES permit number.

4. For storm water discharges associated with industrial activity from point sources which discharge through a nonmunicipal or nonpublicly owned separate storm sewer system, the board, in its discretion, may issue: a single VPDES permit, with each discharger a co-permittee to a permit issued to the operator of the portion of the system that discharges into surface waters; or, individual permits to each discharger of storm water associated with industrial activity through the nonmunicipal conveyance system.

- a. All storm water discharges associated with industrial activity that discharge through a storm water discharge system that is not a municipal separate storm sewer must be covered by an individual permit, or a permit issued to the operator of the portion of the system that discharges to surface waters, with each discharger to the nonmunicipal conveyance a co-permittee to that permit.

- b. Where there is more than one operator of a single system of such conveyances, all operators of storm water discharges associated with industrial activity must submit applications.

- c. Any permit covering more than one operator shall identify the effluent limitations, or other permit conditions, if any, that apply to each operator.

5. Conveyances that discharge storm water run-off combined with municipal sewage are point sources that must obtain VPDES permits in accordance with the procedures of 9VAC25-31-100 and are not subject to the provisions of this section.

6. Whether a discharge from a municipal separate storm sewer is or is not subject to VPDES regulation shall have no bearing on whether the owner or operator of the discharge is eligible for funding under Title II, Title III or Title VI of the CWA.

7. a. On and after October 1, 1994, for discharges composed entirely of storm water, that are not required by subdivision 1 of this subsection to obtain a permit, operators shall be required to obtain a VPDES permit only if:

- (1) The board or the EPA regional administrator determines that storm water controls are needed for the discharge based on wastewater allocations that are part of "total maximum daily loads" (TMDLs) that address the pollutant(s) of concern; or

- (2) The board or the EPA regional administrator determines that the discharge, or category of discharges

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within a geographic area, contributes to a violation of a water quality standard or is a significant contributor of pollutants to surface waters.

b. Operators of nonmunicipal sources designated pursuant to subdivisions 7 a (1) and (2) of this subsection shall seek coverage under a VPDES permit in accordance with subdivision B 1 of this section.

c. Operators of storm water discharges designated pursuant to subdivisions 7 a (1) and (2) of this subsection shall apply to the board for a permit within 180 days of receipt of notice, unless permission for a later date is granted by the board.

**B. Application requirements for storm water discharges associated with industrial activity.**

1. Dischargers of storm water associated with industrial activity are required to apply for an individual permit or seek coverage under a promulgated storm water general permit. Facilities that are required to obtain an individual permit, or any discharge of storm water which the board is evaluating for designation under subdivision A 1 c of this section, shall submit a VPDES application in accordance with the requirements of 9VAC25-31-100 as modified and supplemented by the provisions of this subsection.

a. Except as provided in subdivisions 1 b and c of this subsection, the operator of a storm water discharge associated with industrial activity subject to this section shall provide:

(1) A site map showing topography (or indicating the outline of drainage areas served by the outfall or outfalls covered in the application if a topographic map is unavailable) of the facility including: each of its drainage and discharge structures; the drainage area of each storm water outfall; paved areas and buildings within the drainage area of each storm water outfall, each past or present area used for outdoor storage or disposal of significant materials, each existing structural control measure to reduce pollutants in storm water run-off, materials loading and access areas, areas where pesticides, herbicides, soil conditioners and fertilizers are applied, each of its hazardous waste treatment, storage or disposal facilities (including each area not required to have a RCRA permit which is used for accumulating hazardous waste under 40 CFR 262.34 (2000)); each well where fluids from the facility are injected underground; springs, and other surface water bodies which receive storm water discharges from the facility;

(2) An estimate of the area of impervious surfaces (including paved areas and building roofs) and the total area drained by each outfall (within a mile radius of the facility) and a narrative description of the following: Significant materials that in the three years prior to the submittal of this application have been treated, stored or

disposed in a manner to allow exposure to storm water; method of treatment, storage or disposal of such materials; materials management practices employed, in the three years prior to the submittal of this application, to minimize contact by these materials with storm water runoff; materials loading and access areas; the location, manner and frequency in which pesticides, herbicides, soil conditioners and fertilizers are applied; the location and a description of existing structural and nonstructural control measures to reduce pollutants in storm water runoff; and a description of the treatment the storm water receives, including the ultimate disposal of any solid or fluid wastes other than by discharge;

(3) A certification that all outfalls that should contain storm water discharges associated with industrial activity have been tested or evaluated for the presence of nonstorm water discharges which are not covered by a VPDES permit; tests for such nonstorm water discharges may include smoke tests, fluorometric dye tests, analysis of accurate schematics, as well as other appropriate tests. The certification shall include a description of the method used, the date of any testing, and the onsite drainage points that were directly observed during a test;

(4) Existing information regarding significant leaks or spills of toxic or hazardous pollutants at the facility that have taken place within the three years prior to the submittal of this application;

(5) Quantitative data based on samples collected during storm events and collected in accordance with 9VAC25-31-100 of this part from all outfalls containing a storm water discharge associated with industrial activity for the following parameters:

(a) Any pollutant limited in an effluent guideline to which the facility is subject;

(b) Any pollutant listed in the facility's VPDES permit for its process wastewater (if the facility is operating under an existing VPDES permit);

(c) Oil and grease, pH, BOD<sub>5</sub>, COD, TSS, total phosphorus, total Kjeldahl nitrogen, and nitrate plus nitrite nitrogen;

(d) Any information on the discharge required under 9VAC25-31-100 G 7 f and g;

(e) Flow measurements or estimates of the flow rate, and the total amount of discharge for the storm event or events sampled, and the method of flow measurement or estimation; and

(f) The date and duration (in hours) of the storm event or events sampled, rainfall measurements or estimates of the storm event (in inches) which generated the sampled runoff and the duration between the storm event sampled

and the end of the previous measurable (greater than 0.1 inch rainfall) storm event (in hours);

(6) Operators of a discharge which is composed entirely of storm water are exempt from the requirements of 9VAC25-31-100 G 2, G 3, G 4, G 5, G 7 c, G 7 d, G 7 e, and G 7 h; and

(7) Operators of new sources or new discharges which are composed in part or entirely of storm water must include estimates for the pollutants or parameters listed in subdivision 1 a (5) of this subsection instead of actual sampling data, along with the source of each estimate. Operators of new sources or new discharges composed in part or entirely of storm water must provide quantitative data for the parameters listed in subdivision 1 a (5) of this subsection within two years after commencement of discharge, unless such data has already been reported under the monitoring requirements of the VPDES permit for the discharge. Operators of a new source or new discharge which is composed entirely of storm water are exempt from the requirements of 9VAC25-31-100 K 3 b, K 3 c, and K 5.

b. The operator of an existing or new discharge composed entirely of storm water from an oil or gas exploration, production, processing, or treatment operation, or transmission facility is not required to submit a permit application in accordance with subdivision 1 a of this subsection, unless the facility:

(1) Has had a discharge of storm water resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 117.21 (2000) or 40 CFR 302.6 (2000) at any time since November 16, 1987; or

(2) Has had a discharge of storm water resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR 110.6 (2000) at any time since November 16, 1987; or

(3) Contributes to a violation of a water quality standard.

c. The operator of an existing or new discharge composed entirely of storm water from a mining operation is not required to submit a permit application unless the discharge has come into contact with any overburden, raw material, intermediate products, finished product, byproduct or waste products located on the site of such operations.

d. Applicants shall provide such other information the board may reasonably require to determine whether to issue a permit.

2. No application for a VPDES permit authorizing direct or indirect discharge of stormwater runoff from a new municipal solid waste landfill into a local watershed protection district established and designated as such by

city ordinance prior to January 1, 2006, shall be considered complete unless it contains certification from the local governing body of the city in which the discharge is to take place, that the discharge is consistent with the city's ordinance establishing and designating the local watershed protection district. This requirement shall apply to applications for new or modified individual VPDES permits and for new or modified coverage under general VPDES permits. This requirement does not apply to any municipal solid waste landfill in operation on or before January 1, 2006.

C. Application deadlines. Any operator of a point source required to obtain a permit under this section that does not have an effective VPDES permit authorizing discharges from its storm water outfalls shall submit an application in accordance with the following deadlines:

1. Individual applications.

a. Except as provided in subdivision 1 b of this subsection, for any storm water discharge associated with industrial activity as defined in this chapter which is not authorized by a storm water general permit, a permit application made pursuant to subsection B of this section shall be submitted to the department by October 1, 1992;

b. For any storm water discharge associated with industrial activity from a facility that is owned or operated by a municipality with a population of less than 100,000 that is not authorized by a general or individual permit, other than an airport, powerplant, or uncontrolled sanitary landfill, permit applications must be submitted to the department by March 10, 2003;

2. A permit application shall be submitted to the department within 180 days of notice, unless permission for a later date is granted by the board, for:

a. A storm water discharge which either the board or the regional administrator, determines that the discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to surface waters; or

b. A storm water discharge subject to subdivision B 1 d of this section;

3. Facilities with existing VPDES permits for storm water discharges associated with industrial activity shall maintain existing permits. Facilities with permits for storm water discharges associated with industrial activity which expire on or after May 18, 1992, shall submit a new application in accordance with the requirements of 9VAC25-31-100 and 9VAC25-31-120 B (Form 1, Form 2F, and other applicable forms) 180 days before the expiration of such permits.

D. Petitions.

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1. Any person may petition the board to require a VPDES permit for a discharge which is composed entirely of storm water which contributes to a violation of a water quality standard or is a significant contributor of pollutants to surface waters.

2. The board shall make a final determination on any petition received under this section within 90 days after receiving the petition.

E. Conditional exclusion for no exposure of industrial activities and materials to storm water. Discharges composed entirely of storm water are not storm water discharges associated with industrial activity if there is no exposure of industrial materials and activities to rain, snow, snowmelt or run-off and the discharger satisfies the conditions in subdivisions 1 through 4 of this subsection. No exposure means that all industrial materials and activities are protected by a storm resistant shelter to prevent exposure to rain, snow, snowmelt, and run-off. Industrial materials or activities include, but are not limited to, material handling equipment or activities, industrial machinery, raw materials, intermediate products, by-products, final products, or waste products. Material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product or waste product.

1. To qualify for this exclusion, the operator of the discharge must:

a. Provide a storm resistant shelter to protect industrial materials and activities from exposure to rain, snow, snow melt, and run-off;

b. Complete and sign (according to 9VAC25-31-110) a certification that there are no discharges of storm water contaminated by exposure to industrial materials and activities from the entire facility, except as provided in subdivision 2 of this subsection;

c. Submit the signed certification to the department once every five years;

d. Allow the department to inspect the facility to determine compliance with the no exposure conditions;

e. Allow the department to make any no exposure inspection reports available to the public upon request; and

f. For facilities that discharge through an MS4, upon request, submit a copy of the certification of no exposure to the MS4 operator, as well as allow inspection and public reporting by the MS4 operator.

2. Storm resistant shelter is not required for:

a. Drums, barrels, tanks, and similar containers that are tightly sealed, provided those containers are not deteriorated and do not leak ("sealed" means banded or

otherwise secured and without operational taps or valves);

b. Adequately maintained vehicles used in material handling; and

c. Final products, other than products that would be mobilized in storm water discharge (e.g., rock salt).

3. a. This conditional exclusion from the requirement for a VPDES permit is available on a facility-wide basis only, not for individual outfalls. If a facility has some discharges of storm water that would otherwise be no exposure discharges, individual permit requirements should be adjusted accordingly.

b. If circumstances change and industrial materials or activities become exposed to rain, snow, snow melt, or run-off, the conditions for this exclusion no longer apply. In such cases, the discharge becomes subject to enforcement for unpermitted discharge. Any conditionally exempt discharger who anticipates changes in circumstances should apply for and obtain permit authorization prior to the change of circumstances.

c. Notwithstanding the provisions of this subsection, the board retains the authority to require permit authorization (and deny this exclusion) upon making a determination that the discharge causes, has a reasonable potential to cause, or contributes to an instream excursion above an applicable water quality standard, including designated uses.

4. The no exposure certification requires the submission of the following information, at a minimum, to aid the board in determining if the facility qualifies for the no exposure exclusion:

a. The legal name, address and phone number of the discharger.

b. The facility name and address, the county name and the latitude and longitude where the facility is located.

c. Certification that indicates that none of the following materials or activities are, or will be in the foreseeable future, exposed to precipitation:

(1) Using, storing or cleaning industrial machinery or equipment, and areas where residuals from using, storing or cleaning industrial machinery or equipment remain and are exposed to storm water;

(2) Materials or residuals on the ground or in storm water inlets from spills/leaks;

(3) Materials or products from past industrial activity;

(4) Material handling equipment (except adequately maintained vehicles);

(5) Materials or products during loading/unloading or transporting activities;

(6) Materials or products stored outdoors (except final products intended for outside use, e.g., new cars, where exposure to storm water does not result in the discharge of pollutants);

(7) Materials contained in open, deteriorated or leaking storage drums, barrels, tanks, and similar containers;

(8) Materials or products handled/stored on roads or railways owned or maintained by the discharger;

(9) Waste material (except waste in covered, nonleaking containers, e.g., dumpsters);

(10) Application or disposal of process wastewater (unless otherwise permitted); and

(11) Particulate matter or visible deposits of residuals from roof stacks/vents not otherwise regulated, i.e., under an air quality control permit, and evident in the storm water outflow.

d. All no exposure certifications must include the following certification statement and be signed in accordance with the signatory requirements of 9VAC25-31-110: "I certify under penalty of law that I have read and understand the eligibility requirements for claiming a condition of no exposure and obtaining an exclusion from VPDES storm water permitting; and that there are no discharges of storm water contaminated by exposure to industrial activities or materials from the industrial facility identified in this document (except as allowed under 9VAC25-31-120 E 2). I understand that I am obligated to submit a no exposure certification form once every five years to the Department of Environmental Quality and, if requested, to the operator of the local MS4 into which this facility discharges (where applicable). I understand that I must allow the department, or MS4 operator where the discharge is into the local MS4, to perform inspections to confirm the condition of no exposure and to make such inspection reports publicly available upon request. I understand that I must obtain coverage under a VPDES permit prior to any point source discharge of storm water associated with industrial activity from the facility. I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based upon my inquiry of the person or persons who manage the system, or those persons directly involved in gathering the information, the information submitted is to the best of my knowledge and belief true, accurate and complete. I am aware there are significant penalties for submitting false information,

including the possibility of fine and imprisonment for knowing violations."

VA.R. Doc. No. R08-934; Filed September 26, 2007, 11:20 a.m.

**Final Regulation**

**REGISTRAR'S NOTICE:** The following regulatory action is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations provided such regulations do not differ materially from those required by federal law or regulation. The State Water Control Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** **9VAC25-31. Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (amending 9VAC25-31-100, 9VAC25-31-165).**

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

**Effective Date:** November 14, 2007.

**Agency Contact:** Eleanore M. Daub, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone 804-698-4111, FAX 804-698-4032, or email emdaub@deq.virginia.gov.

**Summary:**

*The existing regulation establishes the procedures and requirements to be followed in connection with VPDES permits issued by the board pursuant to the Clean Water Act and State Water Control Law. The specific sections of the permit regulation to be removed or amended relate specifically to federal regulations at 40 CFR 122.21 (r)(1)(ii), 122.21(r)(5) and 125.90 (a), (c) and (d) and 40 CFR 125.91 through 125.99, which were suspended on July 9, 2007. These regulations relate to requirements for cooling water intake structures at Phase II existing facilities. The Phase II regulation addressed existing power utilities that use a cooling water intake structure to withdraw cooling water from waters of the United States at a rate of 50 million gallons per day (MGD) or greater. This final exempt action reflects the federally published suspension of these rules.*

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

A. Duty to apply. Any person who discharges or proposes to discharge pollutants or who owns or operates a sludge-only facility whose sewage sludge use or disposal practice is regulated by 9VAC25-31-420 through 9VAC25-31-720 and who does not have an effective permit, except persons covered by general permits, excluded from the requirement for a permit by this chapter, or a user of a privately owned

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treatment works unless the board requires otherwise, shall submit a complete application to the department in accordance with this section. All concentrated animal feeding operations have a duty to seek coverage under a VPDES permit.

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

C. Time to apply.

1. Any person proposing a new discharge, shall submit an application at least 180 days before the date on which the discharge is to commence, unless permission for a later date has been granted by the board. Facilities proposing a new discharge of storm water associated with industrial activity shall submit an application 180 days before that facility commences industrial activity which may result in a discharge of storm water associated with that industrial activity. Different submittal dates may be required under the terms of applicable general permits. Persons proposing a new discharge are encouraged to submit their applications well in advance of the 90 or 180 day requirements to avoid delay. New discharges composed entirely of storm water, other than those dischargers identified in 9VAC25-31-120 A 1, shall apply for and obtain a permit according to the application requirements in 9VAC25-31-120 B.

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

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

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

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

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

(3) A description of the sewage sludge use or disposal practices. Unless the sewage sludge meets the requirements of subdivision P 8 d of this section, the

description must include the name and address of any facility where sewage sludge is sent for treatment or disposal and the location of any land application sites;

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

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

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

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

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

E. Completeness.

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

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

3. No application for a new individual VPDES permit authorizing a new discharge of sewage, industrial wastes, or other wastes shall be considered complete unless it contains notification from the county, city, or town in which the discharge is to take place that the location and operation of the discharging facility are consistent with applicable ordinances adopted pursuant to Chapter 22 (§15.2-2200 et seq.) of Title 15.2 of the Code of Virginia.

The county, city or town shall inform in writing the applicant and the board of the discharging facility's compliance or noncompliance not more than 30 days from receipt by the chief administrative officer, or his agent, of a request from the applicant. Should the county, city or town fail to provide such written notification within 30 days, the requirement for such notification is waived. The provisions of this subsection shall not apply to any discharge for which a valid VPDES permit had been issued prior to March 10, 2000.

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

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

1. The activities conducted by the applicant which require it to obtain a VPDES permit;
2. Name, mailing address, and location of the facility for which the application is submitted;
3. Up to four SIC codes which best reflect the principal products or services provided by the facility;
4. The operator's name, address, telephone number, ownership status, and status as federal, state, private, public, or other entity;
5. Whether the facility is located on Indian lands;
6. A listing of all permits or construction approvals received or applied for under any of the following programs:
  - a. Hazardous Waste Management program under RCRA (42 USC §6921);
  - b. UIC program under SDWA (42 USC §300h);
  - c. VPDES program under the CWA and the law;
  - d. Prevention of Significant Deterioration (PSD) program under the Clean Air Act (42 USC §4701 et seq.);
  - e. Nonattainment program under the Clean Air Act (42 USC §4701 et seq.);

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

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

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

i. Other relevant environmental permits, including state permits.

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

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

G. Application requirements for existing manufacturing, commercial, mining, and silvicultural dischargers. Existing manufacturing, commercial mining, and silvicultural dischargers applying for VPDES permits, except for those facilities subject to the requirements of 9VAC25-31-100 H, shall provide the following information to the department, using application forms provided by the department.

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

2. A line drawing of the water flow through the facility with a water balance, showing operations contributing wastewater to the effluent and treatment units. Similar processes, operations, or production areas may be indicated as a single unit, labeled to correspond to the more detailed identification under subdivision 3 of this subsection. The water balance must show approximate average flows at intake and discharge points and between units, including treatment units. If a water balance cannot be determined (for example, for certain mining activities), the applicant may provide instead a pictorial description of the nature and amount of any sources of water and any collection and treatment measures.

3. A narrative identification of each type of process, operation, or production area which contributes wastewater to the effluent for each outfall, including process wastewater, cooling water, and storm water run-off; the average flow which each process contributes; and a description of the treatment the wastewater receives, including the ultimate disposal of any solid or fluid wastes other than by discharge. Processes, operations, or production areas may be described in general terms (for example, dye-making reactor, distillation tower). For a privately owned treatment works, this information shall

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include the identity of each user of the treatment works. The average flow of point sources composed of storm water may be estimated. The basis for the rainfall event and the method of estimation must be indicated.

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

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

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

7. a. Information on the discharge of pollutants specified in this subdivision (except information on storm water discharges which is to be provided as specified in 9VAC25-31-120). When quantitative data for a pollutant are required, the applicant must collect a sample of effluent and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR Part 136 (2005). When no analytical method is approved the applicant may use any suitable method but must provide a description of the method. When an applicant has two or more outfalls with substantially identical effluents, the board may allow the applicant to test only one outfall and report that the quantitative data also apply to the substantially identical outfalls. The requirements in e and f of this subdivision that an applicant must provide quantitative data for certain pollutants known or believed to be present do not apply to pollutants present in a discharge solely as the result of their presence in intake water; however, an applicant must report such pollutants as present. Grab samples must be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform, and fecal streptococcus. For all other pollutants, 24-hour composite samples must be used. However, a minimum of one grab sample may be taken for effluents from holding ponds or other impoundments with a retention period greater than 24 hours. In addition, for discharges other than storm water discharges, the board may waive composite sampling for any outfall for which the applicant demonstrates that the use of an automatic sampler is infeasible and that the minimum of four grab

samples will be a representative sample of the effluent being discharged.

b. For storm water discharges, all samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inch and at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. Where feasible, the variance in the duration of the event and the total rainfall of the event should not exceed 50% from the average or median rainfall event in that area. For all applicants, a flow-weighted composite shall be taken for either the entire discharge or for the first three hours of the discharge. The flow-weighted composite sample for a storm water discharge may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of 15 minutes (applicants submitting permit applications for storm water discharges under 9VAC25-31-120 C may collect flow-weighted composite samples using different protocols with respect to the time duration between the collection of sample aliquots, subject to the approval of the board). However, a minimum of one grab sample may be taken for storm water discharges from holding ponds or other impoundments with a retention period greater than 24 hours. For a flow-weighted composite sample, only one analysis of the composite of aliquots is required. For storm water discharge samples taken from discharges associated with industrial activities, quantitative data must be reported for the grab sample taken during the first 30 minutes (or as soon thereafter as practicable) of the discharge for all pollutants specified in 9VAC25-31-120 B 1. For all storm water permit applicants taking flow-weighted composites, quantitative data must be reported for all pollutants specified in 9VAC25-31-120 except pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform, and fecal streptococcus. The board may allow or establish appropriate site-specific sampling procedures or requirements, including sampling locations, the season in which the sampling takes place, the minimum duration between the previous measurable storm event and the storm event sampled, the minimum or maximum level of precipitation required for an appropriate storm event, the form of precipitation sampled (snow melt or rain fall), protocols for collecting samples under 40 CFR Part 136 (2005), and additional time for submitting data on a case-by-case basis. An applicant is expected to know or have reason to believe that a pollutant is present in an effluent based on an evaluation of the expected use, production, or storage of the pollutant, or on any previous analyses for the pollutant. (For example, any pesticide manufactured by a facility may be expected to be present in contaminated storm water run-off from the facility.)

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

Biochemical oxygen demand (BOD<sub>5</sub>)

Chemical oxygen demand

Total organic carbon

Total suspended solids

Ammonia (as N)

Temperature (both winter and summer)

pH

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

e. Each applicant with processes in one or more primary industry category (see 40 CFR Part 122 Appendix A (2005)) contributing to a discharge must report quantitative data for the following pollutants in each outfall containing process wastewater:

(1) The organic toxic pollutants in the fractions designated in Table I of 40 CFR Part 122 Appendix D (2005) for the applicant's industrial category or categories unless the applicant qualifies as a small business under subdivision 8 of this subsection. Table II of 40 CFR Part 122 Appendix D (2005) lists the organic toxic pollutants in each fraction. The fractions result from the sample preparation required by the analytical procedure which uses gas chromatography/mass spectrometry. A determination that an applicant falls within a particular industrial category for the purposes of selecting fractions for testing is not conclusive as to the applicant's inclusion in that category for any other purposes; and

(2) The pollutants listed in Table III of 40 CFR Part 122 Appendix D (2005) (the toxic metals, cyanide, and total phenols).

f. (1) Each applicant must indicate whether it knows or has reason to believe that any of the pollutants in Table IV of 40 CFR Part 122 Appendix D (2005) (certain conventional and nonconventional pollutants) is discharged from each outfall. If an applicable effluent limitations guideline either directly limits the pollutant or, by its express terms, indirectly limits the pollutant through limitations on an indicator, the applicant must report quantitative data. For every pollutant discharged which is not so limited in an effluent limitations guideline, the applicant must either report quantitative

data or briefly describe the reasons the pollutant is expected to be discharged.

(2) Each applicant must indicate whether it knows or has reason to believe that any of the pollutants listed in Table II or Table III of 40 CFR Part 122 Appendix D (2005) (the toxic pollutants and total phenols) for which quantitative data are not otherwise required under subdivision 7 e of this subsection, is discharged from each outfall. For every pollutant expected to be discharged in concentrations of 10 ppb or greater the applicant must report quantitative data. For acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4,6 dinitrophenol, where any of these four pollutants are expected to be discharged in concentrations of 100 ppb or greater the applicant must report quantitative data. For every pollutant expected to be discharged in concentrations less than 10 ppb, or in the case of acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4,6 dinitrophenol, in concentrations less than 100 ppb, the applicant must either submit quantitative data or briefly describe the reasons the pollutant is expected to be discharged. An applicant qualifying as a small business under subdivision 8 of this subsection is not required to analyze for pollutants listed in Table II of 40 CFR Part 122 Appendix D (2005) (the organic toxic pollutants).

g. Each applicant must indicate whether it knows or has reason to believe that any of the pollutants in Table V of 40 CFR Part 122 Appendix D (2005) (certain hazardous substances and asbestos) are discharged from each outfall. For every pollutant expected to be discharged, the applicant must briefly describe the reasons the pollutant is expected to be discharged, and report any quantitative data it has for any pollutant.

h. Each applicant must report qualitative data, generated using a screening procedure not calibrated with analytical standards, for 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) if it:

(1) Uses or manufactures 2,4,5-trichlorophenoxy acetic acid (2,4,5,-T); 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5,-TP); 2-(2,4,5-trichlorophenoxy) ethyl, 2,2-dichloropropionate (Erbon); O,O-dimethyl O-(2,4,5-trichlorophenyl) phosphorothioate (Ronnel); 2,4,5-trichlorophenol (TCP); or hexachlorophene (HCP); or

(2) Knows or has reason to believe that TCDD is or may be present in an effluent.

8. An applicant which qualifies as a small business under one of the following criteria is exempt from the requirements in subdivision 7 e (1) or 7 f (1) of this subsection to submit quantitative data for the pollutants listed in Table II of 40 CFR Part 122 Appendix D (2005) (the organic toxic pollutants):

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a. For coal mines, a probable total annual production of less than 100,000 tons per year; or

b. For all other applicants, gross total annual sales averaging less than \$100,000 per year (in second quarter 1980 dollars).

9. A listing of any toxic pollutant which the applicant currently uses or manufactures as an intermediate or final product or by-product. The board may waive or modify this requirement for any applicant if the applicant demonstrates that it would be unduly burdensome to identify each toxic pollutant and the board has adequate information to issue the permit.

10. Reserved.

11. An identification of any biological toxicity tests which the applicant knows or has reason to believe have been made within the last three years on any of the applicant's discharges or on a receiving water in relation to a discharge.

12. If a contract laboratory or consulting firm performed any of the analyses required by subdivision 7 of this subsection, the identity of each laboratory or firm and the analyses performed.

13. In addition to the information reported on the application form, applicants shall provide to the board, at its request, such other information, including pertinent plans, specifications, maps and such other relevant information as may be required, in scope and details satisfactory to the board, as the board may reasonably require to assess the discharges of the facility and to determine whether to issue a VPDES permit. The additional information may include additional quantitative data and bioassays to assess the relative toxicity of discharges to aquatic life and requirements to determine the cause of the toxicity.

H. Application requirements for manufacturing, commercial, mining and silvicultural facilities which discharge only nonprocess wastewater. Except for storm water discharges, all manufacturing, commercial, mining and silvicultural dischargers applying for VPDES permits which discharge only nonprocess wastewater not regulated by an effluent limitations guideline or new source performance standard shall provide the following information to the department using application forms provided by the department:

1. Outfall number, latitude and longitude to the nearest 15 seconds, and the name of the receiving water;

2. Date of expected commencement of discharge;

3. An identification of the general type of waste discharged, or expected to be discharged upon commencement of operations, including sanitary wastes, restaurant or cafeteria wastes, or noncontact cooling water.

An identification of cooling water additives (if any) that are used or expected to be used upon commencement of operations, along with their composition if existing composition is available;

4. a. Quantitative data for the pollutants or parameters listed below, unless testing is waived by the board. The quantitative data may be data collected over the past 365 days, if they remain representative of current operations, and must include maximum daily value, average daily value, and number of measurements taken. The applicant must collect and analyze samples in accordance with 40 CFR Part 136 (2005). Grab samples must be used for pH, temperature, oil and grease, total residual chlorine, and fecal coliform. For all other pollutants, 24-hour composite samples must be used. New dischargers must include estimates for the pollutants or parameters listed below instead of actual sampling data, along with the source of each estimate. All levels must be reported or estimated as concentration and as total mass, except for flow, pH, and temperature.

(1) Biochemical oxygen demand (BOD<sub>5</sub>).

(2) Total suspended solids (TSS).

(3) Fecal coliform (if believed present or if sanitary waste is or will be discharged).

(4) Total residual chlorine (if chlorine is used).

(5) Oil and grease.

(6) Chemical oxygen demand (COD) (if noncontact cooling water is or will be discharged).

(7) Total organic carbon (TOC) (if noncontact cooling water is or will be discharged).

(8) Ammonia (as N).

(9) Discharge flow.

(10) pH.

(11) Temperature (winter and summer).

b. The board may waive the testing and reporting requirements for any of the pollutants or flow listed in subdivision 4 a of this subsection if the applicant submits a request for such a waiver before or with his application which demonstrates that information adequate to support issuance of a permit can be obtained through less stringent requirements.

c. If the applicant is a new discharger, he must submit the information required in subdivision 4 a of this subsection by providing quantitative data in accordance with that section no later than two years after commencement of discharge. However, the applicant need not submit testing results which he has already performed and

reported under the discharge monitoring requirements of his VPDES permit.

d. The requirements of subdivisions 4 a and 4 c of this subsection that an applicant must provide quantitative data or estimates of certain pollutants do not apply to pollutants present in a discharge solely as a result of their presence in intake water. However, an applicant must report such pollutants as present. Net credit may be provided for the presence of pollutants in intake water if the requirements of 9VAC25-31-230 G are met;

5. A description of the frequency of flow and duration of any seasonal or intermittent discharge (except for storm water run-off, leaks, or spills);

6. A brief description of any treatment system used or to be used;

7. Any additional information the applicant wishes to be considered, such as influent data for the purpose of obtaining net credits pursuant to 9VAC25-31-230 G;

8. Signature of certifying official under 9VAC25-31-110; and

9. Pertinent plans, specifications, maps and such other relevant information as may be required, in scope and details satisfactory to the board.

I. Application requirements for new and existing concentrated animal feeding operations and aquatic animal production facilities. New and existing concentrated animal feeding operations and concentrated aquatic animal production facilities shall provide the following information to the department, using the application form provided by the department:

1. For concentrated animal feeding operations:

a. The name of the owner or operator;

b. The facility location and mailing address;

c. Latitude and longitude of the production area (entrance to the production area);

d. A topographic map of the geographic area in which the CAFO is located showing the specific location of the production area, in lieu of the requirements of subdivision F 7 of this section;

e. Specific information about the number and type of animals, whether in open confinement or housed under roof (beef cattle, broilers, layers, swine weighing 55 pounds or more, swine weighing less than 55 pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, turkeys, other);

f. The type of containment and storage (anaerobic lagoon, roofed storage shed, storage ponds, underfloor pits, above ground storage tanks, below ground storage

tanks, concrete pad, impervious soil pad, other) and total capacity for manure, litter, and process wastewater storage (tons/gallons);

g. The total number of acres under control of the applicant available for land application of manure, litter, or process wastewater;

h. Estimated amounts of manure, litter, and process wastewater generated per year (tons/gallons); and

i. For CAFOs that must seek coverage under a permit after December 31, 2006, certification that a nutrient management plan has been completed and will be implemented upon the date of coverage.

2. For concentrated aquatic animal production facilities:

a. The maximum daily and average monthly flow from each outfall;

b. The number of ponds, raceways, and similar structures;

c. The name of the receiving water and the source of intake water;

d. For each species of aquatic animals, the total yearly and maximum harvestable weight;

e. The calendar month of maximum feeding and the total mass of food fed during that month; and

f. Pertinent plans, specifications, maps and such other relevant information as may be required, in scope and details satisfactory to the board.

J. Application requirements for new and existing POTWs and treatment works treating domestic sewage. Unless otherwise indicated, all POTWs and other dischargers designated by the board must provide to the department, at a minimum, the information in this subsection using an application form provided by the department. Permit applicants must submit all information available at the time of permit application. The information may be provided by referencing information previously submitted to the department. The board may waive any requirement of this subsection if it has access to substantially identical information. The board may also waive any requirement of this subsection that is not of material concern for a specific permit, if approved by the regional administrator. The waiver request to the regional administrator must include the board's justification for the waiver. A regional administrator's disapproval of the board's proposed waiver does not constitute final agency action but does provide notice to the board and permit applicant(s) that the EPA may object to any board-issued permit issued in the absence of the required information.

1. All applicants must provide the following information:

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

b. Name, mailing address, and telephone number of the applicant and indication as to whether the applicant is the facility's owner, operator, or both;

c. Identification of all environmental permits or construction approvals received or applied for (including dates) under any of the following programs:

(1) Hazardous Waste Management program under the Resource Conservation and Recovery Act (RCRA), Subpart C;

(2) Underground Injection Control program under the Safe Drinking Water Act (SDWA);

(3) NPDES program under the Clean Water Act (CWA);

(4) Prevention of Significant Deterioration (PSD) program under the Clean Air Act;

(5) Nonattainment program under the Clean Air Act;

(6) National Emission Standards for Hazardous Air Pollutants (NESHAPS) preconstruction approval under the Clean Air Act;

(7) Ocean dumping permits under the Marine Protection Research and Sanctuaries Act;

(8) Dredge or fill permits under §404 of the CWA; and

(9) Other relevant environmental permits, including state permits;

d. The name and population of each municipal entity served by the facility, including unincorporated connector districts. Indicate whether each municipal entity owns or maintains the collection system and whether the collection system is separate sanitary or combined storm and sanitary, if known;

e. Information concerning whether the facility is located in Indian country and whether the facility discharges to a receiving stream that flows through Indian country;

f. The facility's design flow rate (the wastewater flow rate the plant was built to handle), annual average daily flow rate, and maximum daily flow rate for each of the previous three years;

g. Identification of type(s) of collection system(s) used by the treatment works (i.e., separate sanitary sewers or combined storm and sanitary sewers) and an estimate of the percent of sewer line that each type comprises; and

h. The following information for outfalls to surface waters and other discharge or disposal methods:

(1) For effluent discharges to surface waters, the total number and types of outfalls (e.g., treated effluent,

combined sewer overflows, bypasses, constructed emergency overflows);

(2) For wastewater discharged to surface impoundments:

(a) The location of each surface impoundment;

(b) The average daily volume discharged to each surface impoundment; and

(c) Whether the discharge is continuous or intermittent;

(3) For wastewater applied to the land:

(a) The location of each land application site;

(b) The size of each land application site, in acres;

(c) The average daily volume applied to each land application site, in gallons per day; and

(d) Whether land application is continuous or intermittent;

(4) For effluent sent to another facility for treatment prior to discharge:

(a) The means by which the effluent is transported;

(b) The name, mailing address, contact person, and phone number of the organization transporting the discharge, if the transport is provided by a party other than the applicant;

(c) The name, mailing address, contact person, phone number, and VPDES permit number (if any) of the receiving facility; and

(d) The average daily flow rate from this facility into the receiving facility, in millions of gallons per day; and

(5) For wastewater disposed of in a manner not included in subdivisions 1 h (1) through (4) of this subsection (e.g., underground percolation, underground injection):

(a) A description of the disposal method, including the location and size of each disposal site, if applicable;

(b) The annual average daily volume disposed of by this method, in gallons per day; and

(c) Whether disposal through this method is continuous or intermittent;

2. All applicants with a design flow greater than or equal to 0.1 mgd must provide the following information:

a. The current average daily volume of inflow and infiltration, in gallons per day, and steps the facility is taking to minimize inflow and infiltration;

b. A topographic map (or other map if a topographic map is unavailable) extending at least one mile beyond property boundaries of the treatment plant, including all unit processes, and showing:

- (1) Treatment plant area and unit processes;
  - (2) The major pipes or other structures through which wastewater enters the treatment plant and the pipes or other structures through which treated wastewater is discharged from the treatment plant. Include outfalls from bypass piping, if applicable;
  - (3) Each well where fluids from the treatment plant are injected underground;
  - (4) Wells, springs, and other surface water bodies listed in public records or otherwise known to the applicant within 1/4 mile of the treatment works' property boundaries;
  - (5) Sewage sludge management facilities (including on-site treatment, storage, and disposal sites); and
  - (6) Location at which waste classified as hazardous under RCRA enters the treatment plant by truck, rail, or dedicated pipe;
- c. Process flow diagram or schematic.
- (1) A diagram showing the processes of the treatment plant, including all bypass piping and all backup power sources or redundancy in the system. This includes a water balance showing all treatment units, including disinfection, and showing daily average flow rates at influent and discharge points, and approximate daily flow rates between treatment units; and
  - (2) A narrative description of the diagram; and
- d. The following information regarding scheduled improvements:
- (1) The outfall number of each outfall affected;
  - (2) A narrative description of each required improvement;
  - (3) Scheduled or actual dates of completion for the following:
    - (a) Commencement of construction;
    - (b) Completion of construction;
    - (c) Commencement of discharge; and
    - (d) Attainment of operational level; and
  - (4) A description of permits and clearances concerning other federal or state requirements;
3. Each applicant must provide the following information for each outfall, including bypass points, through which effluent is discharged, as applicable:
- a. The following information about each outfall:
    - (1) Outfall number;
    - (2) State, county, and city or town in which outfall is located;
    - (3) Latitude and longitude, to the nearest second;
    - (4) Distance from shore and depth below surface;
    - (5) Average daily flow rate, in million gallons per day;
    - (6) The following information for each outfall with a seasonal or periodic discharge:
      - (a) Number of times per year the discharge occurs;
      - (b) Duration of each discharge;
      - (c) Flow of each discharge; and
      - (d) Months in which discharge occurs; and
    - (7) Whether the outfall is equipped with a diffuser and the type (e.g., high-rate) of diffuser used.
  - b. The following information, if known, for each outfall through which effluent is discharged to surface waters:
    - (1) Name of receiving water;
    - (2) Name of watershed/river/stream system and United States Soil Conservation Service 14-digit watershed code;
    - (3) Name of State Management/River Basin and United States Geological Survey 8-digit hydrologic cataloging unit code; and
    - (4) Critical flow of receiving stream and total hardness of receiving stream at critical low flow (if applicable).
  - c. The following information describing the treatment provided for discharges from each outfall to surface waters:
    - (1) The highest level of treatment (e.g., primary, equivalent to secondary, secondary, advanced, other) that is provided for the discharge for each outfall and:
      - (a) Design biochemical oxygen demand (BOD<sub>5</sub> or CBOD<sub>5</sub>) removal (percent);
      - (b) Design suspended solids (SS) removal (percent); and, where applicable,
      - (c) Design phosphorus (P) removal (percent);
      - (d) Design nitrogen (N) removal (percent); and
      - (e) Any other removals that an advanced treatment system is designed to achieve.
    - (2) A description of the type of disinfection used, and whether the treatment plant dechlorinates (if disinfection is accomplished through chlorination).
4. Effluent monitoring for specific parameters.

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a. As provided in subdivisions 4 b through j of this subsection, all applicants must submit to the department effluent monitoring information for samples taken from each outfall through which effluent is discharged to surface waters, except for CSOs. The board may allow applicants to submit sampling data for only one outfall on a case-by-case basis, where the applicant has two or more outfalls with substantially identical effluent. The board may also allow applicants to composite samples from one or more outfalls that discharge into the same mixing zone.

b. All applicants must sample and analyze for the following pollutants:

- (1) Biochemical oxygen demand (BOD<sub>5</sub> or CBOD<sub>5</sub>);
- (2) Fecal coliform;
- (3) Design flow rate;
- (4) pH;
- (5) Temperature; and
- (6) Total suspended solids.

c. All applicants with a design flow greater than or equal to 0.1 mgd must sample and analyze for the following pollutants:

- (1) Ammonia (as N);
- (2) Chlorine (total residual, TRC);
- (3) Dissolved oxygen;
- (4) Nitrate/Nitrite;
- (5) Kjeldahl nitrogen;
- (6) Oil and grease;
- (7) Phosphorus; and
- (8) Total dissolved solids.

Facilities that do not use chlorine for disinfection, do not use chlorine elsewhere in the treatment process, and have no reasonable potential to discharge chlorine in their effluent may delete chlorine.

d. All POTWs with a design flow rate equal to or greater than one million gallons per day, all POTWs with approved pretreatment programs or POTWs required to develop a pretreatment program, and other POTWs, as required by the board must sample and analyze for the pollutants listed in Table 2 of 40 CFR Part 122 Appendix J (2005), and for any other pollutants for which the board or EPA have established water quality standards applicable to the receiving waters.

e. The board may require sampling for additional pollutants, as appropriate, on a case-by-case basis.

f. Applicants must provide data from a minimum of three samples taken within 4-1/2 years prior to the date of the permit application. Samples must be representative of the seasonal variation in the discharge from each outfall. Existing data may be used, if available, in lieu of sampling done solely for the purpose of this application. The board may require additional samples, as appropriate, on a case-by-case basis.

g. All existing data for pollutants specified in subdivisions 4 b through e of this subsection that is collected within 4-1/2 years of the application must be included in the pollutant data summary submitted by the applicant. If, however, the applicant samples for a specific pollutant on a monthly or more frequent basis, it is only necessary, for such pollutant, to summarize all data collected within one year of the application.

h. Applicants must collect samples of effluent and analyze such samples for pollutants in accordance with analytical methods approved under 40 CFR Part 136 (2005) unless an alternative is specified in the existing VPDES permit. Grab samples must be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, and fecal coliform. For all other pollutants, 24-hour composite samples must be used. For a composite sample, only one analysis of the composite of aliquots is required.

i. The effluent monitoring data provided must include at least the following information for each parameter:

- (1) Maximum daily discharge, expressed as concentration or mass, based upon actual sample values;
- (2) Average daily discharge for all samples, expressed as concentration or mass, and the number of samples used to obtain this value;
- (3) The analytical method used; and
- (4) The threshold level (i.e., method detection limit, minimum level, or other designated method endpoints) for the analytical method used.

j. Unless otherwise required by the board, metals must be reported as total recoverable.

## 5. Effluent monitoring for whole effluent toxicity.

a. All applicants must provide an identification of any whole effluent toxicity tests conducted during the 4-1/2 years prior to the date of the application on any of the applicant's discharges or on any receiving water near the discharge.

b. As provided in subdivisions 5 c through i of this subsection, the following applicants must submit to the department the results of valid whole effluent toxicity tests for acute or chronic toxicity for samples taken from

each outfall through which effluent is discharged to surface waters, except for combined sewer overflows:

(1) All POTWs with design flow rates greater than or equal to one million gallons per day;

(2) All POTWs with approved pretreatment programs or POTWs required to develop a pretreatment program;

(3) Other POTWs, as required by the board, based on consideration of the following factors:

(a) The variability of the pollutants or pollutant parameters in the POTW effluent (based on chemical-specific information, the type of treatment plant, and types of industrial contributors);

(b) The ratio of effluent flow to receiving stream flow;

(c) Existing controls on point or nonpoint sources, including total maximum daily load calculations for the receiving stream segment and the relative contribution of the POTW;

(d) Receiving stream characteristics, including possible or known water quality impairment, and whether the POTW discharges to a coastal water, or a water designated as an outstanding natural resource water; or

(e) Other considerations (including, but not limited to, the history of toxic impacts and compliance problems at the POTW) that the board determines could cause or contribute to adverse water quality impacts.

c. Where the POTW has two or more outfalls with substantially identical effluent discharging to the same receiving stream segment, the board may allow applicants to submit whole effluent toxicity data for only one outfall on a case-by-case basis. The board may also allow applicants to composite samples from one or more outfalls that discharge into the same mixing zone.

d. Each applicant required to perform whole effluent toxicity testing pursuant to subdivision 5 b of this subsection must provide:

(1) Results of a minimum of four quarterly tests for a year, from the year preceding the permit application; or

(2) Results from four tests performed at least annually in the 4-1/2 year period prior to the application, provided the results show no appreciable toxicity using a safety factor determined by the board.

e. Applicants must conduct tests with multiple species (no less than two species, e.g., fish, invertebrate, plant) and test for acute or chronic toxicity, depending on the range of receiving water dilution. The board recommends that applicants conduct acute or chronic testing based on the following dilutions: (i) acute toxicity testing if the dilution of the effluent is greater than 100:1 at the edge of the mixing zone or (ii) chronic toxicity testing if the

dilution of the effluent is less than or equal to 100:1 at the edge of the mixing zone.

f. Each applicant required to perform whole effluent toxicity testing pursuant to subdivision 5 b of this subsection must provide the number of chronic or acute whole effluent toxicity tests that have been conducted since the last permit reissuance.

g. Applicants must provide the results using the form provided by the department, or test summaries if available and comprehensive, for each whole effluent toxicity test conducted pursuant to subdivision 5 b of this subsection for which such information has not been reported previously to the department.

h. Whole effluent toxicity testing conducted pursuant to subdivision 5 b of this subsection must be conducted using methods approved under 40 CFR Part 136 (2005), as directed by the board.

i. For whole effluent toxicity data submitted to the department within 4-1/2 years prior to the date of the application, applicants must provide the dates on which the data were submitted and a summary of the results.

j. Each POTW required to perform whole effluent toxicity testing pursuant to subdivision 5 b of this subsection must provide any information on the cause of toxicity and written details of any toxicity reduction evaluation conducted, if any whole effluent toxicity test conducted within the past 4-1/2 years revealed toxicity.

6. Applicants must submit the following information about industrial discharges to the POTW:

a. Number of significant industrial users (SIUs) and categorical industrial users (CIUs) discharging to the POTW; and

b. POTWs with one or more SIUs shall provide the following information for each SIU, as defined in 9VAC25-31-10, that discharges to the POTW:

(1) Name and mailing address;

(2) Description of all industrial processes that affect or contribute to the SIU's discharge;

(3) Principal products and raw materials of the SIU that affect or contribute to the SIU's discharge;

(4) Average daily volume of wastewater discharged, indicating the amount attributable to process flow and nonprocess flow;

(5) Whether the SIU is subject to local limits;

(6) Whether the SIU is subject to categorical standards and, if so, under which category and subcategory; and

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(7) Whether any problems at the POTW (e.g., upsets, pass through, interference) have been attributed to the SIU in the past 4-1/2 years.

c. The information required in subdivisions 6 a and b of this subsection may be waived by the board for POTWs with pretreatment programs if the applicant has submitted either of the following that contain information substantially identical to that required in subdivisions 6 a and b of this subsection:

(1) An annual report submitted within one year of the application; or

(2) A pretreatment program.

7. Discharges from hazardous waste generators and from waste cleanup or remediation sites. POTWs receiving Resource Conservation and Recovery Act (RCRA), Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), or RCRA Corrective Action wastes or wastes generated at another type of cleanup or remediation site must provide the following information:

a. If the POTW receives, or has been notified that it will receive, by truck, rail, or dedicated pipe any wastes that are regulated as RCRA hazardous wastes pursuant to 40 CFR Part 261 (2005), the applicant must report the following:

(1) The method by which the waste is received (i.e., whether by truck, rail, or dedicated pipe); and

(2) The hazardous waste number and amount received annually of each hazardous waste.

b. If the POTW receives, or has been notified that it will receive, wastewaters that originate from remedial activities, including those undertaken pursuant to CERCLA and §3004(u) or 3008(h) of RCRA, the applicant must report the following:

(1) The identity and description of the site or facility at which the wastewater originates;

(2) The identities of the wastewater's hazardous constituents, as listed in Appendix VIII of 40 CFR Part 261 (2005), if known; and

(3) The extent of treatment, if any, the wastewater receives or will receive before entering the POTW.

c. Applicants are exempt from the requirements of subdivision 7 b of this subsection if they receive no more than 15 kilograms per month of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e) (2005).

8. Each applicant with combined sewer systems must provide the following information:

a. The following information regarding the combined sewer system:

(1) A map indicating the location of the following:

(a) All CSO discharge points;

(b) Sensitive use areas potentially affected by CSOs (e.g., beaches, drinking water supplies, shellfish beds, sensitive aquatic ecosystems, and outstanding national resource waters); and

(c) Waters supporting threatened and endangered species potentially affected by CSOs; and

(2) A diagram of the combined sewer collection system that includes the following information:

(a) The location of major sewer trunk lines, both combined and separate sanitary;

(b) The locations of points where separate sanitary sewers feed into the combined sewer system;

(c) In-line and off-line storage structures;

(d) The locations of flow-regulating devices; and

(e) The locations of pump stations.

b. The following information for each CSO discharge point covered by the permit application:

(1) The following information on each outfall:

(a) Outfall number;

(b) State, county, and city or town in which outfall is located;

(c) Latitude and longitude, to the nearest second;

(d) Distance from shore and depth below surface;

(e) Whether the applicant monitored any of the following in the past year for this CSO: (i) rainfall, (ii) CSO flow volume, (iii) CSO pollutant concentrations, (iv) receiving water quality, or (v) CSO frequency; and

(f) The number of storm events monitored in the past year;

(2) The following information about CSO overflows from each outfall:

(a) The number of events in the past year;

(b) The average duration per event, if available;

(c) The average volume per CSO event, if available; and

(d) The minimum rainfall that caused a CSO event, if available, in the last year;

(3) The following information about receiving waters:

(a) Name of receiving water;

(b) Name of watershed/stream system and the United States Soil Conservation Service watershed (14-digit) code, if known; and

(c) Name of State Management/River Basin and the United States Geological Survey hydrologic cataloging unit (8-digit) code, if known; and

(4) A description of any known water quality impacts on the receiving water caused by the CSO (e.g., permanent or intermittent beach closings, permanent or intermittent shellfish bed closings, fish kills, fish advisories, other recreational loss, or exceedance of any applicable state water quality standard).

9. All applicants must provide the name, mailing address, telephone number, and responsibilities of all contractors responsible for any operational or maintenance aspects of the facility.

10. All applications must be signed by a certifying official in compliance with 9VAC25-31-110.

11. Pertinent plans, specifications, maps and such other relevant information as may be required, in scope and details satisfactory to the board.

K. Application requirements for new sources and new discharges. New manufacturing, commercial, mining and silvicultural dischargers applying for VPDES permits (except for new discharges of facilities subject to the requirements of subsection H of this section or new discharges of storm water associated with industrial activity which are subject to the requirements of 9VAC25-31-120 B 1 and this subsection) shall provide the following information to the department, using the application forms provided by the department:

1. The expected outfall location in latitude and longitude to the nearest 15 seconds and the name of the receiving water;

2. The expected date of commencement of discharge;

3. a. Description of the treatment that the wastewater will receive, along with all operations contributing wastewater to the effluent, average flow contributed by each operation, and the ultimate disposal of any solid or liquid wastes not discharged;

b. A line drawing of the water flow through the facility with a water balance as described in subdivision G 2;

c. If any of the expected discharges will be intermittent or seasonal, a description of the frequency, duration and maximum daily flow rate of each discharge occurrence (except for storm water run-off, spillage, or leaks); and

4. If a new source performance standard promulgated under §306 of the CWA or an effluent limitation guideline applies to the applicant and is expressed in terms of production (or other measure of operation), a reasonable measure of the applicant's expected actual production

reported in the units used in the applicable effluent guideline or new source performance standard for each of the first three years. Alternative estimates may also be submitted if production is likely to vary;

5. The requirements in subdivisions H 4 a, b, and c of this section that an applicant must provide estimates of certain pollutants expected to be present do not apply to pollutants present in a discharge solely as a result of their presence in intake water; however, an applicant must report such pollutants as present. Net credits may be provided for the presence of pollutants in intake water if the requirements of 9VAC25-31-230 G are met. All levels (except for discharge flow, temperature, and pH) must be estimated as concentration and as total mass.

a. Each applicant must report estimated daily maximum, daily average, and source of information for each outfall for the following pollutants or parameters. The board may waive the reporting requirements for any of these pollutants and parameters if the applicant submits a request for such a waiver before or with his application which demonstrates that information adequate to support issuance of the permit can be obtained through less stringent reporting requirements.

(1) Biochemical oxygen demand (BOD).

(2) Chemical oxygen demand (COD).

(3) Total organic carbon (TOC).

(4) Total suspended solids (TSS).

(5) Flow.

(6) Ammonia (as N).

(7) Temperature (winter and summer).

(8) pH.

b. Each applicant must report estimated daily maximum, daily average, and source of information for each outfall for the following pollutants, if the applicant knows or has reason to believe they will be present or if they are limited by an effluent limitation guideline or new source performance standard either directly or indirectly through limitations on an indicator pollutant: all pollutants in Table IV of 40 CFR Part 122 Appendix D (2005) (certain conventional and nonconventional pollutants).

c. Each applicant must report estimated daily maximum, daily average and source of information for the following pollutants if he knows or has reason to believe that they will be present in the discharges from any outfall:

(1) The pollutants listed in Table III of 40 CFR Part 122 Appendix D (2005) (the toxic metals, in the discharge from any outfall, Total cyanide, and total phenols);

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(2) The organic toxic pollutants in Table II of 40 CFR Part 122 Appendix D (2005) (except bis (chloromethyl) ether, dichlorofluoromethane and trichlorofluoromethane). This requirement is waived for applicants with expected gross sales of less than \$100,000 per year for the next three years, and for coal mines with expected average production of less than 100,000 tons of coal per year.

d. The applicant is required to report that 2,3,7,8 Tetrachlorodibenzo-P-Dioxin (TCDD) may be discharged if he uses or manufactures one of the following compounds, or if he knows or has reason to believe that TCDD will or may be present in an effluent:

(1) 2,4,5-trichlorophenoxy acetic acid (2,4,5-T) (CAS #93-76-5);

(2) 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5-TP) (CAS #93-72-1);

(3) 2-(2,4,5-trichlorophenoxy) ethyl 2,2-dichloropropionate (Erbon) (CAS #136-25-4);

(4) 0,0-dimethyl 0-(2,4,5-trichlorophenyl) phosphorothioate (Ronnel) (CAS #299-84-3);

(5) 2,4,5-trichlorophenol (TCP) (CAS #95-95-4); or

(6) Hexachlorophene (HCP) (CAS #70-30-4);

e. Each applicant must report any pollutants listed in Table V of 40 CFR Part 122 Appendix D (2005) (certain hazardous substances) if he believes they will be present in any outfall (no quantitative estimates are required unless they are already available).

f. No later than two years after the commencement of discharge from the proposed facility, the applicant is required to submit the information required in subsection G of this section. However, the applicant need not complete those portions of subsection G of this section requiring tests which he has already performed and reported under the discharge monitoring requirements of his VPDES permit;

6. Each applicant must report the existence of any technical evaluation concerning his wastewater treatment, along with the name and location of similar plants of which he has knowledge;

7. Any optional information the permittee wishes to have considered;

8. Signature of certifying official under 9VAC25-31-110; and

9. Pertinent plans, specifications, maps and such other relevant information as may be required, in scope and details satisfactory to the board.

L. Variance requests by non-POTWs. A discharger which is not a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations under any of the following statutory or regulatory provisions within the times specified in this subsection:

1. Fundamentally different factors.

a. A request for a variance based on the presence of fundamentally different factors from those on which the effluent limitations guideline was based shall be filed as follows:

(1) For a request from best practicable control technology currently available (BPT), by the close of the public comment period for the draft permit; or

(2) For a request from best available technology economically achievable (BAT) and/or best conventional pollutant control technology (BCT), by no later than:

(a) July 3, 1989, for a request based on an effluent limitation guideline promulgated before February 4, 1987, to the extent July 3, 1989, is not later than that provided under previously promulgated regulations; or

(b) 180 days after the date on which an effluent limitation guideline is published in the Federal Register for a request based on an effluent limitation guideline promulgated on or after February 4, 1987.

b. The request shall explain how the requirements of the applicable regulatory or statutory criteria have been met.

2. A request for a variance from the BAT requirements for CWA §301(b)(2)(F) pollutants (commonly called nonconventional pollutants) pursuant to §301(c) of the CWA because of the economic capability of the owner or operator, or pursuant to §301(g) of the CWA (provided however that a §301(g) variance may only be requested for ammonia; chlorine; color; iron; total phenols (when determined by the Administrator to be a pollutant covered by §301(b)(2)(F) of the CWA) and any other pollutant which the administrator lists under §301(g)(4) of the CWA) must be made as follows:

a. For those requests for a variance from an effluent limitation based upon an effluent limitation guideline by:

(1) Submitting an initial request to the regional administrator, as well as to the department, stating the name of the discharger, the permit number, the outfall number(s), the applicable effluent guideline, and whether the discharger is requesting a §301(c) or 301(g) of the CWA modification, or both. This request must have been filed not later than 270 days after promulgation of an applicable effluent limitation guideline; and

(2) Submitting a completed request no later than the close of the public comment period for the draft permit demonstrating that: (i) all reasonable ascertainable issues

have been raised and all reasonably available arguments and materials supporting their position have been submitted; and (ii) that the applicable requirements of 40 CFR Part 125 (2005) have been met. Notwithstanding this provision, the complete application for a request under §301(g) of the CWA shall be filed 180 days before EPA must make a decision (unless the Regional Division Director establishes a shorter or longer period); or

b. For those requests for a variance from effluent limitations not based on effluent limitation guidelines, the request need only comply with subdivision 2 a (2) of this subsection and need not be preceded by an initial request under subdivision 2 a (1) of this subsection.

3. A modification under §302(b)(2) of the CWA of requirements under §302(a) of the CWA for achieving water quality related effluent limitations may be requested no later than the close of the public comment period for the draft permit on the permit from which the modification is sought.

4. A variance for alternate effluent limitations for the thermal component of any discharge must be filed with a timely application for a permit under this section, except that if thermal effluent limitations are established on a case-by-case basis or are based on water quality standards the request for a variance may be filed by the close of the public comment period for the draft permit. A copy of the request shall be sent simultaneously to the department.

M. Variance requests by POTWs. A discharger which is a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations under any of the following statutory provisions as specified in this paragraph:

1. A request for a modification under §301(h) of the CWA of requirements of §301(b)(1)(B) of the CWA for discharges into marine waters must be filed in accordance with the requirements of 40 CFR Part 125, Subpart G (2005).

2. A modification under §302(b)(2) of the CWA of the requirements under §302(a) of the CWA for achieving water quality based effluent limitations shall be requested no later than the close of the public comment period for the draft permit on the permit from which the modification is sought.

N. Expedited variance procedures and time extensions.

1. Notwithstanding the time requirements in subsections L and M of this section, the board may notify a permit applicant before a draft permit is issued that the draft permit will likely contain limitations which are eligible for variances. In the notice the board may require the applicant as a condition of consideration of any potential variance request to submit a request explaining how the

requirements of 40 CFR Part 125 (2005) applicable to the variance have been met and may require its submission within a specified reasonable time after receipt of the notice. The notice may be sent before the permit application has been submitted. The draft or final permit may contain the alternative limitations which may become effective upon final grant of the variance.

2. A discharger who cannot file a timely complete request required under subdivisions L 2 a (2) or L 2 b of this section may request an extension. The extension may be granted or denied at the discretion of the board. Extensions shall be no more than six months in duration.

O. Recordkeeping. Except for information required by subdivision C 2 of this section, which shall be retained for a period of at least five years from the date the application is signed (or longer as required by Part VI (9VAC25-31-420 et seq.) of this chapter), applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under this section for a period of at least three years from the date the application is signed.

P. Sewage sludge management. All TWTDS subject to subdivision C 2 a of this section must provide the information in this subsection to the department using an application form approved by the department. New applicants must submit all information available at the time of permit application. The information may be provided by referencing information previously submitted to the department. The board may waive any requirement of this subsection if it has access to substantially identical information. The board may also waive any requirement of this subsection that is not of material concern for a specific permit, if approved by the regional administrator. The waiver request to the regional administrator must include the board's justification for the waiver. A regional administrator's disapproval of the board's proposed waiver does not constitute final agency action, but does provide notice to the board and the permit applicant that the EPA may object to any board issued permit issued in the absence of the required information.

1. All applicants must submit the following information:

- a. The name, mailing address, and location of the TWTDS for which the application is submitted;
- b. Whether the facility is a Class I Sludge Management Facility;
- c. The design flow rate (in million gallons per day);
- d. The total population served;
- e. The TWTDS's status as federal, state, private, public, or other entity;
- f. The name, mailing address, and telephone number of the applicant; and

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- g. Indication whether the applicant is the owner, operator, or both.
2. All applicants must submit the facility's VPDES permit number, if applicable, and a listing of all other federal, state, and local permits or construction approvals received or applied for under any of the following programs:
- a. Hazardous Waste Management program under the Resource Conservation and Recovery Act (RCRA);
  - b. UIC program under the Safe Drinking Water Act (SDWA);
  - c. NPDES program under the Clean Water Act (CWA);
  - d. Prevention of Significant Deterioration (PSD) program under the Clean Air Act;
  - e. Nonattainment program under the Clean Air Act;
  - f. National Emission Standards for Hazardous Air Pollutants (NESHAPS) preconstruction approval under the Clean Air Act;
  - g. Dredge or fill permits under §404 of the CWA;
  - h. Other relevant environmental permits, including state or local permits.
3. All applicants must identify any generation, treatment, storage, land application, or disposal of sewage sludge that occurs in Indian country.
4. All applicants must submit a topographic map (or other map if a topographic map is unavailable) extending one mile beyond property boundaries of the facility and showing the following information:
- a. All sewage sludge management facilities, including on-site treatment, storage, and disposal sites; and
  - b. Wells, springs, and other surface water bodies that are within 1/4 mile of the property boundaries and listed in public records or otherwise known to the applicant.
5. All applicants must submit a line drawing and/or a narrative description that identifies all sewage sludge management practices employed during the term of the permit, including all units used for collecting, dewatering, storing, or treating sewage sludge; the destination(s) of all liquids and solids leaving each such unit; and all processes used for pathogen reduction and vector attraction reduction.
6. The applicant must submit sewage sludge monitoring data for the pollutants for which limits in sewage sludge have been established in Part VI (9VAC25-31-420 et seq.) of this chapter for the applicant's use or disposal practices on the date of permit application with the following conditions:
- a. The board may require sampling for additional pollutants, as appropriate, on a case-by-case basis.
  - b. Applicants must provide data from a minimum of three samples taken within 4-1/2 years prior to the date of the permit application. Samples must be representative of the sewage sludge and should be taken at least one month apart. Existing data may be used in lieu of sampling done solely for the purpose of this application.
  - c. Applicants must collect and analyze samples in accordance with analytical methods specified in 9VAC25-31-490 unless an alternative has been specified in an existing sewage sludge permit.
  - d. The monitoring data provided must include at least the following information for each parameter:
    - (1) Average monthly concentration for all samples (mg/kg dry weight), based upon actual sample values;
    - (2) The analytical method used; and
    - (3) The method detection level.
7. If the applicant is a person who prepares sewage sludge, as defined in 9VAC25-31-500, the applicant must provide the following information:
- a. If the applicant's facility generates sewage sludge, the total dry metric tons per 365-day period generated at the facility.
  - b. If the applicant's facility receives sewage sludge from another facility, the following information for each facility from which sewage sludge is received:
    - (1) The name, mailing address, and location of the other facility;
    - (2) The total dry metric tons per 365-day period received from the other facility; and
    - (3) A description of any treatment processes occurring at the other facility, including blending activities and treatment to reduce pathogens or vector attraction characteristics.
  - c. If the applicant's facility changes the quality of sewage sludge through blending, treatment, or other activities, the following information:
    - (1) Whether the Class A pathogen reduction requirements in 9VAC25-31-710 A or the Class B pathogen reduction requirements in 9VAC25-31-710 B are met, and a description of any treatment processes used to reduce pathogens in sewage sludge;
    - (2) Whether any of the vector attraction reduction options of 9VAC25-31-720 B 1 through 8 are met, and a description of any treatment processes used to reduce vector attraction properties in sewage sludge; and

(3) A description of any other blending, treatment, or other activities that change the quality of sewage sludge.

d. If sewage sludge from the applicant's facility meets the ceiling concentrations in 9VAC25-31-540 B 1, the pollutant concentrations in 9VAC25-31-540 B 3, the Class A pathogen requirements in 9VAC25-31-710 A, and one of the vector attraction reduction requirements in 9VAC25-31-720 B 1 through 8, and if the sewage sludge is applied to the land, the applicant must provide the total dry metric tons per 365-day period of sewage sludge subject to this subsection that is applied to the land.

e. If sewage sludge from the applicant's facility is sold or given away in a bag or other container for application to the land, and the sewage sludge is not subject to subdivision 7 d of this subsection, the applicant must provide the following information:

(1) The total dry metric tons per 365-day period of sewage sludge subject to this subsection that is sold or given away in a bag or other container for application to the land; and

(2) A copy of all labels or notices that accompany the sewage sludge being sold or given away.

f. If sewage sludge from the applicant's facility is provided to another person who prepares sewage sludge, as defined in 9VAC25-31-500, and the sewage sludge is not subject to subdivision 7 d of this subsection, the applicant must provide the following information for each facility receiving the sewage sludge:

(1) The name and mailing address of the receiving facility;

(2) The total dry metric tons per 365-day period of sewage sludge subject to this subsection that the applicant provides to the receiving facility;

(3) A description of any treatment processes occurring at the receiving facility, including blending activities and treatment to reduce pathogens or vector attraction characteristic;

(4) A copy of the notice and necessary information that the applicant is required to provide the receiving facility under 9VAC25-31-530 G; and

(5) If the receiving facility places sewage sludge in bags or containers for sale or give-away to application to the land, a copy of any labels or notices that accompany the sewage sludge.

8. If sewage sludge from the applicant's facility is applied to the land in bulk form and is not subject to subdivision 7 d, e or f of this subsection, the applicant must provide the following information:

a. The total dry metric tons per 365-day period of sewage sludge subject to this subsection that is applied to the land.

b. If any land application sites are located in states other than the state where the sewage sludge is prepared, a description of how the applicant will notify the permitting authority for the state(s) where the land application sites are located.

c. The following information for each land application site that has been identified at the time of permit application:

(1) The name (if any), and location for the land application site;

(2) The site's latitude and longitude to the nearest second, and method of determination;

(3) A topographic map (or other map if a topographic map is unavailable) that shows the site's location;

(4) The name, mailing address, and telephone number of the site owner, if different from the applicant;

(5) The name, mailing address, and telephone number of the person who applies sewage sludge to the site, if different from the applicant;

(6) Whether the site is agricultural land, forest, a public contact site, or a reclamation site, as such site types are defined in 9VAC25-31-500;

(7) The type of vegetation grown on the site, if known, and the nitrogen requirement for this vegetation;

(8) Whether either of the vector attraction reduction options of 9VAC25-31-720 B 9 or 10 is met at the site, and a description of any procedures employed at the time of use to reduce vector attraction properties in sewage sludge; and

(9) Other information that describes how the site will be managed, as specified by the board.

d. The following information for each land application site that has been identified at the time of permit application, if the applicant intends to apply bulk sewage sludge subject to the cumulative pollutant loading rates in 9VAC25-31-540 B 2 to the site:

(1) Whether the applicant has contacted the permitting authority in the state where the bulk sewage sludge subject to 9VAC25-31-540 B 2 will be applied, to ascertain whether bulk sewage sludge subject to 9VAC25-31-540 B 2 has been applied to the site on or since July 20, 1993, and if so, the name of the permitting authority and the name and phone number of a contact person at the permitting authority;

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(2) Identification of facilities other than the applicant's facility that have sent, or are sending, sewage sludge subject to the cumulative pollutant loading rates in 9VAC25-31-540 B 2 to the site since July 20, 1993, if, based on the inquiry in subdivision 8 d (1) of this subsection, bulk sewage sludge subject to cumulative pollutant loading rates in 9VAC25-31-540 B 2 has been applied to the site since July 20, 1993.

e. If not all land application sites have been identified at the time of permit application, the applicant must submit a land application plan that, at a minimum:

- (1) Describes the geographical area covered by the plan;
- (2) Identifies the site selection criteria;
- (3) Describes how the site(s) will be managed;
- (4) Provides for advance notice to the board of specific land application sites and reasonable time for the board to object prior to land application of the sewage sludge; and
- (5) Provides for advance public notice of land application sites in a newspaper of general circulation in the area of the land application site.

9. If sewage sludge from the applicant's facility is placed on a surface disposal site, the applicant must provide the following information:

a. The total dry metric tons of sewage sludge from the applicant's facility that is placed on surface disposal sites per 365-day period.

b. The following information for each surface disposal site receiving sewage sludge from the applicant's facility that the applicant does not own or operate:

- (1) The site name or number, contact person, mailing address, and telephone number for the surface disposal site; and
- (2) The total dry metric tons from the applicant's facility per 365-day period placed on the surface disposal site.

c. The following information for each active sewage sludge unit at each surface disposal site that the applicant owns or operates:

- (1) The name or number and the location of the active sewage sludge unit;
- (2) The unit's latitude and longitude to the nearest second, and method of determination;
- (3) If not already provided, a topographic map (or other map if a topographic map is unavailable) that shows the unit's location;
- (4) The total dry metric tons placed on the active sewage sludge unit per 365-day period;

(5) The total dry metric tons placed on the active sewage sludge unit over the life of the unit;

(6) A description of any liner for the active sewage sludge unit, including whether it has a maximum permeability of  $1 \times 10^{-7}$  cm/sec;

(7) A description of any leachate collection system for the active sewage sludge unit, including the method used for leachate disposal, and any federal, state, and local permit number(s) for leachate disposal;

(8) If the active sewage sludge unit is less than 150 meters from the property line of the surface disposal site, the actual distance from the unit boundary to the site property line;

(9) The remaining capacity (dry metric tons) for the active sewage sludge unit;

(10) The date on which the active sewage sludge unit is expected to close, if such a date has been identified;

(11) The following information for any other facility that sends sewage sludge to the active sewage sludge unit:

(a) The name, contact person, and mailing address of the facility; and

(b) Available information regarding the quality of the sewage sludge received from the facility, including any treatment at the facility to reduce pathogens or vector attraction characteristics;

(12) Whether any of the vector attraction reduction options of 9VAC25-31-720 B 9 through 11 is met at the active sewage sludge unit, and a description of any procedures employed at the time of disposal to reduce vector attraction properties in sewage sludge;

(13) The following information, as applicable to any groundwater monitoring occurring at the active sewage sludge unit:

(a) A description of any groundwater monitoring occurring at the active sewage sludge unit;

(b) Any available groundwater monitoring data, with a description of the well locations and approximate depth to groundwater;

(c) A copy of any groundwater monitoring plan that has been prepared for the active sewage sludge unit;

(d) A copy of any certification that has been obtained from a qualified groundwater scientist that the aquifer has not been contaminated; and

(14) If site-specific pollutant limits are being sought for the sewage sludge placed on this active sewage sludge unit, information to support such a request.

10. If sewage sludge from the applicant's facility is fired in a sewage sludge incinerator, the applicant must provide the following information:

- a. The total dry metric tons of sewage sludge from the applicant's facility that is fired in sewage sludge incinerators per 365-day period.
- b. The following information for each sewage sludge incinerator firing the applicant's sewage sludge that the applicant does not own or operate:
  - (1) The name and/or number, contact person, mailing address, and telephone number of the sewage sludge incinerator; and
  - (2) The total dry metric tons from the applicant's facility per 365-day period fired in the sewage sludge incinerator.

11. If sewage sludge from the applicant's facility is sent to a municipal solid waste landfill (MSWLF), the applicant must provide the following information for each MSWLF to which sewage sludge is sent:

- a. The name, contact person, mailing address, location, and all applicable permit numbers of the MSWLF;
- b. The total dry metric tons per 365-day period sent from this facility to the MSWLF;
- c. A determination of whether the sewage sludge meets applicable requirements for disposal of sewage sludge in a MSWLF, including the results of the paint filter liquids test and any additional requirements that apply on a site-specific basis; and
- d. Information, if known, indicating whether the MSWLF complies with criteria set forth in the Virginia Solid Waste Management Regulations, 9VAC20-80.

12. All applicants must provide the name, mailing address, telephone number, and responsibilities of all contractors responsible for any operational or maintenance aspects of the facility related to sewage sludge generation, treatment, use, or disposal.

13. At the request of the board, the applicant must provide any other information necessary to determine the appropriate standards for permitting under Part VI (9VAC25-31-420 et seq.) of this chapter, and must provide any other information necessary to assess the sewage sludge use and disposal practices, determine whether to issue a permit, or identify appropriate permit requirements; and pertinent plans, specifications, maps and such other relevant information as may be required, in scope and details satisfactory to the board.

14. All applications must be signed by a certifying official in compliance with 9VAC25-31-110.

Q. Applications for facilities with cooling water intake structures.

1. Application requirements.

~~a.~~ New facilities with new or modified cooling water intake structures. New facilities with cooling water intake structures as defined in 9VAC25-31-165 must report the information required under subdivisions 2, 3, and 4 of this subsection and under 9VAC25-31-165. Requests for alternative requirements under 9VAC25-31-165 must be submitted with the permit application.

~~b. Phase II existing facilities. Phase II existing facilities as defined in 9VAC25-31-165 must submit to the board for review the information required under subdivisions 2, 3, and 5 of this subsection and all applicable provisions of 9VAC25-31-165 as part of their application except for the proposal for information collection, which must be provided in accordance with 9VAC25-31-165 C 3 b (1).~~

2. Source water physical data. These include:

- a. A narrative description and scaled drawings showing the physical configuration of all source water bodies used by the facility, including area dimensions, depths, salinity and temperature regimes, and other documentation that supports the determination of the water body type where each cooling water intake structure is located;
- b. Identification and characterization of the source water body's hydrological and geomorphologic features, as well as the methods used to conduct any physical studies to determine the intake's area of influence within the water body and the results of such studies; and
- c. Location maps.

3. Cooling water intake structure data. These include:

- a. A narrative description of the configuration of each cooling water intake structure and where it is located in the water body and in the water column;
- b. Latitude and longitude in degrees, minutes, and seconds for each cooling water intake structure;
- c. A narrative description of the operation of each cooling water intake structure, including design intake flow, daily hours of operation, number of days of the year in operation and seasonal changes, if applicable;
- d. A flow distribution and water balance diagram that includes all sources of water to the facility, recirculation flows and discharges; and
- e. Engineering drawings of the cooling water intake structure.

4. Source water baseline biological characterization data. This information is required to characterize the biological community in the vicinity of the cooling water intake

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structure and to characterize the operation of the cooling water intake structures. The department may also use this information in subsequent permit renewal proceedings to determine if the design and construction technology plan as required in 9VAC25-31-165 should be revised. This supporting information must include existing data if available. Existing data may be supplemented with data from newly conducted field studies. The information must include:

- a. A list of the data in subdivisions 4 b through 4 f of this subsection that is not available and efforts made to identify sources of the data;
- b. A list of species (or relevant taxa) for all life stages and their relative abundance in the vicinity of the cooling water intake structure;
- c. Identification of the species and life stages that would be most susceptible to impingement and entrainment. Species evaluated should include the forage base as well as those most important in terms of significance to commercial and recreational fisheries;
- d. Identification and evaluation of the primary period of reproduction, larval recruitment, and period of peak abundance for relevant taxa;
- e. Data representative of the seasonal and daily activities (e.g., feeding and water column migration) of biological organisms in the vicinity of the cooling water intake structure;
- f. Identification of all threatened, endangered, and other protected species that might be susceptible to impingement and entrainment at the cooling water intake structures;
- g. Documentation of any public participation or consultation with federal or state agencies undertaken in development of the plan; and
- h. If information requested in subdivision 4 of this subsection is supplemented with data collected using field studies, supporting documentation for the source water baseline biological characterization must include a description of all methods and quality assurance procedures for sampling, and data analysis including a description of the study area; taxonomic identification of sampled and evaluated biological assemblages (including all life stages of fish and shellfish); and sampling and data analysis methods. The sampling and/or data analysis methods used must be appropriate for a quantitative survey and based on consideration of methods used in other biological studies performed within the same source water body. The study area should include, at a minimum, the area of influence of the cooling water intake structure.

~~5. Cooling water system data. Phase II existing facilities as defined in 9VAC25-31-165 must provide the following information for each cooling water intake structure they use:~~

- ~~a. A narrative description of the operation of the cooling water system, its relationship to cooling water intake structures, the proportion of the design intake flow that is used in the system, the number of days of the year the cooling water system is in operation and seasonal changes in the operation of the system, if applicable; and~~
- ~~b. Design and engineering calculations prepared by a qualified professional and supporting data to support the description required by subdivision 5 a of this subsection.~~

Note 1: Until further notice subdivision G 7 e (1) of this section and the corresponding portions of the VPDES application Form 2C are suspended as they apply to coal mines.

Note 2: Until further notice subdivision G 7 e (1) of this section and the corresponding portions of Item V-C of the VPDES application Form 2C are suspended as they apply to:

- a. Testing and reporting for all four organic fractions in the Greige Mills Subcategory of the Textile Mills industry (subpart C-Low water use processing of 40 CFR Part 410 (2005)), and testing and reporting for the pesticide fraction in all other subcategories of this industrial category.
- b. Testing and reporting for the volatile, base/neutral and pesticide fractions in the Base and Precious Metals Subcategory of the Ore Mining and Dressing industry (subpart B of 40 CFR Part 440 (2005)), and testing and reporting for all four fractions in all other subcategories of this industrial category.
- c. Testing and reporting for all four GC/MS fractions in the Porcelain Enameling industry.

Note 3: Until further notice subdivision G 7 e (1) of this section and the corresponding portions of Item V-C of the VPDES application Form 2C are suspended as they apply to:

- a. Testing and reporting for the pesticide fraction in the Tall Oil Rosin Subcategory (subpart D) and Rosin-Based Derivatives Subcategory (subpart F) of the Gum and Wood Chemicals industry (40 CFR Part 454 (2005)), and testing and reporting for the pesticide and base-neutral fractions in all other subcategories of this industrial category.
- b. Testing and reporting for the pesticide fraction in the leather tanning and finishing, paint and ink formulation, and photographic supplies industrial categories.
- c. Testing and reporting for the acid, base/neutral and pesticide fractions in the petroleum refining industrial category.

d. Testing and reporting for the pesticide fraction in the Papergrade Sulfite Subcategories (subparts J and U) of the Pulp and Paper industry (40 CFR Part 430 (2005)); testing and reporting for the base/neutral and pesticide fractions in the following subcategories: Deink (subpart Q), Dissolving Kraft (subpart F), and Paperboard from Waste Paper (subpart E); testing and reporting for the volatile, base/neutral and pesticide fractions in the following subcategories: BCT Bleached Kraft (subpart H), Semi-Chemical (subparts B and C), and Nonintegrated-Fine Papers (subpart R); and testing and reporting for the acid, base/neutral, and pesticide fractions in the following subcategories: Fine Bleached Kraft (subpart I), Dissolving Sulfite Pulp (subpart K), Groundwood-Fine Papers (subpart O), Market Bleached Kraft (subpart G), Tissue from Wastepaper (subpart T), and Nonintegrated-Tissue Papers (subpart S).

e. Testing and reporting for the base/neutral fraction in the Once-Through Cooling Water, Fly Ash and Bottom Ash Transport Water process wastestreams of the Steam Electric Power Plant industrial category.

**9VAC25-31-165. Requirements applicable to cooling water intake structures.**

A. Definitions. The following definitions apply specifically to this section:

~~"Adaptive management method" is a type of project management method where a facility chooses an approach to meeting the project goal, monitors the effectiveness of that approach, and then based on monitoring and any other relevant information, makes any adjustments necessary to ensure continued progress toward the project's goal. This cycle of activity is repeated as necessary to reach the project's goal.~~

~~"All life stages" means eggs, larvae, juveniles, and adults.~~

"Annual mean flow" means the average of daily flows over a calendar year.

~~"Calculation baseline" means an estimate of impingement mortality and entrainment that would occur at a site assuming that: the cooling water system has been designed as a once-through system; the opening of the cooling water intake structure is located at, and the face of the standard 3/8 inch mesh traveling screen is oriented parallel to, the shoreline near the surface of the source water body; and the baseline practices, procedures, and structural configuration are those that a facility would maintain in the absence of any structural or operational controls, including flow or velocity reductions, implemented in whole or in part for the purposes of reducing impingement mortality and entrainment. The current level of impingement mortality and entrainment may be used as the calculation baseline. The calculation baseline may be estimated using: historical impingement mortality and entrainment data from a facility with comparable design,~~

~~operational, and environmental conditions; current biological data collected in the water body in the vicinity of the cooling water intake structure; or current impingement mortality and entrainment data collected at the facility. The calculation baseline may be modified to be based on a location of the opening of the cooling water intake structure at a depth other than at or near the surface if it can be demonstrated to the department that the other depth would correspond to a higher baseline level of impingement mortality and/or entrainment.~~

~~"Capacity utilization rate" means the ratio between the average annual net generation of power by the facility (in MWh) and the total net capability of the facility to generate power (in MW) multiplied by the number of hours during a year. In cases where a facility has more than one intake structure, and each intake structure provides cooling water exclusively to one or more generating units, the capacity utilization rate may be calculated separately for each intake structure, based on the capacity utilization of the units it services. Applicable requirements under this section would then be determined separately for each intake structure. The average annual net generation should be measured over a five year period (if available) of representative operating conditions, unless the facility makes a binding commitment to maintain capacity utilization below 15% for the life of the permit, in which case the rate may be based on this commitment. For purposes of this section, the capacity utilization rate applies to only that portion of the facility that generates electricity for transmission or sale using a thermal cycle employing the steam water system as the thermodynamic medium.~~

"Closed-cycle recirculating system" means a system designed, using minimized makeup and blowdown flows, to withdraw water from a natural or other water source to support contact and/or noncontact cooling uses within a facility. The water is usually sent to a cooling canal or channel, lake, pond, or tower to allow waste heat to be dissipated to the atmosphere and then is returned to the system. (Some facilities divert the waste heat to other process operations.) New source water (make-up water) is added to the system to replenish losses that have occurred due to blowdown, drift, and evaporation.

"Cooling water" means water used for contact or noncontact cooling, including water used for equipment cooling, evaporative cooling tower makeup, and dilution of effluent heat content. The intended use of the cooling water is to absorb waste heat rejected from the process or processes used, or from auxiliary operations on the facility's premises. Cooling water that is used in a manufacturing process either before or after it is used for cooling is considered process water for the purposes of calculating the percentage of a new facility's intake flow that is used for cooling purposes.

"Cooling water intake structure" means the total physical structure and any associated constructed waterways used to

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withdraw cooling water from state waters. The cooling water intake structure extends from the point at which water is withdrawn from the surface water source up to, and including, the intake pumps.

~~"Design and construction technology" means any physical configuration of the cooling water intake structure, or a technology that is placed in the water body in front of the cooling water intake structure, to reduce impingement mortality and/or entrainment. Design and construction technologies include, but are not limited to, location of the intake structure, intake screen systems, passive intake systems, fish diversion and/or avoidance systems, and fish handling and return systems. Restoration measures are not design and construction technologies for purposes of this definition.~~

"Design intake flow" means the value assigned (during the facility's design) to the total volume of water withdrawn from a source water body over a specific time period.

"Design intake velocity" means the value assigned (during the design of a cooling water intake structure) to the average speed at which intake water passes through the open area of the intake screen (or other device) against which organisms might be impinged or through which they might be entrained.

~~"Diel" means daily and refers to variation in organism abundance and density over a 24 hour period due to the influence of water movement, physical or chemical changes, and changes in light intensity.~~

"Entrainment" means the incorporation of all life stages of fish and shellfish with intake water flow entering and passing through a cooling water intake structure and into a cooling water system.

"Estuary" means a semi-enclosed body of water that has a free connection with open seas and within which the seawater is measurably diluted with fresh water derived from land drainage. The salinity of an estuary exceeds 0.5 parts per thousand (by mass) but is typically less than 30 parts per thousand (by mass).

"Existing facility" means any facility that ~~commenced construction as described on or before January 17, 2002; and any modification of, or any addition of a unit at such a facility that does not meet the definition of~~ is not a new facility.

"Freshwater river or stream" means a lotic (free-flowing) system that does not receive significant inflows of water from oceans or bays due to tidal action. For the purposes of this section, a flow-through reservoir with a retention time of seven days or less will be considered a freshwater river or stream.

"Hydraulic zone of influence" means that portion of the source water body hydraulically affected by the cooling water intake structure withdrawal of water.

"Impingement" means the entrapment of all life stages of fish and shellfish on the outer part of an intake structure or against a screening device during periods of intake water withdrawal.

"Lake or reservoir" means any inland body of open water with some minimum surface area free of rooted vegetation and with an average hydraulic retention time of more than seven days. Lakes or reservoirs might be natural water bodies or impounded streams, usually fresh, surrounded by land or by land and a man-made retainer (e.g., a dam). Lakes or reservoirs might be fed by rivers, streams, springs, and/or local precipitation. Flow-through reservoirs with an average hydraulic retention time of seven days or less should be considered a freshwater river or stream.

"Maximize" means to increase to the greatest amount, extent, or degree reasonably possible.

"Minimize" means to reduce to the smallest amount, extent, or degree reasonably possible.

~~"Moribund" means dying; close to death.~~

"Natural thermal stratification" means the naturally-occurring division of a water body into horizontal layers of differing densities as a result of variations in temperature at different depths.

"New facility" means any building, structure, facility, or installation that meets the definition of a "new source" or "new discharger" and is a greenfield or stand-alone facility that commences construction after January 17, 2002, and uses either a newly constructed cooling water intake structure, or an existing cooling water intake structure whose design capacity is increased to accommodate the intake of additional cooling water. A greenfield facility is a facility that is constructed at a site at which no other source is located, or that totally replaces the process or production equipment at an existing facility. A stand-alone facility is a new, separate facility that is constructed on property where an existing facility is located and whose processes are substantially independent of the existing facility at the same site. New facility does not include new units that are added to a facility for purposes of the same general industrial operation (for example, a new peaking unit at an electrical generating station).

"Ocean" means marine open coastal waters with a salinity greater than or equal to 30 parts per thousand (by mass).

~~"Once through cooling water system" means a system designed to withdraw water from a natural or other water source, use it at the facility to support contact and/or noncontact cooling uses, and then discharge it to a water body without recirculation. Once through cooling systems sometimes employ canals/channels, ponds, or nonrecirculating cooling towers to dissipate waste heat from the water before it is discharged.~~

~~"Operational measure" means a modification to any operation at a facility that serves to minimize impact to fish and shellfish from the cooling water intake structure. Examples of operational measures include, but are not limited to reductions in cooling water intake flow through the use of variable speed pumps and seasonal flow reductions or shutdowns; and more frequent rotation of traveling screens.~~

~~"Phase II existing facility" means any existing facility that meets the criteria specified in subsection C of this section.~~

"Source water" means the water body from which the cooling water is withdrawn.

~~"Supplier" means an entity, other than the regulated facility, that owns and operates its own cooling water intake structure and directly withdraws water from state waters. The supplier sells the cooling water to other facilities for their use, but may also use a portion of the water itself. An entity that provides potable water to residential populations (e.g., public water system) is not a supplier for purposes of this subpart.~~

"Thermocline" means the middle layer of a thermally stratified lake or reservoir. In this layer, there is a rapid decrease in temperatures.

"Tidal excursion" means the horizontal distance along the estuary or tidal river that a particle moves during one tidal cycle of ebb and flow.

"Tidal river" means the most seaward reach of a river or stream where the salinity is typically less than or equal to 0.5 parts per thousand (by mass) at a time of annual low flow and whose surface elevation responds to the effects of coastal lunar tides.

B. Cooling water intake structures for new facilities.

1. Applicability.

a. This section applies to a new facility if it:

- (1) Is a point source that uses or proposes to use a cooling water intake structure;
- (2) Has at least one cooling water intake structure that uses at least 25% of the water it withdraws for cooling purposes as specified in subdivision 1 c of this subsection; and
- (3) Has a design intake flow greater than two million gallons per day (MGD).

b. Use of a cooling water intake structure includes obtaining cooling water by any sort of contract or arrangement with an independent supplier (or multiple suppliers) of cooling water if the supplier or suppliers withdraw(s) water from waters of the United States. Use of cooling water does not include obtaining cooling water from a public water system or the use of treated effluent that otherwise would be discharged to state waters. This provision is intended to prevent circumvention of these

requirements by creating arrangements to receive cooling water from an entity that is not itself a point source.

c. The threshold requirement that at least 25% of water withdrawn be used for cooling purposes must be measured on an average monthly basis. A new facility meets the 25% cooling water threshold if, based on the new facility's design, any monthly average over a year for the percentage of cooling water withdrawn is expected to equal or exceed 25% of the total water withdrawn.

d. This section does not apply to facilities that employ cooling water intake structures in the offshore and coastal subcategories of the oil and gas extraction point source category as defined under 40 CFR 435.10 and 40 CFR 435.40.

2. Compliance.

a. The owner or operator of a new facility must comply with either Track I in subdivision 2 b or c of this subsection or Track II in subdivision 2 d of this subsection. In addition to meeting the requirements in subdivision 2 b, c or d of this subsection, the owner or operator of a new facility may be required to comply with subdivision 2 e of this subsection.

b. Track I requirements for new facilities that withdraw equal to or greater than 10 MGD. Facilities must comply with all of the following requirements:

- (1) Reduce intake flow, at a minimum, to a level commensurate with that which can be attained by a closed-cycle recirculating cooling water system;
- (2) Design and construct each cooling water intake structure to a maximum through-screen design intake velocity of 0.5 ft/s;
- (3) Design and construct the cooling water intake structure such that the total design intake flow from all cooling water intake structures meets the following requirements:
  - (a) For cooling water intake structures located in a freshwater river or stream, the total design intake flow must be no greater than 5.0% of the source water annual mean flow;
  - (b) For cooling water intake structures located in a lake or reservoir, the total design intake flow must not disrupt the natural thermal stratification or turnover pattern (where present) of the source water except in cases where the disruption is determined to be beneficial to the management of fisheries for fish and shellfish by any fishery management agency(ies);
  - (c) For cooling water intake structures located in an estuary or tidal river, the total design intake flow over one tidal cycle of ebb and flow must be no greater than

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1.0% of the volume of the water column within the area centered about the opening of the intake with a diameter defined by the distance of one tidal excursion at the mean low water level;

(4) Select and implement design and construction technologies or operational measures for minimizing impingement mortality of fish and shellfish if:

(a) There are threatened or endangered or otherwise protected federal, state, or tribal species, or critical habitat for these species, within the hydraulic zone of influence of the cooling water intake structure; or

(b) Based on information submitted by any fishery management agency(ies) or other relevant information, there are migratory and/or sport or commercial species of impingement concern to the board that pass through the hydraulic zone of influence of the cooling water intake structure; or

(c) It is determined by the board, based on information submitted by any fishery management agency(ies) or other relevant information that the proposed facility, after meeting the technology-based performance requirements in subdivision 2 b (1), (2), and (3) of this subsection, would still contribute unacceptable stress to the protected species, critical habitat of those species, or species of concern;

(5) Select and implement design and construction technologies or operational measures for minimizing entrainment of entrainable life stages of fish and shellfish if:

(a) There are threatened or endangered or otherwise protected federal, state, or tribal species, or critical habitat for these species, within the hydraulic zone of influence of the cooling water intake structure; or

(b) Based on information submitted by any fishery management agency(ies) or other relevant information, there are or would be undesirable cumulative stressors affecting entrainable life stages of species of concern to the board, and the board determines that the proposed facility, after meeting the technology-based performance requirements in subdivision 2 b (1), (2), and (3) of this subsection, would contribute unacceptable stress to these species of concern;

(6) Submit the application information required in 9VAC25-31-100 Q and subdivision 4 b of this subsection;

(7) Implement the monitoring requirements specified in subdivision 5 of this subsection;

(8) Implement the record-keeping requirements specified in subdivision 6 of this subsection.

c. Track I requirements for new facilities that withdraw equal to or greater than two MGD and less than 10 MGD and that choose not to comply with subdivision 2 b of this subsection. Facilities must comply with all of the following requirements:

(1) Design and construct each cooling water intake structure at the facility to a maximum through-screen design intake velocity of 0.5 ft/s;

(2) Design and construct the cooling water intake structure such that the total design intake flow from all cooling water intake structures at the facility meets the following requirements:

(a) For cooling water intake structures located in a freshwater river or stream, the total design intake flow must be no greater than 5.0% of the source water annual mean flow;

(b) For cooling water intake structures located in a lake or reservoir, the total design intake flow must not disrupt the natural thermal stratification or turnover pattern (where present) of the source water except in cases where the disruption is determined to be beneficial to the management of fisheries for fish and shellfish by any fishery management agency(ies);

(c) For cooling water intake structures located in an estuary or tidal river, the total design intake flow over one tidal cycle of ebb and flow must be no greater than 1.0% of the volume of the water column within the area centered about the opening of the intake with a diameter defined by the distance of one tidal excursion at the mean low water level;

(3) Select and implement design and construction technologies or operational measures for minimizing impingement mortality of fish and shellfish if:

(a) There are threatened or endangered or otherwise protected federal, state, or tribal species, or critical habitat for these species, within the hydraulic zone of influence of the cooling water intake structure; or

(b) Based on information submitted by any fishery management agency(ies) or other relevant information there are migratory and/or sport or commercial species of impingement concern to the board that pass through the hydraulic zone of influence of the cooling water intake structure; or

(c) It is determined by the board, based on information submitted by any fishery management agency(ies) or other relevant information that the proposed facility, after meeting the technology-based performance requirements in subdivisions 2 c (1) and (2) of this subsection, would still contribute unacceptable stress to the protected species, critical habitat of those species, or species of concern;

(4) Select and implement design and construction technologies or operational measures for minimizing entrainment of entrainable life stages of fish and shellfish;

(5) Submit the application information required in 9VAC25-31-100 Q and 9VAC25-31-165 B 4;

(6) Implement the monitoring requirements specified in 9VAC25-31-165 B 5;

(7) Implement the recordkeeping requirements specified in 9VAC25-31-165 B 6.

d. Track II. The owner or operator of a new facility that chooses to comply under Track II must comply with the following requirements:

(1) Demonstrate to the board that the technologies employed will reduce the level of adverse environmental impact from cooling water intake structures to a comparable level to that which would be achieved using the requirements of subdivision 3 b (1) and (2) of this subsection. This demonstration must include a showing that the impacts to fish and shellfish, including important forage and predator species, within the watershed will be comparable to those that would result implementing the requirements of subdivisions 3 b (1) and (2) of this subsection. This showing may include consideration of impacts other than impingement mortality and entrainment, including measures that will result in increases in fish and shellfish, but it must demonstrate comparable performance for species that the board identifies as species of concern. In identifying such species the board may consider information provided by fishery management agencies with responsibility for fisheries potentially affected by the cooling water intake structure along with data and information from other sources.

(2) Design and construct the cooling water intake structure such that the total design intake flow from all cooling water intake structures at the facility meet the following requirements:

(a) For cooling water intake structures located in a freshwater river or stream, the total design intake flow must be no greater than 5.0% of the source water annual mean flow;

(b) For cooling water intake structures located in a lake or reservoir, the total design intake flow must not disrupt the natural thermal stratification or turnover pattern (where present) of the source water except in cases where the disruption is determined to be beneficial to the management of fisheries for fish and shellfish by any fishery management agency(ies);

(c) For cooling water intake structures located in an estuary or tidal river, the total design intake flow over

one tidal cycle of ebb and flow must be no greater than 1.0% of the volume of the water column within the area centered about the opening of the intake with a diameter defined by the distance of one tidal excursion at the mean low water level.

(3) Submit the application information required in 9VAC25-31-100 Q and 9VAC25-31-165 B 4 c.

(4) Implement the monitoring requirements specified in 9VAC25-31-165 B 5.

(5) Implement the record-keeping requirements specified in 9VAC25-31-165 B 6.

e. The owner or operator of a new facility must comply with any more stringent requirements relating to the location, design, construction, and capacity of a cooling water intake structure or monitoring requirements at a new facility that the board deems are reasonably necessary to comply with any provision of state law, including compliance with state water quality standards (including designated uses, criteria, and antidegradation requirements).

3. Alternative requirements.

a. Any interested person may request that alternative requirements less stringent than those specified in 9VAC25-31-165 B 2 a through e be imposed in the permit. The board may establish alternative requirements less stringent than the requirements of 9VAC25-31-165 B 2 a through e only if:

(1) There is an applicable requirement under 9VAC25-31-165 B 2 a through e;

(2) The board determines that data specific to the facility indicate that compliance with the requirement at issue would result in compliance costs wholly out of proportion to those EPA considered in establishing the requirement at issue or would result in significant adverse impacts on local air quality, significant adverse impacts on local water resources other than impingement or entrainment, or significant adverse impacts on local energy markets;

(3) The alternative requirement requested is no less stringent than justified by the wholly out of proportion cost or the significant adverse impacts on local air quality, significant adverse impacts on local water resources other than impingement or entrainment, or significant adverse impacts on local energy markets; and

(4) The alternative requirement will ensure compliance with other applicable provisions of the Clean Water Act and state law.

b. The burden is on the person requesting the alternative requirement to demonstrate that alternative requirements should be authorized.

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## 4. Application information requirements.

a. The owner or operator of a new facility must submit to the department:

(1) A statement of intention to comply with either:

(a) The Track I requirements for new facilities that withdraw equal to or greater than 10 MGD in 9VAC25-31-165 B 2 b;

(b) The Track I requirements for new facilities that withdraw equal to or greater than 2 MGD and less than 10 MGD in 9VAC25-31-165 B 2 c or;

(c) The requirements for Track II in 9VAC25-31-165 B 2 d.

(2) The owner or operator must also submit the application information required by 9VAC25-31-100 Q and the information required in either subdivision 4 b of this subsection for Track I or subdivision 4 c of this section for Track II when application is made for a new or reissued VPDES permit.

b. Track I application requirements. To demonstrate compliance with Track I requirements in 9VAC25-31-165 B 2 b or c, collect and submit to the department the information in subdivision 4 b (1) through (4) of this subsection.

(1) Flow reduction information. To comply with the flow reduction requirements in 9VAC25-31-165 B 2 b (1), submit the following information to demonstrate reduction of flow to a level commensurate with that which can be attained by a closed-cycle recirculating cooling water system:

(a) A narrative description of the system that has been designed to reduce intake flow to a level commensurate with that which can be attained by a closed-cycle recirculating cooling water system and any engineering calculations, including documentation demonstrating that make-up and blowdown flows have been minimized; and

(b) If the flow reduction requirement is met entirely, or in part, by reusing or recycling water withdrawn for cooling purposes in subsequent industrial processes, provide documentation that the amount of cooling water that is not reused or recycled has been minimized.

(2) Velocity information. Submit the following information to demonstrate compliance with the requirement to meet a maximum through-screen design intake velocity of no more than 0.5 ft/s at each cooling water intake structure:

(a) A narrative description of the design, structure, equipment, and operation used to meet the velocity requirement; and

(b) Design calculations showing that the velocity requirement will be met at minimum ambient source water surface elevations (based on best professional judgment using available hydrological data) and maximum head loss across the screens or other device.

(3) Source water body flow information. Submit the following information to demonstrate that the cooling water intake structure meets the flow requirements in 9VAC25-31-165 B 2 b (3) and c (2):

(a) If the cooling water intake structure is located in a freshwater river or stream, provide the annual mean flow and any supporting documentation and engineering calculations to show that the cooling water intake structure meets the flow requirements;

(b) If the cooling water intake structure is located in an estuary or tidal river, provide the mean low water tidal excursion distance and any supporting documentation and engineering calculations to show that the cooling water intake structure facility meets the flow requirements; and

(c) If the cooling water intake structure is located in a lake or reservoir, provide a narrative description of the water body thermal stratification, and any supporting documentation and engineering calculations to show that the natural thermal stratification and turnover pattern will not be disrupted by the total design intake flow. In cases where the disruption is determined to be beneficial to the management of fisheries for fish and shellfish provide supporting documentation and include a written concurrence from any fisheries management agency(ies) with responsibility for fisheries potentially affected by the cooling water intake structure(s).

(4) Design and Construction Technology Plan. To comply with 9VAC25-31-165 B 2 b (4) and (5), or 9VAC25-31-165 B 2 c (3) and (4), submit the following information in a Design and Construction Technology Plan:

(a) Information to demonstrate whether or not the criteria in 9VAC25-31-165 B 2 b (4) and b (5), or 9VAC25-31-165 B 2 c (3) and c (4) are met;

(b) Delineation of the hydraulic zone of influence for the cooling water intake structure;

(c) New facilities required to install design and construction technologies and/or operational measures must develop a plan explaining the technologies and measures selected based on information collected for the Source Water Biological Baseline Characterization required by 9VAC25-31-100 Q. (Examples of appropriate technologies include, but are not limited to, wedgewire screens, fine mesh screens, fish handling and return systems, barrier nets, aquatic filter barrier systems,

etc. Examples of appropriate operational measures include, but are not limited to, seasonal shutdowns or reductions in flow, continuous operations of screens, etc.) The plan must contain the following information:

(i) A narrative description of the design and operation of the design and construction technologies, including fish-handling and return systems, that will be used to maximize the survival of those species expected to be most susceptible to impingement. Provide species-specific information that demonstrates the efficacy of the technology;

(ii) A narrative description of the design and operation of the design and construction technologies that will be used to minimize entrainment of those species expected to be the most susceptible to entrainment. Provide species-specific information that demonstrates the efficacy of the technology; and

(iii) Design calculations, drawings, and estimates to support the descriptions provided in 9VAC25-31-165 B 4 b (4) (c) (i) and (ii).

c. Application requirements for Track II. In order to with the requirements of Track II in 9VAC25-31-165 B 2 d collect and submit the following information:

(1) Source water body flow information. Submit to the department the following information to demonstrate that the cooling water intake structure meets the source water body requirements in 9VAC25-31-165 B 2 d (2):

(a) If the cooling water intake structure is located in a freshwater river or stream, provide the annual mean flow and any supporting documentation and engineering calculations to show that the cooling water intake structure meets the flow requirements;

(b) If the cooling water intake structure is located in an estuary or tidal river, provide the mean low water tidal excursion distance and any supporting documentation and engineering calculations to show that the cooling water intake structure facility meets the flow requirements; and

(c) If the cooling water intake structure is located in a lake or reservoir, provide a narrative description of the water body thermal stratification, and any supporting documentation and engineering calculations to show that the natural thermal stratification and thermal or turnover pattern will not be disrupted by the total design intake flow. In cases where the disruption is determined to be beneficial to the management of fisheries for fish and shellfish provide supporting documentation and include a written concurrence from any fisheries management agency(ies) with responsibility for fisheries potentially affected by the cooling water intake structure(s).

(2) Track II Comprehensive Demonstration Study. Perform and submit the results of a Comprehensive Demonstration Study (study). This information is required to characterize the source water baseline in the vicinity of the cooling water intake structure(s), characterize operation of the cooling water intake(s), and to confirm that the technology(ies) proposed and/or implemented at the cooling water intake structure reduce the impacts to fish and shellfish to levels comparable to those achieved by implementation of the requirements in 9VAC25-31-165 B 2 b (1) and (2) of Track I. To demonstrate the "comparable level" requirement, include information showing that:

(a) Both impingement mortality and entrainment of all life stages of fish and shellfish are reduced by 90% or greater of the reduction that would be achieved through 9VAC25-31-165 B 2 b (1) and (2); or

(b) If the demonstration includes consideration of impacts other than impingement mortality and entrainment, that the measures taken will maintain the fish and shellfish in the water body at a substantially similar level to that which would be achieved through 9VAC25-31-165 B 2 b (1) and (2); and

(c) Develop and submit a plan to the department containing a proposal for how information will be collected to support the study. The plan must include:

(i) A description of the proposed and/or implemented technology(ies) to be evaluated in the study;

(ii) A list and description of any historical studies characterizing the physical and biological conditions in the vicinity of the proposed or actual intakes and their relevancy to the proposed study. If existing source water body data is used, it must be no more than five years old, demonstrated sufficient to develop a scientifically valid estimate of potential impingement and entrainment impacts, and include documentation that the data were collected using appropriate quality assurance/quality control procedures;

(iii) Any public participation or consultation with federal or state agencies undertaken in developing the plan; and

(iv) A sampling plan for data that will be collected using actual field studies in the source water body. The sampling plan must document all methods and quality assurance procedures for sampling, and data analysis. The sampling and data analysis methods proposed must be appropriate for a quantitative survey and based on consideration of methods used in other studies performed in the source water body. The sampling plan must include a description of the study area (including the area of influence of the cooling water intake structure and at least 100 meters beyond); taxonomic identification of the sampled or evaluated biological assemblages (including

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all life stages of fish and shellfish); and sampling and data analysis methods; and

(d) Submit documentation of the results of the study to the director. Documentation of the results of the study must include:

(i) Source Water Biological Study. The Source Water Biological Study must include a taxonomic identification and characterization of aquatic biological resources including a summary of historical and contemporary aquatic biological resources; determination and description of the target populations of concern (those species of fish and shellfish and all life stages that are most susceptible to impingement and entrainment); and a description of the abundance and temporal/spatial characterization of the target populations based on the collection of multiple years of data to capture the seasonal and daily activities (e.g., spawning, feeding and water column migration) of all life stages of fish and shellfish found in the vicinity of the cooling water intake structure; an identification of all threatened or endangered species that might be susceptible to impingement and entrainment by the proposed cooling water intake structure(s); and a description of additional chemical, water quality, and other anthropogenic stresses on the source water body.

(ii) Evaluation of potential cooling water intake structure effects. This evaluation will include calculations of the reduction in impingement mortality and entrainment of all life stages of fish and shellfish that would need to be achieved by the technologies selected to implement requirements under Track II and an engineering estimate of efficacy for the proposed and/or implemented technologies used to minimize impingement mortality and entrainment of all life stages of fish and shellfish and maximize survival of impinged life stages of fish and shellfish, demonstrating that the technologies reduce impingement mortality and entrainment of all life stages of fish and shellfish to a comparable level to that which would be achieved implementing the requirements in 9VAC25-31-165 B 2 b (1) and (2) of Track I. The efficacy projection must include a site-specific evaluation of technology(ies) suitability for reducing impingement mortality and entrainment based on the results of the Source Water Biological Study. Efficacy estimates may be determined based on case studies that have been conducted in the vicinity of the cooling water intake structure and/or site-specific technology prototype studies.

(iii) Evaluation of proposed restoration measures. If restoration measures are proposed to maintain the fish and shellfish provide information and data to show coordination with the appropriate fishery management agency(ies) and a plan that provides a list of the measures

to implement to demonstrate and continue to ensure that restoration measures will maintain the fish and shellfish in the water body to a substantially similar level to that which would be achieved through 9VAC25-31-165 B 2 b (1) and (2).

(iv) Verification monitoring plan. Include in the study a plan to conduct, at a minimum, two years of monitoring to verify the full-scale performance of the proposed or implemented technologies or operational measures. The verification study must begin at the start of operations of the cooling water intake structure and continue for a sufficient period of time to demonstrate that the facility is reducing the level of impingement and entrainment to the level documented in 9VAC25-31-165 B 4 c (2) (d) (ii). The plan must describe the frequency of monitoring and the parameters to be monitored. The department will use the verification monitoring to confirm that the level of impingement mortality and entrainment reduction required in is met and that the operation of the technology has been optimized. Include a plan to conduct monitoring to verify that restoration measures will maintain the fish and shellfish in the water body to a substantially similar level as that which would be achieved through 9VAC25-31-165 B 2 b (1) and (2).

5. Monitoring. The owner or operator of a new facility will be required to perform monitoring to demonstrate compliance with the requirements specified in 9VAC25-31-165 B 2.

a. Biological monitoring. Monitor both impingement and entrainment of the commercial, recreational, and forage base fish and shellfish species identified in either the Source Water Baseline Biological Characterization data or the Comprehensive Demonstration Study, depending on whether compliance with Track I or Track II was chosen. The monitoring methods used must be consistent with those used for the Source Water Baseline Biological Characterization or the Comprehensive Demonstration Study. Follow the monitoring frequencies identified below for at least two years after the initial permit issuance.

(1) Impingement sampling. Collect samples to monitor impingement rates (simple enumeration) for each species over a 24-hour period and no less than once per month when the cooling water intake structure is in operation.

(2) Entrainment sampling. Collect samples to monitor entrainment rates (simple enumeration) for each species over a 24-hour period and no less than biweekly during the primary period of reproduction, larval recruitment, and peak abundance identified during the Source Water Baseline Biological Characterization or the Comprehensive Demonstration Study. Collect samples only when the cooling water intake structure is in operation.

b. Velocity monitoring. If the facility uses surface intake screen systems, monitor head loss across the screens and correlate the measured value with the design intake velocity. The head loss across the intake screen must be measured at the minimum ambient source water surface elevation (best professional judgment based on available hydrological data). The maximum head loss across the screen for each cooling water intake structure must be used to determine compliance with the velocity requirement in 9VAC25-31-165 B 2 b (2) or c (1). If the facility uses devices other than surface intake screens, monitor velocity at the point of entry through the device. Monitor head loss or velocity during initial facility startup, and thereafter, at the frequency specified in the VPDES permit.

c. Visual or remote inspections. Conduct visual inspections or employ remote monitoring devices during the period the cooling water intake structure is in operation. Conduct visual inspections at least weekly to ensure that any design and construction technologies are maintained and operated to ensure that they will continue to function as designed. Alternatively, inspect via remote monitoring devices to ensure that the impingement and entrainment technologies are functioning as designed.

6. Records and reporting. The owner or operator of a new facility is required to keep records and report information and data to the department as follows:

a. Keep records of all the data used to complete the permit application and show compliance with the requirements, any supplemental information developed under 9VAC25-31-165 B 4, and any compliance monitoring data submitted under 9VAC25-31-165 B 5, for a period of at least three years from the date of permit issuance. The department may require that these records be kept for a longer period.

b. Provide the following to the department in a yearly status report:

- (1) Biological monitoring records for each cooling water intake structure as required by 9VAC25-31-165 B 5 a;
- (2) Velocity and head loss monitoring records for each cooling water intake structure as required by 9VAC25-31-165 B 5 b; and
- (3) Records of visual or remote inspections as required in 9VAC25-31-165 B 5 c.

C. Cooling water intake structures for ~~Phase II~~ existing facilities.

1. Applicability.

a. An existing facility, as defined in 9VAC25-31-165 A, is a Phase II existing facility subject to this section if it meets each of the following criteria:

~~(1) It is a point source.~~

~~(2) It uses or proposes to use cooling water intake structures with a total design intake flow of 50 million gallons per day (MGD) or more to withdraw cooling water from state waters;~~

~~(3) As its primary activity, the facility both generates and transmits electric power, or generates electric power but sells it to another entity for transmission; and~~

~~(4) It uses at least 25% of water withdrawn exclusively for cooling purposes, measured on an average annual basis.~~

~~b. In the case of a Phase II existing facility that is co-located with a manufacturing facility, only that portion of the combined cooling water intake flow that is used by the Phase II facility to generate electricity for sale to another entity will be considered for purposes of determining whether the 50 MGD and 25% criteria in 9VAC25-31-165 C 1 a (2) and (4) have been exceeded.~~

~~e. Use of a cooling water intake structure includes obtaining cooling water by any sort of contract or arrangement with one or more independent suppliers of cooling water if the supplier withdraws water from state waters but is not itself a Phase II existing facility, except as provided in 9VAC25-31-165 C 1 d.~~

~~d. Notwithstanding subdivision 1 c of this subsection, obtaining cooling water from a public water system or using treated effluent as cooling water does not constitute use of a cooling water intake structure for purposes of this section.~~

2. Establishing best technology available requirements for Phase II Existing facilities.

~~a. Compliance alternatives. Phase II existing facilities must select and implement one of the following five alternatives for establishing best technology available for minimizing adverse environmental impact at the facility:~~

~~(1) Flow and velocity reduction.~~

~~(a) Demonstrate to the department a reduction, or planned reduction in flow commensurate with a closed-cycle recirculating system. In this case, the applicable performance standards are deemed to be met and the facility will not be required to demonstrate further that it meets the impingement mortality and entrainment performance standards specified in subdivision 2 b of this subsection. In addition, the facility is not subject to the requirements in 9VAC25-31-165 C 3, C 4, or C 5. However, the facility may still be subject to more stringent requirements established under subdivision 2 e of this subsection; or~~

~~(b) Demonstrate to the department that a reduction, or planned reduction in the maximum through screen design~~

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intake velocity to 0.5 ft/s or less. In this case, the facility is deemed to have met the impingement mortality performance standards and will not be required to demonstrate further that it meets the performance standards for impingement mortality specified in subdivision 2 b of this subsection, and the facility is not subject to the requirements in 9VAC25-31-165 C 3, C 4, or C 5 as they apply to impingement mortality. However, the facility may still be subject to applicable requirements for entrainment reduction and may still be subject to more stringent requirements established under subdivision 2 e of this subsection.

(2) Demonstrate to the department that the existing design and construction technologies, operational measures, and/or restoration measures meet the performance standards specified in subdivision 2 b of this subsection and/or the restoration requirements in subdivision 2 c of this subsection.

(3) Demonstrate to the department that the facility has selected, and will install and properly operate and maintain, design and construction technologies, operational measures, and/or restoration measures that will, in combination with any existing design and construction technologies, operational measures, and/or restoration measures, meet the performance standards specified in subdivision 2 b of this subsection and/or the restoration requirements in subdivision 2 c of this subsection;

(4) Demonstrate to the department that the facility has installed, or will install, and properly operate and maintain an approved design and construction technology in accordance with 9VAC25-31-165 C 6; or

(5) Demonstrate to the department that the facility has selected, installed, and is properly operating and maintaining, or will install and properly operate and maintain design and construction technologies, operational measures, and/or restoration measures that the department has determined to be the best technology available to minimize adverse environmental impact for the facility in accordance with 9VAC25-31-165 C 2 a (5) (a) or (b).

(a) If the department determines that data specific to the facility demonstrate that the costs of compliance under alternatives in 9VAC25-31-165 C 2 a (2) through (4) would be significantly greater than the costs considered by the EPA Administrator for similar facilities in establishing the applicable performance standards in subdivision 2 b of this subsection, the department must make a site-specific determination of the best technology available for minimizing adverse environmental impact. This determination must be based on reliable, scientifically valid cost and performance data submitted by the facility and any other information that the

department deems appropriate. The department must establish site-specific alternative requirements based on new and/or existing design and construction technologies, operational measures, and/or restoration measures that achieve an efficacy that is, in the judgment of the department, as close as practicable to the applicable performance standards in 9VAC25-31-165 C 2 b of this section, without resulting in costs that are significantly greater than the costs considered by the EPA administrator for similar facilities in establishing the applicable performance standards. The site-specific determination may conclude that design and construction technologies, operational measures, and/or restoration measures in addition to those already in place are not justified because of the significantly greater costs. To calculate the costs considered by the EPA administrator for a similar facility in establishing the applicable performance standards:

(i) Determine which technology the EPA administrator modeled as the most appropriate compliance technology for the facility;

(ii) Using the EPA administrator's costing equations, calculate the annualized capital and net operation and maintenance (O&M) costs for a facility with the same design intake flow using this technology;

(iii) Determine the annualized net revenue loss associated with net construction downtime that the EPA administrator modeled for the facility to install this technology;

(iv) Determine the annualized pilot study costs that the EPA Administrator modeled for the facility to test and optimize this technology;

(v) Sum the cost items in 9VAC25-31-165 C 2 a (5) (a) (ii), (iii), and (iv); and

(vi) Determine if the performance standards that form the basis of these estimates (i.e., impingement mortality reduction only or impingement mortality and entrainment reduction) are applicable to the facility, and if necessary, adjust the estimates to correspond to the applicable performance standards.

(b) If the department determines that data specific to the facility demonstrate that the costs of compliance under alternatives in 9VAC25-31-165 C 2 a (2) through (4) of this section would be significantly greater than the benefits of complying with the applicable performance standards at the facility, the department must make a site-specific determination of best technology available for minimizing adverse environmental impact. This determination must be based on reliable, scientifically valid cost and performance data submitted by the facility and any other information the department deems appropriate. The department must establish site-specific

~~alternative requirements based on new and/or existing design and construction technologies, operational measures, and/or restoration measures that achieve an efficacy that, in the judgment of the department, is as close as practicable to the applicable performance standards in 9VAC25-31-165 C-2-b without resulting in costs that are significantly greater than the benefits at the facility. The director's site-specific determination may conclude that design and construction technologies, operational measures, and/or restoration measures in addition to those already in place are not justified because the costs would be significantly greater than the benefits at the facility.~~

~~b. Performance standards.~~

~~(1) Impingement mortality performance standards. If compliance alternatives in 9VAC25-31-165 C-2-a (2), a (3), or a (4) of this section are chosen, the standard for impingement mortality is to reduce impingement mortality for all life stages of fish and shellfish by 80 to 95% from the calculation baseline.~~

~~(2) Entrainment performance standards. If compliance alternatives in 9VAC25-31-165 C-2-a (1) (b), a (2), a (3), or a (4) are chosen, the standard for entrainment is to reduce entrainment of all life stages of fish and shellfish by 60 to 90% from the calculation baseline if:~~

~~(a) The facility has a capacity utilization rate of 15% or greater, and~~

~~(b) The facility uses:~~

~~(i) Cooling water withdrawn from a tidal river, estuary or ocean; or~~

~~(ii) The facility uses cooling water withdrawn from a freshwater river or stream and the design intake flow of the cooling water intake structures is greater than 5.0% of the mean annual flow.~~

~~(3) Additional performance standards for facilities withdrawing from a lake or a reservoir. If the facility withdraws cooling water from a lake or a reservoir and the facility proposes to increase the design intake flow of cooling water intake structures it uses, the increased design intake flow must not disrupt the natural thermal stratification or turnover pattern (where present) of the source water, except in cases where the disruption does not adversely affect the management of fisheries. In determining whether any such disruption does not adversely affect the management of fisheries, the facility must consult with state fish and wildlife management agencies.~~

~~(4) Use of performance standards for site specific determinations of best technology available. The performance standards in 9VAC25-31-165 C-2-b (1) through (3) must also be used for determining eligibility~~

~~for site specific determinations of best technology available for minimizing adverse environmental impact and establishing site specific requirements that achieve an efficacy as close as practicable to the applicable performance standards without resulting in costs that are significantly greater than those considered by the EPA administrator for a similar facility in establishing the performance standards or costs that are significantly greater than the benefits at the facility.~~

~~e. Requirements for restoration measures. With the approval of the department, the facility may implement and adaptively manage restoration measures that produce and result in increases of fish and shellfish in the facility's watershed in place of or as a supplement to installing design and control technologies and/or adopting operational measures that reduce impingement mortality and entrainment. Demonstration must be made to the department that:~~

~~(1) The facility has evaluated the use of design and construction technologies and operational measures and determined that the use of restoration measures is appropriate because meeting the applicable performance standards or site specific requirements through the use of design and construction technologies and/or operational measures alone is less feasible, less cost effective, or less environmentally desirable than meeting the standards or requirements in whole or in part through the use of restoration measures; and~~

~~(2) The restoration measures to be implemented, alone or in combination with design and construction technologies and/or operational measures, will produce ecological benefits (fish and shellfish), including maintenance or protection of community structure and function in the facility's water body or watershed, at a level that is substantially similar to the level achieved by meeting the applicable performance standards under 9VAC25-31-165 C-2-b, or that satisfies alternative site-specific requirements established pursuant to 9VAC25-31-165 C-2-a (5).~~

~~d. Compliance using a technology installation and operation plan or restoration plan.~~

~~(1) If the facility chooses one of the compliance alternatives in 9VAC25-31-165 C-2-a (2), (3), (4), or (5), it may request that compliance with the requirements of 9VAC25-31-165 C-2-b during the first permit containing requirements consistent with this section be determined based on whether the facility has complied with the construction, operational, maintenance, monitoring, and adaptive management requirements of a Technology Installation and Operation Plan developed in accordance with 9VAC25-31-165 C-3-b (4) (b) (for any design and construction technologies and/or operational measures) and/or a Restoration Plan developed in accordance with~~

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~~9VAC25-31-165 C 3 b (5) (for any restoration measures). The Technology Installation and Operation Plan must be designed to meet applicable performance standards in 9VAC25-31-165 C 2 b or alternative site-specific requirements developed pursuant to 9VAC25-31-165 C 2 a (5). The Restoration Plan must be designed to achieve compliance with the applicable requirements 9VAC25-31-165 C 2 e.~~

~~(2) During subsequent permit terms, if the facility selected and installed design and construction technologies and/or operational measures and has been in compliance with the construction, operational, maintenance, monitoring, and adaptive management requirements of the Technology Installation and Operation Plan during the preceding permit term, it may request that compliance with the requirements of 9VAC25-31-165 C 2 during the following permit term be determined based on whether the facility remains in compliance with the Technology Installation and Operation Plan, revised in accordance with the adaptive management plan in 9VAC25-31-165 C 3 b (4) (b) (iii) if applicable performance standards are not met. Each request and approval of a Technology Installation and Operation Plan shall be limited to one permit term.~~

~~(3) During subsequent permit terms, if the facility selected and installed restoration measures and has been in compliance with the construction, operational, maintenance, monitoring, and adaptive management requirements in the Restoration Plan during the preceding permit term, it may request that compliance with the requirements of this section during the following permit term be determined based on whether the facility remains in compliance with the Restoration Plan, revised in accordance with the adaptive management plan in 9VAC25-31-165 C 3 b (5) (e) if applicable performance standards are not met. Each request and approval of a Restoration Plan shall be limited to one permit term.~~

~~e. More stringent standards. The department may establish more stringent requirements as best technology available for minimizing adverse environmental impact if the department determines that compliance with the applicable requirements of this section would not meet the requirements of applicable state law.~~

~~f. Nuclear facilities. If it is demonstrated to the department based on consultation with the Nuclear Regulatory Commission that compliance with this subpart would result in a conflict with a safety requirement established by the commission, the department must make a site-specific determination of best technology available for minimizing adverse environmental impact that would not result in a conflict with the Nuclear Regulatory Commission's safety requirement.~~

### 3. Application information requirements.

a. Items to be submitted to the department are:

~~(1) The proposal for information collection required in 9VAC25-31-165 C 2 b (1) prior to the start of information collection activities;~~

~~(2) The information required in 9VAC25-31-100 Q and any applicable portions of the Comprehensive Demonstration Study, except for the proposal for information collection required by 9VAC25-31-165 C 2 b (1); and~~

~~(a) The VPDES permit application in accordance with the time frames specified in 9VAC25-31-100.~~

~~(b) If the existing permit expires before July 9, 2008, the facility may request that the department establish a schedule for submission of the information required by this section as expeditiously as practicable, but not later than January 7, 2008. Between the time the existing permit expires and the time a VPDES permit containing requirements consistent with this section is issued to the facility, the best technology available to minimize adverse environmental impact will continue to be determined based on the department's best professional judgment.~~

~~(3) In subsequent permit terms, the department may approve a request to reduce the information required to be submitted in the permit application on the cooling water intake structure(s) and the source water body, if conditions at the facility and in the water body remain substantially unchanged since the previous application. The request for reduced cooling water intake structure and water body application information must be submitted to the department at least one year prior to the expiration of the permit. The request must identify each required information item in 9VAC25-31-100 Q and this section that has not substantially changed since the previous permit application and the basis for the determination.~~

~~b. Comprehensive Demonstration Study. The purpose of the Comprehensive Demonstration Study is to characterize impingement mortality and entrainment, to describe the operation of the cooling water intake structures, and to confirm that the technologies, operational measures, and/or restoration measures selected and installed, or to be installed, at the facility meet the applicable requirements of 9VAC25-31-165 C 2. All facilities except those that have met the applicable requirements in accordance with 9VAC25-31-165 C 2 a (1) (a), 9VAC25-31-165 C 2 a (1) (b), and 9VAC25-31-165 C 2 a (4) must submit all applicable portions of the Comprehensive Demonstration Study to the department in accordance with 9VAC25-31-165 C 2 a. Facilities that meet the requirements in 9VAC25-31-165 C 2 a (1) (a)~~

by reducing their flow commensurate with a closed-cycle, recirculating system are not required to submit a Comprehensive Demonstration Study. Facilities that meet the requirements in 9VAC25-31-165 C 2 a (1) (b) by reducing their design intake velocity to 0.5 ft/sec or less are required to submit a study only for the entrainment requirements, if applicable. Facilities that meet the requirements in 9VAC25-31-165 C 2 a (4) and have installed and properly operate and maintain an approved design and construction technology are required to submit only the Technology Installation and Operation Plan in 9VAC25-31-165 C 2 b (4) and the Verification Monitoring Plan in 9VAC25-31-165 C 2 b (7). Facilities that are required to meet only impingement mortality performance standards in 9VAC25-31-165 C 2 b (1) are required to submit only a study for the impingement mortality reduction requirements. The Comprehensive Demonstration Study must include:

(1) Proposal For Information Collection. Submit to the department for review and comment a description of the information to be used to support the study. The proposal for information must be submitted prior to the start of information collection activities, such activities may be initiated prior to receiving comment from the department. The proposal must include:

(a) A description of the proposed and/or implemented technologies, operational measures, and/or restoration measures to be evaluated in the study;

(b) A list and description of any historical studies characterizing impingement mortality and entrainment and/or the physical and biological conditions in the vicinity of the cooling water intake structures and their relevance to this proposed study. If existing data is to be used, demonstrate the extent to which the data are representative of current conditions and that the data were collected using appropriate quality assurance/quality control procedures;

(c) A summary of any past or ongoing consultations with appropriate fish and wildlife agencies that are relevant to this study and a copy of written comments received as a result of such consultations; and

(d) A sampling plan for any new field studies proposed in order to ensure sufficient data to develop a scientifically valid estimate of impingement mortality and entrainment at the site is provided. The sampling plan must document all methods and quality assurance/quality control procedures for sampling and data analysis. The sampling and data analysis methods must be appropriate for a quantitative survey and include consideration of the methods used in other studies performed in the source water body. The sampling plan must include a description of the study area (including the area of influence of the cooling water intake structure(s)), and

provide a taxonomic identification of the sampled or evaluated biological assemblages (including all life stages of fish and shellfish).

(2) Source water body flow information. Submit to the department the following source water body flow information:

(a) If the cooling water intake structure is located in a freshwater river or stream, provide the annual mean flow of the water body and any supporting documentation and engineering calculations to support the analysis of whether the design intake flow is greater than 5.0% of the mean annual flow of the river or stream for purposes of determining applicable performance standards under 9VAC25-31-165 C 2 b. Representative historical data (from a period of time up to 10 years, if available) must be used; and

(b) If the cooling water intake structure is located in a lake or a reservoir and an increase in design intake flow is proposed, provide a description of the thermal stratification in the water body, and any supporting documentation and engineering calculations to show that the total design intake flow after the increase will not disrupt the natural thermal stratification and turnover pattern in a way that adversely impacts fisheries, including the results of any consultations with fish and wildlife management agencies.

(3) Impingement Mortality and/or Entrainment Characterization Study. Submit to the department an Impingement Mortality and/or Entrainment Characterization Study for the purpose of providing information to support the development of a calculation baseline for evaluating impingement mortality and entrainment and to characterize current impingement mortality and entrainment. The Impingement Mortality and/or Entrainment Characterization Study must include the following in sufficient detail to support development of the other elements of the Comprehensive Demonstration Study:

(a) Taxonomic identifications of all life stages of fish, shellfish, and any species protected under federal or state law (including threatened or endangered species) that are in the vicinity of the cooling water intake structure(s) and are susceptible to impingement and entrainment;

(b) A characterization of all life stages of fish, shellfish, and any species protected under federal or state law (including threatened or endangered species) identified pursuant to 9VAC25-31-165 C 2 b (3) (a), including a description of the abundance and temporal and spatial characteristics in the vicinity of the cooling water intake structure(s), based on sufficient data to characterize annual, seasonal, and diel variations in impingement mortality and entrainment (e.g., related to climate and

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weather differences, spawning, feeding and water column migration). These may include historical data that are representative of the current operation of the facility and of biological conditions at the site;

(c) Documentation of the current impingement mortality and entrainment of all life stages of fish, shellfish, and any species protected under federal or state law (including threatened or endangered species) identified pursuant to 9VAC25-31-165 C-2-b-(3)-(a) and an estimate of impingement mortality and entrainment to be used as the calculation baseline. The documentation may include historical data that are representative of the current operation of the facility and of biological conditions at the site. Impingement mortality and entrainment samples to support the calculations required in 9VAC25-31-165 C-2-b-(4)-(a)-(iii) and b-(5)-(c) must be collected during periods of representative operational flows for the cooling water intake structure and the flows associated with the samples must be documented;

#### (4) Technology and compliance assessment information.

(a) Design and Construction Technology Plan. If design and construction technologies and/or operational measures are proposed, in whole or in part, to meet the requirements of 9VAC25-31-165 C-2-a-(2) or (3), submit a Design and Construction Technology Plan to the department for review and approval. In the plan, provide the capacity utilization rate for the facility or for individual intake structures where applicable, and provide supporting data (including the average annual net generation of the facility in MWh measured over a five-year period if available) of representative operating conditions and the total net capacity of the facility in MW and underlying calculations. The plan must explain the technologies and/or operational measures in place and/or selected to meet the requirements in 9VAC25-31-165 C-2 (examples of potentially appropriate technologies may include, but are not limited to, wedgewire screens, fine mesh screens, fish handling and return systems, barrier nets, aquatic filter barrier systems, vertical and/or lateral relocation of the cooling water intake structure, and enlargement of the cooling water intake structure opening to reduce velocity. Examples of potentially appropriate operational measures may include, but are not limited to, seasonal shutdowns, reductions in flow, and continuous or more frequent rotation of traveling screens.) The plan must contain the following information:

(i) A narrative description of the design and operation of all design and construction technologies and/or operational measures (existing and proposed), including fish handling and return systems, that are in place or will be used to meet the requirements to reduce impingement mortality of those species expected to be most

susceptible to impingement, and information that demonstrates the efficacy of the technologies and/or operational measures for those species;

(ii) A narrative description of the design and operation of all design and construction technologies and/or operational measures (existing and proposed) that are in place or will be used to meet the requirements to reduce entrainment of those species expected to be the most susceptible to entrainment, if applicable, and information that demonstrates the efficacy of the technologies and/or operational measures for those species;

(iii) Calculations of the reduction in impingement mortality and entrainment of all life stages of fish and shellfish that would be achieved by the technologies and/or operational measures selected based on the Impingement Mortality and/or Entrainment Characterization Study in 9VAC25-31-165 C-2-b-(3). In determining compliance with any requirements to reduce impingement mortality or entrainment, assess the total reduction in impingement mortality and entrainment against the calculation baseline determined in accordance with 9VAC25-31-165 C-2-b-(3). Reductions in impingement mortality and entrainment from this calculation baseline as a result of any design and construction technologies and/or operational measures already implemented at the facility should be added to the reductions expected to be achieved by any additional design and/or construction technologies and operational measures that will be implemented, and any increases in fish and shellfish within the water body attributable to the restoration measures. Facilities that recirculate a portion of their flow, but do not reduce flow sufficiently to satisfy the compliance option in 9VAC25-31-165 C-2-a-(1)-(a) may take into account the reduction in impingement mortality and entrainment associated with the reduction in flow when determining the net reduction associated with existing design and construction technologies and/or operational measures. This estimate must include a site specific evaluation of the suitability of the technologies and/or operational measures based on the species that are found at the site, and may be determined based on representative studies (i.e., studies that have been conducted at a similar facility's cooling water intake structures located in the same water body type with similar biological characteristics) and/or site-specific technology prototype or pilot studies; and

(iv) Design and engineering calculations, drawings, and estimates prepared by a qualified professional to support the descriptions required by 9VAC25-31-165 C-2-b-(4)-(i) and (ii).

(b) Technology Installation and Operation Plan. If the compliance alternative in 9VAC25-31-165 C-2-a-(2), (3), (4), or (5) is chosen and design and construction

technologies and/or operational measures are to be used in whole or in part to comply with the applicable requirements of 9VAC25-31-165 C-2, submit the following information with the application for review and approval by the department:

(i) A schedule for the installation and maintenance of any new design and construction technologies. Any downtime of generating units to accommodate installation and/or maintenance of these technologies should be scheduled to coincide with otherwise necessary downtime (e.g., for repair, overhaul, or routine maintenance of the generating units) to the extent practicable. Where additional downtime is required, coordinate scheduling of this downtime with the North American Electric Reliability Council and/or other generators in the area to ensure that impacts to reliability and supply are minimized;

(ii) A list of operational and other parameters to be monitored, and the location and frequency of monitoring;

(iii) A list of activities to be undertaken to ensure to the degree practicable the efficacy of installed design and construction technologies and operational measures, and the schedule for implementing them;

(iv) A schedule and methodology for assessing the efficacy of any installed design and construction technologies and operational measures in meeting applicable performance standards or site specific requirements, including an adaptive management plan for revising design and construction technologies, operational measures, operation and maintenance requirements, and/or monitoring requirements if the assessment indicates that applicable performance standards or site specific requirements are not being met; and

(v) If the compliance alternative in 9VAC25-31-165 C-2 a (4) is chosen, documentation that the appropriate site conditions exist at the facility.

(5) Restoration plan. If restoration measures are proposed, in whole or in part, to meet the applicable requirements in 9VAC25-31-165 C-2, submit the following information with the application for review and approval by the department. Address species of concern identified in consultation with federal and state fish and wildlife management agencies with responsibility for fisheries and wildlife potentially affected by the cooling water intake structure(s):

(a) A demonstration to the department that evaluation has been made of the use of design and construction technologies and/or operational measures for the facility and an explanation of how it was determined that restoration would be more feasible, cost effective, or environmentally desirable;

(b) A narrative description of the design and operation of all restoration measures (existing and proposed) that are in place or will be used to produce fish and shellfish;

(c) Quantification of the ecological benefits of the proposed restoration measures. Use information from the Impingement Mortality and/or Entrainment Characterization Study required in 9VAC25-31-165 C-2 b (3), and any other available and appropriate information, to estimate the reduction in fish and shellfish impingement mortality and/or entrainment that would be necessary for the facility to comply with 9VAC25-31-165 C-2 c (2). Then calculate the production of fish and shellfish that will be achieved with the restoration measures installed. Include a discussion of the nature and magnitude of uncertainty associated with the performance of these restoration measures. Also include a discussion of the time frame within which these ecological benefits are expected to accrue;

(d) Design calculations, drawings, and estimates to document that the proposed restoration measures in combination with design and construction technologies and/or operational measures, or alone, will meet the requirements of 9VAC25-31-165 C-2 c (2). If the restoration measures address the same fish and shellfish species identified in the Impingement Mortality and/or Entrainment Characterization Study (in-kind restoration), demonstrate that the restoration measures will produce a level of these fish and shellfish substantially similar to that which would result from meeting applicable performance standards in 9VAC25-31-165 C-2 b, or that they will satisfy site specific requirements established pursuant to 9VAC25-31-165 C-2 a (5). If the restoration measures address fish and shellfish species different from those identified in the Impingement Mortality and/or Entrainment Characterization Study (out-of-kind restoration), demonstrate that the restoration measures produce ecological benefits substantially similar to or greater than those that would be realized through in-kind restoration. Such a demonstration should be based on a watershed approach to restoration planning and consider applicable multiagency watershed restoration plans, site-specific peer reviewed ecological studies, and/or consultation with appropriate federal and state fish and wildlife management agencies.

(e) A plan utilizing an adaptive management method for implementing, maintaining, and demonstrating the efficacy of the restoration measures selected and for determining the extent to which the restoration measures, or the restoration measures in combination with design and construction technologies and operational measures, have met the applicable requirements of 9VAC25-31-165 C-2 c (2). The plan must include:

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~~(i) A monitoring plan that includes a list of the restoration parameters that will be monitored, the frequency of monitoring, and success criteria for each parameter;~~

~~(ii) A list of activities to be undertaken to ensure the efficacy of the restoration measures, a description of the linkages between these activities and the items in 9VAC25-31-165 C 2 b (5) (c) (i) of this section, and an implementation schedule; and~~

~~(iii) A process for revising the Restoration Plan as new information, including monitoring data, becomes available, if the applicable requirements under 9VAC25-31-165 C 2 c (2) are not being met.~~

~~(f) A summary of any past or ongoing consultation with appropriate federal or state fish and wildlife management agencies on the use of restoration measures including a copy of any written comments received as a result of such consultations;~~

~~(g) If requested by the department, a peer review of the items submitted for the Restoration Plan. Choose the peer reviewers in consultation with the department that may consult with EPA and federal and state fish and wildlife management agencies with responsibility for fish and wildlife potentially affected by the cooling water intake structure(s). Peer reviewers must have appropriate qualifications (e.g., in the fields of geology, engineering, and/or biology, etc.) depending upon the materials to be reviewed; and~~

~~(h) A description of the information to be included in a biannual status report to the department.~~

~~(6) Information to support site specific determination of best technology available for minimizing adverse environmental impact. If a site specific determination of best technology available for minimizing adverse environmental impact pursuant to 9VAC25-31-165 C 2 a (5) (a) is requested because of costs significantly greater than those considered by the EPA administrator for a similar facility in establishing the applicable performance standards of 9VAC25-31-165 C 2 b, the facility is required to provide to the department the information specified in 9VAC25-31-165 C 2 b (6) (a) and b (6) (c). If a site specific determination of best technology available for minimizing adverse environmental impact pursuant to 9VAC25-31-165 C 2 a (5) (b) is requested because of costs significantly greater than the benefits of meeting the applicable performance standards of 9VAC25-31-165 C 2 b at the facility, provide the information specified in 9VAC25-31-165 C 2 b (6) (a), b (6) (b), and b (6) (c):~~

~~(a) Comprehensive Cost Evaluation Study. Perform and submit the results of a Comprehensive Cost Evaluation Study, that includes:~~

~~(i) Engineering cost estimates in sufficient detail to document the costs of implementing design and construction technologies, operational measures, and/or restoration measures at the facility that would be needed to meet the applicable performance standards of 9VAC25-31-165 C 2 b;~~

~~(ii) A demonstration that the costs documented in 9VAC25-31-165 C 2 b (6) (a) (i) significantly exceed either those considered by the EPA administrator for a similar facility in establishing the applicable performance standards or the benefits of meeting the applicable performance standards at the facility; and~~

~~(iii) Engineering cost estimates in sufficient detail to document the costs of implementing the design and construction technologies, operational measures, and/or restoration measures in the Site Specific Technology Plan developed in accordance with 9VAC25-31-165 C 2 b (6) (c).~~

~~(b) Benefits Valuation Study. If the facility is seeking a site specific determination of best technology available for minimizing adverse environmental impact because of costs significantly greater than the benefits of meeting the applicable performance standards of 9VAC25-31-165 C 2 b, use a comprehensive methodology to fully value the impacts of impingement mortality and entrainment at the site and the benefits achievable by meeting the applicable performance standards. In addition to the valuation estimates, the benefit study must include the following:~~

~~(i) A description of the methodology(ies) used to value commercial, recreational, and ecological benefits (including any nonuse benefits, if applicable);~~

~~(ii) Documentation of the basis for any assumptions and quantitative estimates. If use of an entrainment survival rate other than zero is planned, submit a determination of entrainment survival at the facility based on a study approved by the department;~~

~~(iii) An analysis of the effects of significant sources of uncertainty on the results of the study; and~~

~~(iv) If requested by the department, a peer review of the items submitted in the Benefits Valuation Study. Choose the peer reviewers in consultation with the department that may consult with EPA and federal and state fish and wildlife management agencies with responsibility for fish and wildlife potentially affected by the cooling water intake structure. Peer reviewers must have appropriate qualifications depending upon the materials to be reviewed.~~

~~(v) A narrative description of any nonmonetized benefits that would be realized at the site if the applicable~~

performance standards were met and a qualitative assessment of their magnitude and significance.

(c) ~~Site Specific Technology Plan.~~ Based on the results of the Comprehensive Cost Evaluation Study required by 9VAC25-31-165 C 2 b (6) (a), and the Benefits Valuation Study required by 9VAC25-31-165 C 2 b (6) (b), if applicable, submit a Site Specific Technology Plan to the department for review and approval. The plan must contain the following information:

(i) ~~A narrative description of the design and operation of all existing and proposed design and construction technologies, operational measures, and/or restoration measures selected in accordance with 9VAC25-31-165 C 2 a (5);~~

(ii) ~~An engineering estimate of the efficacy of the proposed and/or implemented design and construction technologies or operational measures, and/or restoration measures. This estimate must include a site specific evaluation of the suitability of the technologies or operational measures for reducing impingement mortality and/or entrainment (as applicable) of all life stages of fish and shellfish based on representative studies (e.g., studies that have been conducted at cooling water intake structures located in the same water body type with similar biological characteristics) and, if applicable, site-specific technology prototype or pilot studies. If restoration measures will be used, provide a Restoration Plan that includes the elements described in 9VAC25-31-165 C 2 b (5).~~

(iii) ~~A demonstration that the proposed and/or implemented design and construction technologies, operational measures, and/or restoration measures achieve an efficacy that is as close as practicable to the applicable performance standards of 9VAC25-31-165 C 2 b without resulting in costs significantly greater than either the costs considered by the EPA Administrator for a similar facility in establishing the applicable performance standards, or as appropriate, the benefits of complying with the applicable performance standards at the facility;~~

(iv) ~~Design and engineering calculations, drawings, and estimates prepared by a qualified professional to support the elements of the plan.~~

(7) ~~Verification Monitoring Plan.~~ If using compliance alternatives in 9VAC25-31-165 C 2 a (2), (3), (4), or (5) with design and construction technologies and/or operational measures, submit a plan to conduct, at a minimum, two years of monitoring to verify the full-scale performance of the proposed or already implemented technologies and/or operational measures. The verification study must begin once the design and construction technologies and/or operational measures

are installed and continue for a period of time that is sufficient to demonstrate to the department whether the facility is meeting the applicable performance standards in 9VAC25-31-165 C 2 b or site specific requirements developed pursuant to 9VAC25-31-165 C 2 a (5). The plan must provide the following:

(a) ~~A description of the frequency and duration of monitoring, the parameters to be monitored, and the basis for determining the parameters and the frequency and duration for monitoring. The parameters selected and duration and frequency of monitoring must be consistent with any methodology for assessing success in meeting applicable performance standards in the Technology Installation and Operation Plan as required by 9VAC25-31-165 C 2 b (4) (b).~~

(b) ~~A proposal on how naturally moribund fish and shellfish that enter the cooling water intake structure would be identified and taken into account in assessing success in meeting the performance standards in 9VAC25-31-165 C 2 b.~~

(c) ~~A description of the information to be included in a biannual status report to the department.~~

4. ~~Monitoring.~~ The owner or operator of a Phase II existing facility must perform monitoring, as applicable, in accordance with the Technology Installation and Operation Plan required by 9VAC25-31-165 C 3 b (4) (b), the Restoration Plan required by 9VAC25-31-165 C 3 b (5), the Verification Monitoring Plan required by 9VAC25-31-165 C 3 b (7), and any additional monitoring specified by the department to demonstrate compliance with the applicable requirements of 9VAC25-31-165 C 2.

5. ~~Records and reporting.~~ The owner or operator of a Phase II existing facility is required to keep records and report information and data to the department as follows:

a. ~~Keep records of all the data used to complete the permit application and show compliance with the requirements of 9VAC25-31-165 C 2, any supplemental information developed under 9VAC25-31-165 C 3, and any compliance monitoring data submitted under 9VAC25-31-165 C 4, for a period of at least three years from date of permit issuance. The department may require that these records be kept for a longer period.~~

b. ~~Submit a status report to the department for review every two years that includes appropriate monitoring data and other information as specified by the department.~~

6. ~~Approved design and construction technologies.~~

a. ~~The following technologies constitute approved design and construction technologies for purposes of 9VAC25-31-165 C 2 a (4):~~

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~~(1) Submerged cylindrical wedge wire screen technology, if the following conditions are met:~~

~~(a) The cooling water intake structure is located in a freshwater river or stream;~~

~~(b) The cooling water intake structure is situated such that sufficient ambient counter currents exist to promote cleaning of the screen face;~~

~~(c) The maximum through screen design intake velocity is 0.5 ft/s or less;~~

~~(d) The slot size is appropriate for the size of eggs, larvae, and juveniles of all fish and shellfish to be protected at the site; and~~

~~(e) The entire main condenser cooling water flow is directed through the technology. Small flows totaling less than 2 MGD for auxiliary plant cooling uses are excluded from this provision.~~

~~(2) A technology that has been approved in accordance with the process described in 9VAC25-31-165 C 2 b.~~

Existing facilities that are not subject to requirements under this section must meet requirements under §316(b) of the Clean Water Act determined by the department on a case-by-case, best professional judgment basis.

V.A.R. Doc. No. R08-910; Filed September 26, 2007, 11:24 a.m.

## Proposed Regulation

**Title of Regulation: 9VAC25-640. Aboveground Storage Tank and Pipeline Facility Financial Responsibility Requirements (amending 9VAC25-640-10, 9VAC25-640-20, 9VAC25-640-30, 9VAC25-640-50, 9VAC25-640-70 through 9VAC25-640-120, 9VAC25-640-150 through 9VAC25-640-190, 9VAC25-640-210, 9VAC25-640-220, 9VAC25-640-230, 9VAC25-640-250, Appendices I through IX; repealing 9VAC25-640-130).**

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

Public Hearing Information:

November 15, 2007 - 1 p.m. - Department of Environmental Quality, 629 East Main Street, Richmond, VA

Public comments: Public comments may be submitted until 5 p.m. on December 14, 2007.

Agency Contact: Leslie D. Beckwith, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4123, or email ldbeckwith@deq.virginia.gov.

Basis: Section 62.1-44.34:16 D authorizes the State Water Control Board to promulgate regulations requiring operators of facilities to demonstrate financial responsibility based on

the total storage capacity of all facilities operated within the Commonwealth and operators of pipelines to demonstrate financial responsibility for any pipelines operated within the Commonwealth.

Purpose: According to the regulation, operators of regulated petroleum ASTs and pipeline facilities must demonstrate they have the financial resources available to pay for the costs of containment and cleanup necessitated by accidental releases arising from the operation of petroleum ASTs and pipeline facilities. As part of the proposed regulatory action, the department is exploring alternative methods for achieving compliance with the AST financial responsibility requirements while continuing to meet the goals of the financial responsibility regulations. Specifically, the department is investigating ways to reduce the cost of compliance with the regulation by proposing modified compliance requirements that are no less stringent than the existing requirements, but may be more cost effective to secure. The department will also propose administrative changes to the regulation that do not affect the regulatory requirements. In addition to the changes proposed by the Department of Environmental Quality, the department will also solicit public input during the review and consider alternatives presented by the regulated community that also meet the goals of the regulation.

Substance: The department is exploring alternative methods for achieving compliance with the AST financial responsibility regulations while continuing to meet the goals of the financial responsibility regulation. Specifically, the department is investigating ways to reduce the cost of compliance with the regulation by proposing modified compliance requirements. The department will also propose administrative changes to the regulation that do not affect the regulatory requirements. In addition to the proposed changes, the department will also solicit public input during the review and consider alternatives presented by the regulated community that also meet the goals of the regulation.

Issues: The primary advantage to the public from the proposed amendments is an increased level of protection associated with third-party financial mechanisms. By deleting the standby trust fund requirement for letters of credit and surety bonds, the department will reduce the cost of obtaining these mechanisms and thus encourage operators to demonstrate using these mechanisms rather than self insurance. Financial mechanisms backed by a third party such as a bank or surety company are more likely to ensure that the money will be available for clean up or compensating third parties than relying on the operator's net worth. There are no potential disadvantages to the public or the Commonwealth from adopting the proposed amendments.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Regulation. The State Water Control Board (Board) proposes to amend the existing regulations on Aboveground Storage Tank and Pipeline Facility Financial Responsibility Requirements (9 VAC 25-640). The major proposed change is to eliminate the standby trust requirement for operators who demonstrate financial responsibility through a guarantee, a surety bond or a letter of credit. Under certain conditions, all amounts paid by the guarantor, surety, or institution issuing a letter of credit shall be deposited into the Virginia Petroleum Storage Tank Fund (VPSTF) and will be used by the Board to conduct containment and cleanup. The Board also proposes several changes to the regulation for the purpose of clarification.

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

Estimated Economic Impact. Under the current Aboveground Storage Tank and Pipeline Facility Financial Responsibility Requirements (9 VAC 25-640), operators of petroleum aboveground storage tank (AST) facilities<sup>1</sup> and pipeline facilities shall demonstrate financial responsibility to ensure that the costs of containment and cleanup will be recovered in the event of accidental releases arising from the operation of petroleum ASTs and pipeline facilities. Subject to certain limitations, an operator may use any one or combination of the following mechanisms to demonstrate financial responsibility for one or more aboveground storage tanks or pipelines: 1) financial test of self-insurance, 2) guarantee, 3) insurance and group self-insurance pool coverage, 4) surety bond, 5) letter of credit, and 6) trust fund. Current regulations require that an operator who uses any one of the mechanisms among guarantee, surety bond and letter of credit establish a standby trust fund when the mechanism is acquired. In the event of a release, all amounts paid by the guarantor, surety or issuing institution will be deposited directly into the standby trust fund and will be used for containment and cleanup arising from the release.

The Board proposes to eliminate the standby trust requirement if an operator uses guarantee, surety bond or letter of credit to demonstrate financial assurance. In the event that an operator fails to provide alternate coverage within 60 days after receipt of a notice of cancellation of the guarantee, surety bond or letter of credit, and the Board determines or suspects that a discharge has occurred at an AST and/or pipeline covered by the mechanism, all amounts paid by the guarantor, surety, or institution issuing a letter of credit shall be deposited into the Virginia Petroleum Storage Tank Fund and will be used by the Board to conduct containment and cleanup. Change of the receiving fund from the standby trust fund to VPSTF for money paid by guarantor, surety, or institution issuing a letter of credit will not affect the stringency of the current financial responsibility requirements. On the other hand, elimination of the standby trust fund requirement will reduce the cost of compliance for operators using guarantee, surety bond or letter of credit as

financial assurance mechanisms. According to the Department of Environmental Quality (DEQ), obtaining a standby trust fund will cost an operator \$1,250 on average. Therefore, this proposed change will create a cost saving of \$1,250 on average for operators that are currently using guarantee, surety bond or letter of credit as financial assurance mechanisms. DEQ reports that currently there are 750 AST facilities in the Commonwealth of Virginia. Among the 155 facilities that have had their financial responsibility reviewed by DEQ by February 2007, about 29.7% are using guarantee, surety bond or letter of credit to demonstrate financial assurance. Assuming that the percentage of facilities using guarantee, surety bond or letter of credit remains 29.7% among all of the AST facilities, approximately 223 AST facilities are currently using guarantee, surety bond or letter of credit and will incur a cost saving of \$1,250 after the standby trust requirement is eliminated. The total cost savings from eliminating the standby trust requirement will be approximately \$278,750 statewide.

The elimination of the standby trust requirement will make the use of guarantee, surety bond or letter of credit as financial assurance mechanisms less costly than it is now, and will likely encourage some operators that currently use other mechanisms to switch to guarantee, surety bond or letter of credit. Increased use of guarantee, surety bond, or letter of credit as financial assurance mechanisms will benefit the public with an increased level of protection because these mechanisms are backed by a third party such as a bank or surety company, and will more likely ensure that the funds will be available for containment and cleanup compared to mechanisms relying on the operators' net worth. The estimated number of operators that will switch to guarantee, surety bond or letter of credit is not known. However, the change in the percentages of Underground Storage Tank (UST) facilities using guarantee, surety bond or letter of credit as financial assurance mechanisms before and after the standby trust requirement was eliminated from the Petroleum Underground Storage Tank Financial Responsibility Requirements (9 VAC 25-590) may shed some light on the impact of the proposed change. DEQ reports that about 9.9% of operators of UST facilities used guarantee, surety bond or letter of credit as financial assurance mechanisms in 2003. After the standby trust requirement was eliminated from the Petroleum Underground Storage Tank Financial Responsibility Requirements (9 VAC 25-590) effective January 2005, the percentage of the UST operators using guarantee, surety bond or letter of credit to demonstrate financial assurance increased to 19.8% in May 2005 and 31.4% in February 2007.

The Board also proposes several changes for clarification that do not affect the regulatory requirements. For example, the proposed regulation will replace "owner" with "operator" to be consistent with the Code of Virginia and other sections of the regulation. The name of "Rural Electrification

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Administration” will be replaced with “Rural Utilities Office” due to change of agency name. These proposed changes will reduce possible confusion and benefit the public and the operators of AST and pipeline facilities.

**Businesses and Entities Affected.** The proposed regulation affects all of the 750 AST and pipeline facilities in Virginia. Among them, approximately 223 that are currently using guarantee, surety bond or letter of credit will incur a cost saving of \$1,250 annually. The other 527 facilities may be encouraged to switch from other mechanisms to guarantee, surety bond or letter of credit. Financial institutions that provide guarantee, surety bond or letter of credit will likely foresee reduced business in standby trust funds and possibly increased business in guarantees, surety bonds or letters of credit.

**Localities Particularly Affected.** The proposed regulations will affect all localities in the Commonwealth.

**Projected Impact on Employment.** The proposed elimination of the standby trust requirement will create cost savings for AST and pipeline facilities that are currently using guarantee, surety bond or letter of credit to demonstrate financial assurance. This would increase their profits and may have a slight positive impact on the number of people employed by those facilities.

**Effects on the Use and Value of Private Property.** The proposed elimination of the standby trust requirement will create cost savings for AST and pipeline facilities that currently use guarantee, surety bond or letter of credit as financial assurance mechanisms. This would increase their profits and will likely have a positive impact on their asset value.

**Small Businesses: Costs and Other Effects.** Operators of small AST and pipeline facilities that are currently using guarantee, surety bond or letter of credit would incur a cost saving of \$1,250 annually. Small facilities that use mechanisms other than guarantee, surety bond or letter of credit may find it worthwhile to switch to guarantee, surety bond or letter of credit due to the reduced cost.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** Small businesses will benefit from the proposed regulations.

**Legal Mandate.** The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with §2.2-4007.04 of the Administrative Process Act and Executive Order Number 21 (02). Section 2.2-4007.04 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, §2.2-4007.04 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.

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<sup>1</sup> Unless otherwise exempted in 9 VAC25-640-30, provisions in 9 VAC25-640-220 apply to operators of all aboveground storage tank facilities, the rest of 9 VAC 25-640 apply to operators of aboveground storage tank facilities with a maximum storage capacity of 25,000 gallons or greater of oil and pipeline facilities.

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

Summary:

*The regulation requires operators of regulated petroleum aboveground storage tanks (ASTs) and pipeline facilities to demonstrate they have the financial resources available to pay for the costs of containment and cleanup in the event of a release from their tanks. The proposed amendments eliminate the standby trust requirement for third-party mechanisms such as letters of credit and surety bonds, which would have the effect of reducing operators’ cost of compliance without affecting the stringency of the current financial responsibility requirements. Also, several administrative changes are proposed to the regulation that do not affect the regulatory requirements.*

**9VAC25-640-10. Definitions.**

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

"Aboveground storage tank" or "AST" means any one or combination of tanks, including pipes, used to contain an accumulation of oil at atmospheric pressure, and the volume of which, including the volume of the pipes, is more than 90% above the surface of the ground. This term does not include line pipe and breakout tanks of an interstate pipeline regulated under the federal Accountable Pipeline Safety and Partnership Act of 1996 (49 USC §60101 et seq.).

"Accidental discharge" means any sudden or nonsudden discharge of oil from a facility that results in a need for containment and clean up which was neither expected nor intended by the operator.

"Annual aggregate" means the maximum financial responsibility requirement that an ~~owner or~~ operator is required to demonstrate annually.

"Board" means the State Water Control Board.

"Change in service" means change in operation, conditions of the stored product, specific gravity, corrosivity, temperature or pressure that has occurred from the original that may affect the tank's suitability for service.

"Containment and clean up" means abatement, containment, removal and disposal of oil and, to the extent possible, the restoration of the environment to its existing state prior to an oil discharge.

"Controlling interest" means direct ownership of at least 50% of the voting stock of another entity.

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

"Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying or dumping.

"Facility" means any development or installation within the Commonwealth that deals in, stores or handles oil, and includes a pipeline.

"Financial reporting year" means the latest consecutive 12-month period for which any of the following reports used to support a financial test is prepared: (i) a 10-K report submitted to the U.S. Securities & Exchange Commission (SEC); (ii) an annual report of tangible net worth submitted to Dun and Bradstreet; (iii) annual reports submitted to the Energy Information Administration or the Rural ~~Electrification Administration~~ Utilities Service; or (iv) a year-end financial statement authorized under 9VAC25-640-70 B or C. "Financial reporting year" may thus comprise a fiscal or calendar year period.

"Group self-insurance pool" or "pool" means a pool organized by two or more operators of aboveground storage tanks, including pipelines, for the purpose of forming a group self-insurance pool in order to demonstrate financial responsibility as required by §62.1-44.34:16 of the Code of Virginia.

"Legal defense cost" means any expense that an operator or provider of financial assurance incurs in defending against claims or actions brought (i) by the federal government or the board to require containment or clean up or to recover the costs of containment and clean up, or to collect civil penalties under federal or state law or to assert any claim on behalf of the Virginia Petroleum Storage Tank Fund; or (ii) by any

person to enforce the terms of a financial assurance mechanism.

"Local government entity" means a municipality, county, town, commission, separately chartered and operated special district, school board, political subdivision of a state or other special purpose government which provides essential services.

"Member" means an operator of an aboveground storage tank or pipeline who has entered into a member agreement and thereby becomes a member of a group self-insurance pool.

"Member agreement" means the written agreement executed between each member and the pool, which sets forth the conditions of membership in the pool, the obligations, if any, of each member to the other members, and the terms, coverages, limits, and deductibles of the pool plan.

"Occurrence" means an accident, including continuous or repeated exposure to conditions, that results in a discharge from an AST. Note: This definition is intended to assist in the understanding of this chapter and is not intended either to limit the meaning of "occurrence" in a way that conflicts with standard insurance usage or to prevent the use of other standard insurance terms in place of "occurrence."

"Oil" means oil of any kind and in any form, including, but not limited to, petroleum and petroleum byproducts, fuel oil, lubricating oils, sludge, oil refuse, oil mixed with other wastes, crude oil and all other liquid hydrocarbons regardless of specific gravity.

"Operator" means any person who owns, operates, charters by demise, rents or otherwise exercises control over or responsibility for a facility or a vehicle or a vessel.

"Person" means an individual; trust; firm; joint stock company; corporation, including a government corporation; partnership; association; any state or agency thereof; municipality; county; town; commission; political subdivision of a state; any interstate body; consortium; joint venture; commercial entity; the government of the United States or any unit or agency thereof.

"Pipeline" means all new and existing pipe, rights of way, and any equipment, facility, or building used in the transportation of oil, including, but not limited to, line pipe, valves and other appurtenances connected to line pipe, pumping units, fabricated assemblies associated with pumping units, metering and delivery stations and fabricated assemblies therein, and breakout tanks.

"Pool plan" means the plan of self-insurance offered by the pool to its members as specifically designated in the member agreement.

"Provider of financial assurance" means a person that provides financial assurance to an operator of an aboveground

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storage tank through one of the mechanisms listed in 9VAC25-640-70 through 9VAC25-640-120, including a guarantor, insurer, group self-insurance pool, surety, or issuer of a letter of credit.

"Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank or facility into groundwater, surface water, or upon lands, subsurface soils or storm drain systems.

"Storage capacity" means the total capacity of an AST or a container, whether filled in whole or in part with oil, a mixture of oil, or mixtures of oil with nonhazardous substances, or empty. An AST that has been permanently closed in accordance with the requirements of ~~9VAC25-91-10 et seq.~~ 9VAC25-91 has no storage capacity.

"Substantial business relationship" means the extent of a business relationship necessary under Virginia law to make a guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued "incident to that relationship" if it arises from and depends on existing economic transactions between the guarantor and the operator.

"Tangible net worth" means the tangible assets that remain after deducting liabilities; such assets do not include intangibles such as goodwill and rights to patents or royalties. For purposes of this definition, "assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity as a result of past transactions.

"Tank" means a device designed to contain an accumulation of oil and constructed of nonearthen materials, such as concrete, steel, or plastic, that provides structural support. This term does not include flow-through process tanks as defined in 40 CFR Part 280. For purposes of 9VAC25-640-220, a tank means a device, having a liquid capacity of more than 60 gallons, designed to contain an accumulation of oil and constructed of nonearthen materials, such as concrete, steel, or plastic, that provides structural support.

"Termination" under Appendix III and Appendix IV means only those changes that could result in a gap in coverage as where the insured has not obtained substitute coverage or has obtained substitute coverage with a different retroactive date than the retroactive date of the original policy.

"Underground storage tank" means any one or combination of tanks, including connecting pipes, used to contain an accumulation of regulated substances, and the volume of which, including the volume of underground connecting pipes, is 10% or more beneath the surface of the ground. This term does not include any:

1. Farm or residential tanks having a capacity of 1,100 gallons or less and used for storing motor fuel for noncommercial purposes;

2. Tanks used for storing heating oil for consumption on the premises where stored;
3. Septic tanks;
4. Pipeline facilities (including gathering lines) regulated under:
  - a. The Natural Gas Pipeline Safety Act of 1968 (49 USC App. 1671 et seq.);
  - b. The Hazardous Liquid Pipeline Safety Act of 1979 (49 USC App. 2001 et seq.); or
  - c. Any intrastate pipeline facility regulated under state laws comparable to the provisions of the law referred to in subdivision 4 a or 4 b of this definition;
5. Surface impoundments, pits, ponds, or lagoons;
6. Storm water or wastewater collection systems;
7. Flow-through process tanks;
8. Liquid traps or associated gathering lines directly related to oil or gas production and gathering operations; or
9. Storage tanks situated in an underground area, such as a basement, cellar, mineworking, drift, shaft, or tunnel, if the storage tank is situated upon or above the surface of the floor.

The term "underground storage tank" does not include any pipes connected to any tank which is described in subdivisions 1 through 9 of this definition.

"Vehicle" means any motor vehicle, rolling stock, or other artificial contrivance for transport whether self-propelled or otherwise, except vessels.

"Vessel" means every description of watercraft or other contrivance used as a means of transporting on water, whether self-propelled or otherwise, and shall include barges and tugs.

## **9VAC25-640-20. Applicability.**

A. Unless otherwise exempted in this section or excluded in 9VAC25-640-30, operators of aboveground storage tank facilities having a maximum storage capacity of 25,000 gallons or greater of oil must demonstrate financial responsibility in accordance with the requirements of this chapter as a condition of operation.

B. Unless otherwise exempted in this section or excluded in 9VAC25-640-30, operators of pipelines must demonstrate financial responsibility in accordance with the requirements of this chapter as a condition of operation.

C. State and federal government entities whose debts and liabilities are the debts and liabilities of the Commonwealth of Virginia or the United States have the requisite financial strength and stability to fulfill their financial assurance requirements and are relieved of the requirements to further

demonstrate an ability to provide financial responsibility under this chapter.

D. Local government entities are not required to comply with the requirements of this chapter.

E. If there is more than one operator for a facility, only one operator is required to demonstrate financial responsibility; however, all operators are jointly responsible for ensuring compliance with financial responsibility requirements.

F. The provisions in 9VAC25-640-220 apply to operators of all aboveground storage tank facilities, regardless of storage capacity, unless otherwise exempted or excluded in 9VAC25-640-30.

**9VAC25-640-30. Exclusions.**

The requirements of this chapter do not apply to:

1. Vessels;
2. Licensed motor vehicles, unless used solely for the storage of oil;
3. An AST with a storage capacity of 660 gallons or less of oil, except for the requirements of 9VAC25-640-220;
4. An AST containing petroleum, including crude oil or any fraction thereof, which is liquid at standard temperature and pressure (60°F at 14.7 pounds per square inch absolute) subject to and specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of §101(14) of the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 USC §9601 et seq.);
5. A wastewater treatment tank system that is part of a wastewater treatment facility regulated under §402 or §307(b) of the federal Clean Water Act (33 USC §1251 et seq.);
6. An AST that is regulated by the Department of Mines, Minerals and Energy under Chapter 22.1 (§45.1-361.1 et seq.) of the Code of Virginia;
7. An AST used for the storage of products that are regulated pursuant to the federal Food, Drug and Cosmetic Act (21 USC §301 et seq.), except for the requirements of 9VAC25-640-220;
8. An AST that is used to store hazardous wastes listed or identified under Subtitle C of the Resource Conservation and Recovery Act (RCRA) (Solid Waste Disposal Act) (42 USC §6901 et seq.);
9. An AST that is used to store propane gas, butane gas or other liquid petroleum gases;
10. An AST used to store nonpetroleum hydrocarbon-based animal and vegetable oils;

11. A liquid trap or associated gathering lines directly related to oil or gas production, or gathering operations;

12. A surface impoundment, pit, pond, or lagoon;

13. A storm water or wastewater collection system;

14. Equipment or machinery that contains oil for operational purposes, including but not limited to lubricating systems, hydraulic systems, and heat transfer systems;

15. An AST used to contain oil for less than 120 days when: (i) used in connection with activities related to the containment and clean up of oil; (ii) used by a federal, state or local entity in responding to an emergency; or (iii) used temporarily on site to replace permanent storage capacity, except for the requirements of 9VAC25-640-220;

16. Oil-filled electrical equipment, including, but not limited to, transformers, circuit breakers or capacitors;

17. A flow-through process tank;

18. Oily water separators;

19. An AST containing dredge spoils;

20. An AST located on a farm or residence used for storing motor fuel for noncommercial purposes with an aggregated storage capacity of 1,100 gallons or less, except for the requirements of 9VAC25-640-220;

21. Pipes or piping beyond the first valve from the AST that connects an AST with production process tanks or production process equipment;

22. An AST storing asphalt and asphalt compounds which are not liquid at standard conditions of temperature and pressure (60°F at 14.7 pounds per square inch absolute);

23. Underground storage tanks regulated under a state program;

24. An AST with a capacity of 5,000 gallons or less used for storing heating oil for consumptive use on the premises where stored, except for the requirements of 9VAC25-640-220.

**9VAC25-640-50. Amount and scope of required financial responsibility.**

A. Operators shall demonstrate per occurrence and annual aggregate financial responsibility for containment and clean up of discharges of oil in an amount equal to (i) five cents per gallon of the aggregate aboveground storage capacity for ASTs in all Virginia facilities up to a maximum of \$1 million and (ii) \$5 million for pipelines.

B. If the operator uses separate mechanisms or combinations of mechanisms to demonstrate financial responsibility for the containment and clean up of oil, (i) the amount of assurance provided by the combination of mechanisms shall be in the

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full amount specified in subsection A of this section, and (ii) the operator shall demonstrate financial responsibility in the appropriate amount of annual aggregate assurance specified in subsection A of this section by the first-occurring effective date anniversary of any one of the mechanisms combined (other than a financial test or guarantee) to provide assurance.

C. The amounts of assurance required under this section exclude legal defense costs.

D. The required demonstration of financial responsibility does not in any way limit the liability of the operator under §62.1-44.34:18 of the Code of Virginia.

E. Operators which demonstrate financial responsibility shall maintain copies of those records on which the determination is based. The following documents may be used by operators to support a financial responsibility requirement determination:

1. Copies of the registration form required under ~~9VAC25-91-10 et seq~~ 9VAC25-91.
2. Any other form of documentation that the board may deem to be acceptable evidence to support the financial responsibility requirement determination.

## **9VAC25-640-70. Financial test of self-insurance.**

A. An operator and/or guarantor may satisfy the requirements of 9VAC25-640-50 by passing a financial test as specified in this section. To pass the financial test of self-insurance, the operator and/or guarantor shall meet the requirements of subsection B or C and subsection D of this section based on year-end financial statements for the latest completed financial reporting year.

B. 1. The operator and/or guarantor shall have a tangible net worth at least equal to the total of the applicable amount required by 9VAC25-640-50 for which a financial test is used to demonstrate financial responsibility and any aggregate amount required to be demonstrated under 9VAC25-590-40 for which a financial test is used to demonstrate financial responsibility.

2. The operator and/or guarantor shall comply with either subdivision a or b below:

- a. (1) The financial reporting year-end financial statements of the operator and/or guarantor shall be examined by an independent certified public accountant and be accompanied by the accountant's report of the examination; and
- (2) The financial reporting year-end financial statements of the operator and/or guarantor cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

b. (1) (a) File financial statements annually with the U.S. Securities and Exchange Commission, the Energy

Information Administration, or the Rural ~~Electrification Administration~~ Utilities Service; or

(b) Report annually the tangible net worth of the operator and/or guarantor to Dun and Bradstreet, and Dun and Bradstreet must have assigned a financial strength rating which at least equals the amount of financial responsibility required by the operator in 9VAC25-640-50.

(2) The financial reporting year-end financial statements of the operator and/or guarantor, if independently audited, cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

3. The operator and/or guarantor shall have a letter signed by the chief financial officer worded identically as specified in Appendix I/Alternative I.

C. 1. The operator and/or guarantor shall have a tangible net worth at least equal to the total of the applicable amount required by 9VAC25-640-50 for which a financial test is used to demonstrate financial responsibility.

2. The financial reporting year-end financial statements of the operator and/or guarantor shall be examined by an independent certified public accountant and be accompanied by the accountant's report of the examination.

3. The financial reporting year-end financial statements cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

4. If the financial statements of the operator and/or guarantor are not submitted annually to the U.S. Securities and Exchange Commission, the Energy Information Administration or the Rural ~~Electrification Administration~~ Utilities Service, the operator and/or guarantor shall obtain a special report by an independent certified public accountant stating that:

- a. The accountant has compared the data that the letter from the chief financial officer specified as having been derived from the latest financial reporting year-end financial statements of the operator and/or guarantor with the amounts in such financial statements; and
- b. In connection with that comparison, no matters came to the accountant's attention that caused him to believe that the specified data should be adjusted.

5. The operator and/or guarantor shall have a letter signed by the chief financial officer, worded identically as specified in Appendix I/Alternative II.

D. To meet the financial demonstration test under subsections B or C of this section, the chief financial officer of the operator and/or guarantor shall sign, within 120 days of the close of each financial reporting year, as defined by the 12-month period for which financial statements used to support the financial test are prepared, a letter worded

identically as specified in Appendix I with the appropriate alternative, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted.

E. If an operator using the test to provide financial assurance finds that he no longer meets the requirements of the financial test based on the financial reporting year-end financial statements, the operator shall obtain alternative coverage and submit to the board the appropriate original forms listed in 9VAC25-640-170 B within 150 days of the end of the year for which financial statements have been prepared.

F. The board may require reports of financial condition at any time from the operator and/or guarantor. If the board finds, on the basis of such reports or other information, that the operator and/or guarantor no longer meets the financial test requirements of subsection B or C and D of this section, the operator shall obtain alternate coverage and submit to the board the appropriate original forms listed in 9VAC25-640-170 B within 30 days after notification of such finding.

G. If the operator fails to obtain alternate assurance within 150 days of finding that he no longer meets the requirements of the financial test based on the financial reporting year-end financial statements, or within 30 days of notification by the board that he no longer meets the requirements of the financial test, the operator shall notify the board of such failure within 10 days.

**9VAC25-640-80. Guarantee.**

A. An operator may satisfy the requirements of 9VAC25-640-50 by obtaining a guarantee that conforms to the requirements of this section. The guarantor shall be:

1. A firm that:
  - a. Possesses a controlling interest in the operator;
  - b. Possesses a controlling interest in a firm described under subdivision A 1 a of this section; or
  - c. Is controlled through stock ownership by a common parent firm that possesses a controlling interest in the operator; or
2. A firm engaged in a substantial business relationship with the operator and issuing the guarantee as an act incident to that business relationship.

B. Within 120 days of the close of each financial reporting year, the guarantor shall demonstrate that it meets the financial test criteria of 9VAC25-640-70 B or C and D based on year-end financial statements for the latest completed financial reporting year by completing the letter from the chief financial officer described in Appendix I and shall deliver the letter to the operator. If the guarantor fails to meet the requirements of the financial test at the end of any financial reporting year, within 120 days of the end of that financial reporting year the guarantor shall send by certified mail, before cancellation or nonrenewal of the guarantee,

notice to the operator. If the board notifies the guarantor that he no longer meets the requirements of the financial test of 9VAC25-640-70 B or C and D, the guarantor shall notify the operator within 10 days of receiving such notification from the board. In both cases, the guarantee will terminate no less than 120 days after the date the operator receives the notification, as evidenced by the return receipt. The operator shall obtain alternate coverage as specified in 9VAC25-640-200.

C. The guarantee shall be worded identically as specified in Appendix II, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

~~D. An operator who uses a guarantee to satisfy the requirements of 9VAC25-640-50 shall establish a standby trust fund when the guarantee is obtained. Under the terms of the guarantee, all amounts paid by the guarantor under the guarantee will be deposited directly into the standby trust fund in accordance with instructions from the board under 9VAC25-640-180. This standby trust fund shall meet the requirements specified in 9VAC25-640-130. Under the terms of the guarantee, all amounts paid by the guarantor under the guarantee will be paid directly to the board in accordance with instructions from the board under 9VAC25-640-180.~~

**9VAC25-640-90. Insurance and group self-insurance pool coverage.**

A. 1. An operator may satisfy the requirements of 9VAC25-640-50 by obtaining liability insurance that conforms to the requirements of this section from a qualified insurer or entering into a member agreement with a group self-insurance pool.

2. Such liability insurance may be in the form of a separate insurance policy or an endorsement to an existing insurance policy.

3. Group self-insurance pools shall comply with §62.1-44.34:16 of the Code of Virginia and ~~applicable~~ the rules promulgated by the State Corporation Commission Bureau of Insurance regulations designated as Chapter 385 of Title 14 of the Virginia Administrative Code and entitled "Rules Governing Aboveground Storage Tank and Pipeline Operators Group Self-Insurance Pools" (14VAC5-385).

B. Each liability insurance policy shall be amended by an endorsement worded in no respect less favorable than the coverage as specified in Appendix III, or evidenced by a certificate of insurance worded identically as specified in Appendix IV, except that instructions in brackets shall be replaced with the relevant information and the brackets deleted.

C. Each liability insurance policy shall be issued by an insurer ~~or a group self-insurance pool~~ that, at a minimum, is licensed to transact the business of insurance or eligible to

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provide insurance as an excess or approved surplus lines insurer in the Commonwealth of Virginia.

D. Each group self-insurance pool must be licensed in accordance with 14VAC5-385, and any coverage provided by such a pool shall be evidenced by a certificate of group self-insurance worded identically as specified in Appendix VIII, except that instructions in brackets shall be replaced with the relevant information and the brackets deleted.

E. Each liability insurance policy or group self-insurance plan shall provide first dollar coverage. The insurer or group self-insurance pool shall be liable for the payment of all amounts within any deductible applicable to the policy to the provider of containment and clean up as provided in this chapter, with a right of reimbursement by the insured for any such payment made by the insurer or group self-insurance pool. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in 9VAC25-640-70 through 9VAC25-640-120.

## **9VAC25-640-100. Surety bond.**

A. An operator may satisfy the requirements of 9VAC25-640-50 by obtaining a surety bond that conforms to the requirements of this section. The surety company issuing the bond shall be licensed to operate as a surety in the Commonwealth of Virginia and be among those listed as acceptable sureties on federal bonds in the latest Circular 570 of the U.S. Department of the Treasury.

B. The surety bond shall be worded identically as specified in Appendix V, except that instructions in brackets shall be replaced with the relevant information and the brackets deleted.

C. Under the terms of the bond, the surety will become liable on the bond obligation when the operator fails to perform as guaranteed by the bond. In all cases, the surety's liability is limited to the per-occurrence and annual aggregate penal sums.

D. ~~The operator who uses a surety bond to satisfy the requirements of 9VAC25-640-50 shall establish a standby trust fund when the surety bond is acquired.~~ Under the terms of the bond, all amounts paid by the surety under the bond will be deposited directly into the standby trust fund in accordance with instructions from the board under paid directly to the board in accordance with instructions from the board under 9VAC25-640-180. This standby trust fund shall meet the requirements specified in 9VAC25-640-130.

## **9VAC25-640-110. Letter of credit.**

A. An operator may satisfy the requirements of 9VAC25-640-50 by obtaining an irrevocable standby letter of credit that conforms to the requirements of this section. The issuing institution shall be an entity that has the authority to issue letters of credit in the Commonwealth of Virginia and whose

letter-of-credit operations are regulated and examined by a federal agency or the State Corporation Commission.

B. The letter of credit shall be worded identically as specified in Appendix VI, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

C. ~~An operator who uses a letter of credit to satisfy the requirements of 9VAC25-640-50 also shall establish a standby trust fund when the letter of credit is acquired.~~ Under the terms of the letter of credit, all amounts paid pursuant to a draft by the board will be deposited by the issuing institution directly into the standby trust fund paid by the issuing institution directly to the board in accordance with instructions from the board under 9VAC25-640-180. ~~This standby trust fund shall meet the requirements specified in 9VAC25-640-130.~~

D. The letter of credit shall be irrevocable with a term specified by the issuing institution. The letter of credit shall provide that credit will be automatically renewed for the same term as the original term, unless, at least 120 days before the current expiration date, the issuing institution notifies the operator and the board by certified mail of its decision not to renew the letter of credit. Under the terms of the letter of credit, the 120 days will begin on the date when the operator and the board receives the notice, as evidenced by the return receipt receipts.

## **9VAC25-640-120. Trust fund.**

A. An operator may satisfy the requirements of 9VAC25-640-50 by establishing an irrevocable trust fund that conforms to the requirements of this section. The trustee shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or the State Corporation Commission.

B. The trust fund shall be irrevocable and shall continue until terminated at the written direction of the grantor and the trustee, or by the trustee and the State Water Control Board, if the grantor ceases to exist. Upon termination of the trust, all remaining trust property, less final trust administration expenses, shall be delivered to the operator. The wording of the trust agreement shall be identical to the wording specified in Appendix VII ~~and shall be accompanied by a formal certification of acknowledgment as specified in Appendix VIII.~~

C. The irrevocable trust fund, when established, shall be funded for the full required amount of coverage, or funded for part of the required amount of coverage and used in combination with other mechanisms that provide the remaining required coverage.

D. If the value of the trust fund is greater than the required amount of coverage, the operator may submit a written request to the board for release of the excess.

E. If other financial assurance as specified in this chapter is substituted for all or part of the trust fund, the operator may submit a written request to the board for release of the excess.

F. Within 60 days after receiving a request from the operator for release of funds as specified in subsection D or E of this section, the board will instruct the trustee to release to the operator such funds as the board specifies in writing.

**9VAC25-640-130. Standby trust fund. (Repealed.)**

~~A. An operator using any one of the mechanisms authorized by 9VAC25-640-80, 9VAC25-640-100, and 9VAC25-640-110 shall establish a standby trust fund when the mechanism is acquired. The trustee of the standby trust fund shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal agency or the State Corporation Commission.~~

~~B. The standby trust agreement or trust agreement shall be worded identically as specified in Appendix VII, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted, and accompanied by a formal certification of acknowledgment as specified in Appendix VIII.~~

~~C. The board will instruct the trustee to refund the balance of the standby trust fund to the provider of financial assurance if the board determines that no additional containment and clean up costs will occur as a result of a discharge covered by the financial assurance mechanism for which the standby trust fund was established.~~

~~D. An operator may establish one trust fund as the depository mechanism for all funds assured in compliance with this rule.~~

**9VAC25-640-150. Cancellation or nonrenewal by a provider of financial assurance.**

A. Except as otherwise provided, a provider of financial assurance may cancel or fail to renew an assurance mechanism by sending a notice of termination by certified mail to the operator and the board.

Termination of a guarantee, a surety bond, or a letter of credit may not occur until 120 days after the date on which the operator and the board receives the notice of termination, as evidenced by the return ~~receipt~~ receipts.

Termination of insurance or group self-insurance pool coverage, except for nonpayment or misrepresentation by the insured, may not occur until 60 days after the date on which the operator and the board receives the notice of termination, as evidenced by the return ~~receipt~~ receipts. Termination for nonpayment of premium or misrepresentation by the insured may not occur until a minimum of 15 days after the date on which the operator and the board receives the notice of termination, as evidenced by the return ~~receipt~~ receipts.

B. If a provider of financial responsibility cancels or fails to renew for reasons other than incapacity of the provider as specified in 9VAC25-640-200, the operator shall obtain alternate coverage as specified in this section and shall submit to the board the appropriate original forms listed in 9VAC25-640-170 B documenting the alternate coverage within 60 days after receipt of the notice of termination. If the operator fails to obtain alternate coverage within 60 days after receipt of the notice of termination, the operator shall immediately notify the board of such failure and submit:

1. The name and address of the provider of financial assurance;
2. The effective date of termination; and
3. A copy of the financial assurance mechanism subject to the termination maintained in accordance with 9VAC25-640-170.

**9VAC25-640-160. Reporting by operator.**

~~A. Except as specified in 9VAC25-640-170 B 7, an operator of a facility existing as of March 2, 2001, shall comply with the requirements of this chapter by June 30, 2001. An operator shall submit the appropriate original forms listed in 9VAC25-640-170 B documenting current evidence of financial responsibility to the board within 30 days after the operator identifies or confirms a discharge from an aboveground storage tank or pipeline required to be reported under 9VAC25-90-210. For all subsequent discharges within the same period of time for which the documents submitted according to this subsection are still effective, the operator shall submit a letter that identifies the operator's name and address and the aboveground storage tank's or pipeline's location by site name, street address, board incident designation number and a statement that the financial responsibility documentation previously provided to the board is currently in force.~~

~~B. Except as specified in 9VAC25-640-170 B 7, an operator of a facility which does not exist as of March 2, 2001, shall comply with the requirements of this chapter at least 30 days before the facility commences operation or by May 1, 2001, whichever is later.~~

~~C. An operator shall notify the board if the operator fails to obtain alternate coverage as required by this chapter within 30 days after the operator receives notice of:~~

1. Commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a provider of financial assurance as a debtor.
2. Suspension or revocation of the authority of a provider of financial assurance to issue a financial assurance mechanism.
3. Failure of a guarantor to meet the requirements of the financial test.

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4. Other incapacity of a provider of financial assurance.

~~D.~~ C. An operator shall submit the appropriate original forms listed in 9VAC25-640-170 B documenting current evidence of financial responsibility to the board as required by 9VAC25-640-70 E and F and 9VAC25-640-150 B.

~~E.~~ D. An operator shall submit to the board the appropriate original forms listed in 9VAC25-640-170 B documenting current evidence of financial responsibility upon substitution of its financial assurance mechanisms as provided by 9VAC25-640-140.

~~F.~~ E. The board may require an operator to submit evidence of financial assurance as described in 9VAC25-640-170 B or other information relevant to compliance with this chapter at any time. The board may require submission of originals or copies at its sole discretion.

## **9VAC25-640-170. Recordkeeping.**

A. Operators shall maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility under this chapter for an aboveground storage tank or pipeline, or both, until released from the requirements of this regulation under 9VAC25-640-190. An operator shall maintain such evidence at the aboveground storage tank site or the operator's place of work in this Commonwealth. Records maintained off-site shall be made available upon request of the board.

B. Operators shall maintain the following types of evidence of financial responsibility:

1. An operator using an assurance mechanism specified in 9VAC25-640-70 through 9VAC25-640-120 shall maintain the original instrument worded as specified.

2. An operator using a financial test or guarantee shall maintain (i) the chief financial officer's letter, and (ii) year-end financial statements for the most recent completed financial reporting year or the Dun and Bradstreet rating on which the chief financial officer's letter was based. Such evidence shall be on file no later than 120 days after the close of the financial reporting year.

~~3. An operator using a guarantee, surety bond, or letter of credit shall maintain the signed standby trust fund agreement and any amendments to the agreement.~~

~~4.~~ 3. An operator using an insurance policy or group self-insurance pool coverage shall maintain a copy of the signed insurance policy or group self-insurance pool coverage policy, with the endorsement or certificate of insurance and any amendments to the agreements.

~~5.~~ 4. a. An operator using an assurance mechanism specified in 9VAC25-640-70 through 9VAC25-640-120 shall maintain an original certification of financial responsibility worded identically as specified in Appendix

IX, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

b. The operator shall maintain a new original certification at or before the time specified in 9VAC25-640-160 or whenever the financial assurance mechanisms used to demonstrate financial responsibility changes.

~~6. An operator using a trust agreement or who is required to prepare a standby trust agreement pursuant to 9VAC25-640-130 shall maintain a certification of acknowledgment worded identically as specified in Appendix VIII, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.~~

~~7.~~ 5. For subsequent annual ~~updates~~ submissions required under 9VAC25-640-160:

a. The operator may maintain an endorsement, a rider or a notice of extension from the provider of financial assurance evidencing continuation of coverage in lieu of a new original surety bond or letter of credit or insurance policy, provided the form of the endorsement, rider or notice of extension is approved by the board;

b. The operator need not obtain a new original guarantee or trust fund, provided the same mechanism is to continue to act as the operator's demonstration mechanism for the subsequent year or years;

~~c. The operator need not obtain a new standby trust agreement, provided the financial assurance mechanism remains the same;~~

~~d.~~ c. The operator must maintain a new original mechanism as specified in subdivision 2 of this subsection;

~~e.~~ d. The operator need not obtain a new original certification of acknowledgment, provided the associated trust agreement has not changed;

~~f.~~ e. The operator must maintain a new original certification of financial responsibility.

## **9VAC25-640-180. Drawing on financial assurance mechanisms.**

A. The board ~~shall~~ may require the guarantor, surety, or institution issuing a letter of credit to ~~place the amount of funds stipulated by the board,~~ pay to the board an amount up to the limit of funds provided by the financial assurance mechanism, ~~into the standby trust~~ if:

1. a. The operator fails to establish alternate financial assurance within 60 days after receiving notice of cancellation of the guarantee, surety bond, letter of credit; and

b. The board determines or suspects that a discharge from an aboveground storage tank or pipeline covered by the mechanism has occurred and so notifies the operator, or

the operator has notified the board pursuant to ~~9VAC25-91-10 et seq.~~ 9VAC25-91 of a discharge from an aboveground storage tank or pipeline covered by the mechanism; or

2. The conditions of subsection B of this section are satisfied.

B. The board shall deposit the financial assurance funds forfeited pursuant to subsection A of this section into the Virginia Petroleum Storage Tank Fund. The board may draw on a standby trust fund when the board use the financial responsibility funds obtained pursuant to subsection A of this section to conduct containment and cleanup when it makes a final determination that a discharge has occurred and immediate or long-term containment and/or clean up for the discharge is needed, and the operator, after appropriate notice and opportunity to comply, has not conducted containment and clean up as required under ~~9VAC25-91-10 et seq.~~ 9VAC25-91.

**9VAC25-640-190. Release from the requirements.**

An operator is no longer required to maintain financial responsibility under this chapter for an aboveground storage tank or pipeline after the tank or pipeline has been permanently closed pursuant to the requirements of ~~9VAC25-91-10 et seq.~~ 9VAC25-91, except when the board determines clean up of a discharge from the aboveground storage tank or pipeline is required.

**9VAC25-640-210. Replenishment of guarantees, letters of credit or surety bonds.**

A. If at any time after a standby trust is funded upon the instruction of the board with funds drawn from a guarantee, letter of credit, or surety bond, and the amount in the standby trust is reduced below the full amount of coverage required is drawn upon by instruction of the board and the board has expended all or part of the funds for containment and cleanup, the operator shall by the anniversary date of the financial mechanism from which the funds were drawn shall:

1. Replenish the value of financial assurance to equal the full amount of coverage required; or
2. Acquire another financial assurance mechanism for the amount by which funds in the standby trust have the face value of the letter of credit, surety bond, or guarantee has been reduced.

B. For purposes of this section, the full amount of coverage required is the amount of coverage to be provided by 9VAC25-640-50. If a combination of mechanisms was used to provide the assurance funds which were drawn upon, replenishment shall occur by the earliest anniversary date among the mechanisms.

**9VAC25-640-220. Virginia Petroleum Storage Tank Fund.**

~~The fund may be used for all uses authorized by §62.1-44.34:11 of the Code of Virginia in accordance with the requirements specified in 9VAC25-590-210.~~

A. The Virginia Petroleum Storage Tank Fund will be used for reasonable and necessary costs, in excess of the financial responsibility amounts specified below, incurred by an operator for containment and cleanup of a petroleum release from a facility of a product subject to §62.1-44.34:13 of the Code of Virginia as follows:

1. Reasonable and necessary per occurrence containment and cleanup costs incurred by an operator whose net annual profits from all facilities in Virginia do not exceed \$10 million:

a. For a release from a facility with a storage capacity less than 25,000 gallons, per occurrence costs in excess of \$2,500 up to \$1 million;

b. For a release from a facility with a storage capacity from 25,000 gallons to 100,000 gallons, per occurrence costs in excess of \$5,000 up to \$1 million;

c. For a release from a facility with a storage capacity from 100,000 gallons to four million gallons, per occurrence costs in excess of \$.05 per gallon of aboveground storage capacity up to \$1 million; and

d. For a release from a facility with a storage capacity greater than four million gallons, per occurrence costs in excess of \$200,000 up to \$1 million.

e. For purposes of this subdivision, the per occurrence financial responsibility requirements for an operator shall be based on the total storage capacity for the facility from which the discharge occurs.

2. Reasonable and necessary per occurrence containment and cleanup costs incurred by an operator whose net annual profits from all facilities in Virginia exceed \$10 million:

a. For a release from a facility with a storage capacity less than four million gallons, per occurrence costs in excess of \$200,000 up to \$1 million;

b. For a release from a facility with a storage capacity from four million gallons to 20 million gallons, per occurrence costs in excess of \$.05 per gallon of aboveground storage capacity of up to \$1 million; and

c. For a release from a facility with a storage capacity greater than 20 million gallons no access to the fund will be permitted.

d. For purposes of this subdivision, the financial responsibility requirements for an operator are based on

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the total aboveground storage capacity for all facilities operated in Virginia.

B. The Virginia Petroleum Storage Tank Fund will be used for reasonable and necessary per occurrence costs of containment and cleanup incurred for releases reported after December 22, 1989, by the operator of a facility in excess of \$500 up to \$1 million for any release of petroleum into the environment from an aboveground storage tank with a capacity of 5,000 gallons or less used for storing heating oil for consumption on the premises where stored.

C. The Virginia Petroleum Storage Tank Fund may be used for all other uses authorized in §62.1-44.34:11 of the Code of Virginia.

D. An operator of a facility responding to a release and conducting board-approved corrective action may proceed to pay for all costs incurred for such activities. Documentation submitted to the board of all costs incurred will be reviewed and those documented costs in excess of the financial responsibility requirements up to \$1 million that are reasonable and necessary and have been approved by the board will be reimbursed from the fund.

E. Operators shall pay the financial responsibility requirement specified in this section for each occurrence.

F. Section 62.1-44.34:11 A of the Code of Virginia provides that no person shall receive reimbursement from the fund:

1. For costs incurred for corrective action taken prior to December 22, 1989, by an owner or operator of an underground storage tank exempted in subdivisions 1 and 2 of the definition of an underground storage tank in §62.1-44.34:10 of the Code of Virginia, or an owner of an aboveground storage tank with a capacity of 5,000 gallons or less used for storing heating oil for consumption on the premises where stored.

2. For costs incurred prior to January 1, 1992, by an operator of a facility for containment and cleanup of a release from a facility of a product subject to §62.1-44.34:13 of the Code of Virginia.

3. For containment and cleanup costs that are reimbursed or are reimbursable from other applicable state or federal programs.

4. If the operator of a facility has not complied with applicable statutes or regulations governing reporting, prevention, containment and cleanup of a discharge of oil.

5. If the owner or operator of an underground storage tank or the operator of an aboveground storage tank facility fails to report a release of petroleum or a discharge of oil to the board as required by applicable statutes, laws or regulations.

6. Unless a reimbursement claim has been filed with the board within two years from the date the board issues a site

remediation closure letter for that release or July 1, 2000, whichever is later.

G. In addition to the statutory prohibitions quoted in subsection F of this section, no person shall receive reimbursement from the fund for containment and cleanup:

1. Where the release is caused, in whole or in part, by the willful misconduct or negligence of the operator, his employee, contractor, or agent, or anyone within his privity or knowledge;

2. Where the claim cost has been reimbursed or is reimbursable by an insurance policy;

3. Where the operator does not demonstrate the reasonableness and necessity of the claim costs;

4. Where the person, his employee, contractor or agent, or anyone within the privity or knowledge of that person has (i) failed to carry out the instructions of the board, (ii) committed willful misconduct or been negligent in carrying out the instructions of the board, or (iii) has violated applicable federal or state safety, construction or operating laws or regulations in carrying out the instructions of the board; and

5. Where the costs or damages were incurred pursuant to §10.1-1232 of the Code of Virginia and the regulations promulgated thereunder.

H. No disbursements shall be made from the fund for operators who are federal government entities or whose debts and liabilities are the debts and liabilities of the United States.

I. No funds shall be paid in excess of the minimum disbursement necessary to contain and cleanup each occurrence to the acceptable level of risk, as determined by the board.

J. The board may perform a detailed review of all documentation associated with a reimbursement claim up to seven years following payment of the claim. Based upon the results of the review, the board may take actions to address any deficiencies found in the claim documentation. Such actions may include, but are not limited to, publishing a list of audit concerns associated with the claim, withholding payment of future claims, and/or recovering costs paid on prior claims.

K. The board shall seek recovery of all costs and expenses incurred by the Commonwealth for investigation, containment and cleanup of a discharge of oil or threat of discharge against any person liable for a discharge of oil as specified in Article 11 (§62.1-44.34:14 et seq.) of the State Water Control Law; however, the board shall seek recovery from an operator of expenditures from the fund only in the amount by which such expenditures exceed the amount authorized to be disbursed to the operator under subdivisions A 1 and A 2 of this section. This limitation on recovery shall

not apply if the release was caused, in whole or in part, by the willful misconduct or negligence of the owner or operator, his employee, contractor, or agent, or anyone within his privity or knowledge.

**9VAC25-640-230. Notices to the State Water Control Board.**

All requirements of this chapter for notification to the State Water Control Board shall be addressed as follows:

Director Department of Environmental Quality 629 E. Main Street P.O. Box 40009 1105 Richmond, Virginia 23240-0009 23218.

**9VAC25-640-250. Evaluation of chapter.**

A. ~~No later than March 2, 2004,~~ Within four years after the effective date of this chapter, the department shall perform an analysis on this chapter and provide the board with a report on the results. The analysis shall include (i) the purpose and need for the chapter; (ii) alternatives that would achieve the stated purpose of this chapter in a less burdensome and less intrusive manner; (iii) an assessment of the effectiveness of this chapter; (iv) the results of a review of current state and federal statutory and regulatory requirements, including identification and justification of requirements of this chapter which are more stringent than federal requirements; and (v) the results of a review as to whether this chapter is clearly written and easily understandable by affected entities.

B. Upon review of the department's analysis, the board shall confirm the need to (i) continue this chapter without amendments, (ii) repeal this chapter or (iii) amend this chapter. If the board's decision is to repeal or amend this chapter, the board shall authorize the department to initiate the applicable regulatory process to carry out the decision of the board.

**APPENDIX I. LETTER FROM CHIEF FINANCIAL OFFICER.**

(Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.)

I am the chief financial officer of [insert: name and address of the operator or guarantor]. This letter is in support of the use of [insert: "the financial test of self-insurance," and/or "Guarantee"] to demonstrate financial responsibility for the containment and clean up of discharges of oil in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] annual aggregate arising from operating [insert: "(an) aboveground storage tank(s)" and/or "(a) pipeline(s)"].

Aboveground storage tanks at the following facilities and/or pipelines are assured by this financial test by this [insert: "operator" and/or "guarantor"]:

[List for each facility: the name and address of the facility where tanks assured by this financial test are located, either

the registration identification number assigned by the Department or the Oil Discharge Contingency Plan facility identification number, and whether tanks are assured by this financial test. If separate mechanisms or combinations of mechanisms are being used to assure any of the tanks at this facility, list each tank assured by this financial test.

List for each pipeline: the home office address and the names of the cities and counties in the Commonwealth where the pipeline is located.]

This [insert: "operator " or "guarantor"] has not received an adverse opinion, a disclaimer of opinion, or a "going concern" qualification from an independent auditor on the financial statements for the latest completed fiscal year.

[Fill in the information for Alternative I if the criteria of 9VAC25-640-70 B are being used to demonstrate compliance with the financial test requirements. Fill in the information for Alternative II if the criteria of 9VAC25-640-70 C are being used to demonstrate compliance with the financial test requirements.]

**ALTERNATIVE I**

- 1. Amount of AST annual aggregate coverage being assured by a financial test, and/or guarantee \$ \_\_\_\_\_
- 2. Amount of pipeline annual aggregate coverage covered by a financial test, and/or guarantee \$ \_\_\_\_\_
- 3. Amount of annual underground storage tank (UST) aggregate coverage being assured by a financial test and/or guarantee pursuant to 9 VAC 25-590 \$ \_\_\_\_\_
- 4. Total AST/Pipeline/UST financial responsibility obligations assured by a financial test and/or guarantee (Sum of lines 1, ~~and 2~~ and 3) \$ \_\_\_\_\_
- 4. 5. Total tangible assets \$ \_\_\_\_\_
- ~~5.~~ 6. Total liabilities [if any of the amount reported on line ~~3~~ 4 is included in total liabilities, you may deduct that amount from this line or add that amount to line ~~6~~ 7] \$ \_\_\_\_\_
- ~~6.~~ 7. Tangible net worth [subtract line ~~5~~ 6 from line ~~4~~ 5] \$ \_\_\_\_\_
- ~~7.~~ 8. Is line ~~6~~ 7 at least equal to line ~~3~~ 4 above? Yes No  
\_\_\_\_\_
- ~~8.~~ 9. Have financial statements for the latest financial reporting year been filed with the Securities and Exchange Commission? \_\_\_\_\_

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~~9.~~ 10. Have financial statements for the latest financial reporting year been filed with the Energy Information Administration?

— —

only if less than 90

percent of assets are located in the U.S.].

~~10.~~ 11. Have financial statements for the latest financial reporting year been filed with the Rural ~~Electrification Administration~~ Utilities Service?

— —

~~8.~~ 9. Is line ~~6~~ 7 at least equal to line ~~3~~ 4 above?

Yes No

— —

~~11.~~ 12. Has financial information been provided to Dun and Bradstreet, and has Dun and Bradstreet provided a financial strength rating of at least equal to the amount of annual AST/pipeline aggregate coverage being assured? [Answer Yes only if both criteria have been met.]

— —

~~9.~~ 10. Are at least 90 percent of assets located in the U.S.? [If No, complete line ~~10~~ 11.]

— —

~~10.~~ 11. Is line ~~7~~ 8 at least equal to line ~~3~~ 4?

— —

[Fill in either lines ~~11-14~~ 12-15 or lines ~~15-17~~ 16-18.]

~~11.~~ 12. Current assets

\$ \_\_\_\_\_

~~12.~~ 13. Current liabilities

\$ \_\_\_\_\_

~~13.~~ 14. Net working capital [subtract line ~~12~~ 13 from line ~~11~~ 12]

\$ \_\_\_\_\_

~~14.~~ 15. Is line ~~13~~ 14 at least equal to line ~~3~~ 4?

Yes No

— —

~~15.~~ 16. Current bond rating of most recent bond issue

\_\_\_\_\_

~~16.~~ 17. Name of rating service

\_\_\_\_\_

~~17.~~ 18. Date of maturity of bond

\_\_\_\_\_

## ALTERNATIVE II

1. Amount of AST annual aggregate coverage being assured by a financial test, and/or guarantee

\$ \_\_\_\_\_

~~18.~~ 19. Have financial statements for the latest fiscal year been filed with the SEC, the Energy Information Administration, or the Rural ~~Electrification Administration~~ Utilities Service?

Yes No

— —

2. Amount of pipeline annual aggregate coverage covered by a financial test, and/or guarantee

\$ \_\_\_\_\_

3. Amount of annual underground storage tank (UST) aggregate coverage being assured by a financial test and/or guarantee pursuant to 9VAC25-590

\$ \_\_\_\_\_

[If "No," please attach a report from an independent certified public accountant certifying that there are no material differences between the data as reported in lines ~~4-17~~ 5-18 above and the financial statements for the latest financial reporting year.]

4. Total AST/Pipeline?UST financial responsibility obligations assured by a financial test and/or guarantee (Sum of lines 1, ~~and 2~~ and 3)

\$ \_\_\_\_\_

[For Alternatives I and II, complete the certification with this statement.]

~~4.~~ 5. Total tangible assets

\$ \_\_\_\_\_

I hereby certify that the wording of this letter is identical to the wording specified in Appendix I of ~~9VAC25-640-10 et seq.~~ 9VAC25-640 as such regulations were constituted on the date shown immediately below.

~~5.~~ 6. Total liabilities [if any of the amount reported on line ~~3~~ 4 is included in total liabilities, you may deduct that amount from this line or add that amount to line]

\$ \_\_\_\_\_

[Signature]

[Name]

~~6.~~ 7. Tangible net worth [subtract line ~~5~~ 6 from line ~~4~~ 5]

\$ \_\_\_\_\_

[Title]

[Date]

~~7.~~ 8. Total assets in the U.S. [required

\$ \_\_\_\_\_

APPENDIX II. GUARANTEE.

(Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.)

Guarantee made this [date] by [name of guaranteeing entity], a business entity organized under the laws of the state of [insert name of state], herein referred to as guarantor, to the State Water Control Board of the Commonwealth of Virginia and obligees, on behalf of [operator] of [business address].

Recitals.

(1) Guarantor meets or exceeds the financial test criteria of 9VAC25-640-70 B or C and D and agrees to comply with the requirements for guarantors as specified in 9VAC25-640-80.

(2) Operator operates the following aboveground storage tank(s) and/or pipelines covered by this guarantee:

[List for each facility: the name and address of facility where tanks assured by this financial test are located, either the registration identification number assigned by the Department or the Oil Discharge Contingency Plan facility identification number, and whether tanks are assured by this guarantee. If more than one instrument is used to assure different tanks at any one facility, list each tank assured by this mechanism.

List for each pipeline: the home office address and the names of the cities and counties in the Commonwealth where the pipeline is located.]

This guarantee satisfies the requirements of ~~9VAC25-640-10 et seq.~~ 9VAC25-640 for assuring funding for taking containment and clean up measures necessitated by a discharge of oil; [if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the above-identified aboveground storage tank(s) and/or pipelines in the amount of [insert dollar amount] per occurrence and [insert dollar amount] annual aggregate.

(3) [Insert appropriate phrase: "On behalf of our subsidiary" (if guarantor is corporate parent of the operator); "On behalf of our affiliate" (if guarantor is a related firm of the operator); or "Incident to our business relationship with" (if guarantor is providing the guarantee as an incident to a substantial business relationship with operator)] [operator], guarantor guarantees to the State Water Control Board that:

In the event that operator fails to provide alternate coverage within 60 days after receipt of a notice of cancellation of this guarantee and the State Water Control Board has determined or suspects that a discharge has occurred at an aboveground storage tank and/or pipeline covered by this guarantee, the guarantor, upon instructions from the State Water Control Board, shall ~~fund a standby trust fund~~ pay the funds to the State Water Control Board in accordance with the provisions

of 9VAC25-640-180, in an amount not to exceed the coverage limits specified above.

In the event that the State Water Control Board determines that operator has failed to perform containment and clean up for discharges arising out of the operation of the above-identified tank(s) and/or pipelines in accordance with ~~9VAC25-91-10 et seq.~~ 9VAC25-91, the guarantor upon written instructions from the State Water Control Board shall ~~fund a standby trust~~ pay the funds to the State Water Control Board in accordance with the provisions of 9VAC25-640-180, in an amount not to exceed the coverage limits specified above.

(4) Guarantor agrees that if, at the end of any financial reporting year before cancellation of this guarantee, the guarantor fails to meet the financial test criteria of 9VAC25-640-70 B or C and D, guarantor shall send within 120 days of such failure, by certified mail, notice to operator and the State Water Control Board. The guarantee will terminate 120 days from the date of receipt of the notice by operator and the State Water Control Board, as evidenced by the return receipt.

(5) Guarantor agrees to notify operator and the State Water Control Board by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming the guarantor as debtor, within 10 days after commencement of the proceeding.

(6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of operator pursuant to ~~9VAC25-91-10 et seq.~~ 9VAC25-91 or ~~9VAC25-640-10 et seq.~~ 9VAC25-640.

(7) Guarantor agrees to remain bound under this guarantee for so long as operator shall comply with the applicable financial responsibility requirements of ~~9VAC25-640-10 et seq.~~ 9VAC25-640 for the above-identified tank(s) and/or pipelines, except that guarantor may cancel this guarantee by sending notice by certified mail to operator and the State Water Control Board, such cancellation to become effective no earlier than 120 days after receipt of such notice by operator and the State Water Control Board, as evidenced by the return receipt.

(8) The guarantor's obligation does not apply to any of the following:

- (a) Any obligation of operator under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
- (b) Bodily injury to an employee of operator arising from, and in the course of, employment by operator;
- (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

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(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by operator that is not the direct result of a discharge from an aboveground storage tank and/or pipeline;

(e) Bodily damage or property damage for which operator is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of ~~9VAC25-640-10 et seq.~~ 9VAC25-640.

(9) Guarantor expressly waives notice of acceptance of this guarantee by the State Water Control Board or by operator.

I hereby certify that the wording of this guarantee is identical to the wording specified in Appendix II of ~~9VAC25-640-10 et seq.~~ 9VAC25-640 as such regulations were constituted on the effective date shown immediately below.

[Name of guarantor]

[Authorized signature for guarantor]

[Name of person signing]

[Title of person signing]

Signature of witness or notary:

## APPENDIX III. ENDORSEMENT.

(Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.)

Name: \_\_\_\_\_ [name of each covered location]  
\_\_\_\_\_

Address: \_\_\_\_\_ [address of each covered location]  
\_\_\_\_\_

Policy Number: \_\_\_\_\_

Period of Coverage: \_\_\_\_\_ [current policy period]  
\_\_\_\_\_

Name of ~~Insurer or Group Self Insurance Pool~~ Insurer:  
\_\_\_\_\_  
\_\_\_\_\_

Address of ~~Insurer or Group Self Insurance Pool~~ Insurer:  
\_\_\_\_\_  
\_\_\_\_\_

Name of Insured: \_\_\_\_\_

Address of Insured:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Endorsement:

1. This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering the following aboveground storage tanks and/or pipelines in connection with the insured's obligation to demonstrate financial responsibility under ~~9VAC25-640-10 et seq.~~ 9VAC25-640:

[List for each facility: the name and address of the facility where tanks assured by this mechanism are located, either the registration identification number assigned by the department or the Oil Discharge Contingency Plan facility identification number, and whether tanks are assured by this mechanism. If more than one instrument is used to assure different tanks at any one facility, list each tank assured by this mechanism.

List for each pipeline: the home office address and the names of the cities and counties in the Commonwealth where the pipeline is located.]

for containment and clean up of a discharge of oil in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy; [if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the aboveground storage tank(s) and/or pipelines identified above.

The limits of liability are [insert the dollar amount of the containment and clean up "each occurrence" and "annual aggregate" limits of the Insurer's or Group's liability; if the amount of coverage is different for different types of coverage or for different aboveground storage tanks, pipelines or locations, indicate the amount of coverage for each type of coverage and/or for each aboveground storage tank, pipeline or location], exclusive of legal defense costs, which are subject to a separate limit under the policy. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions inconsistent with subsections (a) through (d) for occurrence policies and (a) through (e) for claims-made policies of this Paragraph 2 are hereby amended to conform with subsections (a) through (e):

a. Bankruptcy or insolvency of the insured shall not relieve the ~~["Insurer" or "Pool"]~~ of its obligations under the policy to which this endorsement is attached.

b. The ~~["Insurer" or "Pool"]~~ is liable for the payment of amounts within any deductible applicable to the policy to the provider of containment and clean up, with a right of reimbursement by the insured for any such payment made by the ~~["Insurer" or "Pool"]~~.

This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in 9VAC25-640-70 through ~~420~~ 9VAC25-640-120.

c. Whenever requested by the State Water Control Board, the ~~["Insurer" or "Pool"]~~ agrees to furnish to State Water Control Board a signed duplicate original of the policy and all endorsements.

d. Cancellation or any other termination of the insurance by the ~~["Insurer" or "Pool"]~~, except for on-payment of premium or misrepresentation by the insured, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the insured and the State Water Control Board. Cancellation for non-payment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of 15 days after a copy of such written notice is received by the insured and the State Water Control Board.

[Insert for claims-made policies:

e. The insurance covers claims otherwise covered by the policy that are reported to the ~~["Insurer" or "Pool"]~~ within six months of the effective date of cancellation or nonrenewal of the policy except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy, and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such policy renewal or termination date. Claims reported during such extended reporting period are subject to the terms, conditions, limits, including limits of liability, and exclusions of the policy.]

I hereby certify that the wording of this endorsement is in no respect less favorable than the coverage specified in Appendix III of ~~9VAC25-640-10 et seq.~~ 9VAC25-640 and has been so certified by the State Corporation Commission of the Commonwealth of Virginia. I further certify that the ~~["Insurer" or "Pool"]~~ is ~~["licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in the Commonwealth of Virginia"]~~.

[Signature of authorized representative of ~~Insurer or Group Self Insurance Pool~~]

[Name of person signing]

[Title of person signing], Authorized Representative of ~~[name of Insurer or Group Self Insurance Pool]~~

[Address of Representative]

APPENDIX IV. CERTIFICATE OF INSURANCE.

(Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.)

Name: \_\_\_\_\_ [name of each covered location]  
\_\_\_\_\_

Address: \_\_\_\_\_ [address of each covered location]  
\_\_\_\_\_

Policy Number: \_\_\_\_\_

Endorsement (if applicable): \_\_\_\_\_

Period of Coverage: \_\_\_\_\_ [current policy period]  
\_\_\_\_\_

Name of ~~Insurer or Group Self Insurance Pool~~:

\_\_\_\_\_  
\_\_\_\_\_

Address of ~~Insurer or Group Self Insurance Pool~~:

\_\_\_\_\_  
\_\_\_\_\_

Name of Insured: \_\_\_\_\_

Address of Insured: \_\_\_\_\_

Certification:

1. ~~[Name of Insurer or Group Self Insurance Pool]~~, [the ~~"Insurer" or "Pool"~~], as identified above, hereby certifies that it has issued liability insurance covering the following aboveground storage tank(s) and/or pipelines in connection with the insured's obligation to demonstrate financial responsibility under ~~9VAC25-640-10 et seq.~~ 9VAC25-640:

[List for each facility: the name and address of the facility where tanks assured by this mechanism are located, either the registration identification number assigned by the Department or the Oil Discharge Contingency Plan facility identification number, and whether tanks are assured by this mechanism. If more than one instrument is used to assure different tanks at any one facility, list each tank assured by this mechanism.

List for each pipeline: the home office address and the names of the cities and counties in the Commonwealth where the pipeline is located.]

for containment and clean up of discharges of oil; in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy; [if coverage is different for different tanks, pipelines or locations, indicate the type of coverage applicable to each

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tank, pipeline or location] arising from operating the aboveground storage tank(s) and/or pipelines identified above.

The limits of liability are [insert the dollar amount of the containment and clean up "each occurrence" and "annual aggregate" limits of the Insurer's ~~or Group's~~ liability; if the amount of coverage is different for different types of coverage or for different aboveground storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each aboveground storage tank, pipeline or location], exclusive of legal defense costs, which are subject to a separate limit under the policy. This coverage is provided under [policy number]. The effective date of said policy is [date].

2. The [{"Insurer" or "Pool"}] further certifies the following with respect to the insurance described in Paragraph 1:

a. Bankruptcy or insolvency of the insured shall not relieve the [{"Insurer" or "Pool"}] of its obligations under the policy to which this certificate applies.

b. The [{"Insurer" or "Pool"}] is liable for the payment of amounts within any deductible applicable to the policy to the provider of containment and clean up with a right of reimbursement by the insured for any such payment made by the [{"Insurer" or "Pool"}].

This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in 9VAC25-640-70 through 9VAC25-640-120.

c. Whenever requested by the State Water Control Board, the [{"Insurer" or "Pool"}] agrees to furnish to the State Water Control Board a signed duplicate original of the policy and all endorsements.

d. Cancellation or any other termination of the insurance by the [{"Insurer" or "Pool"}], except for non-payment of premium or misrepresentation by the insured, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the insured and the State Water Control Board. Cancellation for non-payment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of 15 days after a copy of such written notice is received by the insured and the State Water Control Board.

[Insert for claims-made policies:

e. The insurance covers claims otherwise covered by the policy that are reported to the [{"Insurer" or "Pool"}] within six months of the effective date of cancellation or nonrenewal of the policy except where the new or renewed policy has the same retroactive date or a

retroactive date earlier than that of the prior policy, and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such policy renewal or termination date. Claims reported during such extended reporting period are subject to the terms, conditions, limits, including limits of liability, and exclusions of the policy.]

I hereby certify that the wording of this instrument is identical to the wording in Appendix IV of ~~9VAC25-640-10 et seq.~~ 9VAC25-640 and that the [{"Insurer" or "Pool"}] is [{"licensed to transact the business of insurance, or eligible to provide insurance as an excess or approved surplus lines insurer, in the Commonwealth of Virginia"}].

[Signature of authorized representative of Insurer]

[Type name] [Title], Authorized Representative of [name of Insurer ~~or Group Self Insurance Pool~~]

[Address of Representative]

## APPENDIX V. PERFORMANCE BOND.

(Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.)

Date bond executed: \_\_\_\_\_

~~Period of coverage~~ Effective date: \_\_\_\_\_

Principal: [legal name and address of operator]  
\_\_\_\_\_

Type of organization: [insert "individual" "joint venture," "partnership," "corporation," or appropriate identification of type of organization] \_\_\_\_\_

State of incorporation (if applicable): \_\_\_\_\_

Surety(ies): [name(s) and business address(es)]  
\_\_\_\_\_

Scope of Coverage:

[List for each facility: the name and address of the facility where tanks assured by this mechanism are located, either the registration identification number assigned by the Department or the Oil Discharge Contingency Plan facility identification number, and whether tanks are assured by this mechanism. If more than one instrument is used to assure different tanks at any one facility, list each tank assured by this mechanism. For pipelines, list the home office address and the names of the cities and counties in the Commonwealth where the pipeline is located.

List the coverage guaranteed by the bond: containment and clean up of oil from a discharge arising from operating the aboveground storage tank and/or pipeline.]

Penal sums of bond:

Containment and Clean up (per discharge) \$ \_\_\_\_\_

Annual Aggregate \$ \_\_\_\_\_

Surety's bond number: \_\_\_\_\_

Know All Persons by These Presents, that we, the Principal and Surety(ies), hereto are firmly bound to the State Water Control Board of the Commonwealth of Virginia, in the above penal sums for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sums jointly and severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sums only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sums.

Whereas said Principal is required under §62.1-44.34:16 of the Code of Virginia and under ~~9VAC25-640-10 et seq.~~ 9VAC25-640 to provide financial assurance for containment and clean up necessitated by discharges of oil; [if coverage is different for different tanks or locations or pipelines, indicate the type of coverage applicable to each tank or location or pipeline] arising from operating the aboveground storage tanks and/or pipelines identified above; ~~and~~

~~Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;~~

Now, therefore, the conditions of the obligation are such that if the Principal shall faithfully contain and clean up, in accordance with the State Water Control Board's instructions for containment and clean up of discharges of oil arising from operating the tank(s) identified above, or if the Principal shall provide alternate financial assurance, as specified in ~~9VAC25-640-10 et seq.~~ 9VAC25-640, within 120 days after the date the notice of cancellation is received by the Principal from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

Such obligation does not apply to any of the following:

- (a) Any obligation of operator under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
- (b) Bodily injury to an employee of operator arising from, and in the course of, employment by operator;
- (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by operator that is not the direct result of a discharge from an aboveground storage tank and/or pipeline;

(e) Bodily injury or property damage for which operator is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of ~~9VAC25-640-10 et seq.~~ 9VAC25-640.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by the State Water Control Board that the Principal has failed to contain and clean up in accordance with ~~9VAC25-91-10 et seq.~~ 9VAC25-91 and the State Water Control Board's instructions, the Surety(ies) shall either perform containment and clean up in accordance with ~~9VAC25-91-10 et seq.~~ 9VAC25-91 and the board's instructions, or ~~place pay~~ pay funds in an amount up to the annual aggregate penal sum ~~into to the standby trust fund~~ State Water Control Board as directed by the State Water Control Board under 9VAC25-640-180. The State Water Control Board in its sole discretion may elect to require the surety to pay the funds or to perform containment and cleanup up to the annual aggregate penal sum.

Upon notification by the State Water Control Board that the Principal has failed to provide alternate financial assurance within 60 days after the date the notice of cancellation is received by the Principal from the Surety(ies) and that the State Water Control Board has determined or suspects that a discharge has occurred, the Surety(ies) shall ~~place pay~~ pay funds in an amount not exceeding the annual aggregate penal sum ~~into to the standby trust fund~~ State Water Control Board as directed by the State Water Control Board under 9VAC25-640-180.

The Surety(ies) submit to the jurisdiction of the Circuit Court of the City of Richmond to adjudicate any claim against it (them) by the State Water Control Board and waive any objection to venue in that court. Interest shall accrue at the judgment rate of interest on the amount due beginning seven days after the date of notification by the State Water Control Board. In the event the State Water Control Board shall institute legal action to compel performance by the Surety under this agreement, the Surety shall be liable for all costs and legal fees incurred by the board to enforce this agreement.

The Surety(ies) hereby waive(s) notification of amendments to applicable laws, statutes, rules, and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation on this bond. The Surety(ies) hereby agrees that it(they) has been notified of all material facts regarding this contract of suretyship and waiver(s) any defense founded in concealment of material facts. The Surety(ies) represents that the person executing this agreement has full authority to execute the agreement. Surety(ies) hereby waive(s) any right to notice of breach or default of the Principal. The State Water Control Board may enforce this agreement against the

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Surety(ies) without bringing suit against the Principal. The State Water Control Board shall not be required to exhaust the assets of the Principal before demanding performance by the Surety. No lawful act of the State Water Control Board, including without limitation any extension of time to the Principal, shall serve to release any surety, whether or not that act may be construed to alter or vary this agreement. Release of one cosurety shall not act as the release of another. This agreement shall be construed to affect its purpose to provide remedial action for discharges of petroleum.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the annual aggregate to the penal sum shown on the face of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said annual aggregate penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail or overnight courier to the Principal and the State Water Control Board, provided, however, that cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by the Principal and the State Water Control Board, as evidenced by the return receipt.

The Principal may terminate this bond by sending written notice to the Surety(ies).

In Witness Whereof, the Principal and Surety(ies) have executed this Bond and have affixed their seals on the date set forth above.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in Appendix V of ~~9VAC25-640-10 et seq.~~ 9VAC25-640 as such regulations were constituted on the date this bond was executed.

PRINCIPAL

[Signature(s)]

[Name(s)]

[Title(s)]

[Corporate seal]

CORPORATE SURETY(IES)

[Name and address]

State of Incorporation:

Liability limit: \$ \_\_\_\_\_

[Signature(s)]

[Name(s) and title(s)]

[Corporate seal]

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: \$ \_\_\_\_\_

## APPENDIX VI. IRREVOCABLE STANDBY LETTER OF CREDIT.

(Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.)

[Name and address of issuing institution]

[Name and address of the Director]

Dear Sir or Madam: We hereby establish our Irrevocable Standby Letter of Credit No. \_\_\_\_\_ in your favor, at the request and for the account of [operator name] of [address] up to the aggregate amount of [in words] U.S. dollars (\$[insert dollar amount]), available upon presentation of

(1) Your sight draft, bearing reference to this letter of credit, No. \_\_\_\_\_; and

(2) Your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of §62.1- 44.34:16 of the Code of Virginia."

This letter of credit may be drawn on to cover containment and clean up necessitated by discharges of oil arising from operating the aboveground storage tank(s) and pipelines identified below in the amount of [in words] \$ [insert dollar amount] per occurrence and [in words] \$ [insert dollar amount] annual aggregate:

[List for each facility: the name and address of the facility where tanks assured by this mechanism are located, either the registration identification number assigned by the Department or the Oil Discharge Contingency Plan facility identification number, and whether tanks are assured by this mechanism. If more than one instrument is used to assure different tanks at any one facility, list each tank covered by this instrument.

For pipelines, list: the home office address and the names of the cities and counties in the Commonwealth where the pipeline is located.]

The letter of credit may not be drawn on to cover any of the following:

(a) Any obligation of operator under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(b) Bodily injury to an employee of operator arising from, and in the course of, employment by operator;

(c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by an operator that is not the direct result of a discharge of oil from an aboveground storage tank and/or pipeline;

(e) Bodily injury or property damage for which an operator is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 9VAC25-640-50.

This letter of credit is effective as of [date] and shall expire on [date], but such expiration date shall be automatically extended for a period of [at least the length of the original term] on [expiration date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify operator and the State Water Control Board by certified mail or overnight courier that we have decided not to extend this letter of credit beyond the current expiration date. In the event that operator is and the State Water Control Board are so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by operator the State Water Control Board, as shown on the signed return receipt, or until the current expiration date, whichever is later.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall ~~deposit the amount of the draft directly into the standby trust fund of operator~~ pay to you the amount of the draft promptly and directly in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording specified in Appendix VI of ~~9VAC25-640-10 et seq.~~ 9VAC25-640 as such regulations were constituted on the date shown immediately below.

[Signature(s) and title(s) of official(s) of issuing institution]

[Date]

This credit is subject to [insert "the most recent edition of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce" or "the Uniform Commercial Code"].

APPENDIX VII. TRUST AGREEMENT.

(Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.)

Trust agreement, the "Agreement," entered into as of [date] by and between [name of the operator], a [name of state] [insert "corporation," "partnership," "association," "proprietorship," or appropriate identification of type of entity], the "Grantor," and [name of corporate trustee], [insert "Incorporated in the state of \_\_\_\_\_" or "a national bank"], the "Trustee."

Whereas, the State Water Control Board of the Commonwealth of Virginia has established certain regulations applicable to the Grantor, requiring that an operator of an aboveground storage tank and/or pipeline shall provide assurance that funds will be available when needed for containment and clean up of a discharge of oil arising from the operation of the aboveground storage tank and/or pipeline. The attached Schedule A contains for each facility the name and address of the facility where tanks covered by this ~~{trust agreement or standby trust agreement}~~ are located, either the registration identification number assigned by the Department or the Oil Discharge Contingency Plan facility identification number and for pipelines the home office address and names of the cities and counties in the Commonwealth where the pipeline is located;

~~Whereas, the Grantor has elected to establish [insert either "a guarantee," "surety bond," or "letter of credit"] to provide all or part of such financial assurance for the aboveground storage tanks and/or pipelines identified herein and is required to establish a standby trust fund able to accept payments from the instrument (This paragraph is only applicable to the standby trust agreement.);~~

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee;

Now, therefore, the Grantor and the Trustee agree as follows:

Section 1. Definitions. As used in this Agreement:

- (a) The term "Grantor" means the operator who enters into this Agreement and any successors or assigns of the Grantor.
- (b) The term "Trustee" means the Trustee who enters into this Agreement and any successor Trustee.
- (c) "9 VAC 25-640" is the Aboveground Storage Tank and Pipeline Facility Financial Responsibility Requirements Regulation promulgated by the State Water Control Board for the Commonwealth of Virginia.

~~Section 2. Identification of the Financial Assurance Mechanism.~~

~~This Agreement pertains to the [identify the financial assurance mechanism, either a guarantee, surety bond, or letter of credit, from which the standby trust fund is established to receive payments (This paragraph is only applicable to the standby trust agreement).];~~

Section ~~3.~~ 2. Establishment of Fund.

The Grantor and the Trustee hereby establish a trust fund, the "Fund," for the benefit of the State Water Control Board of the Commonwealth of Virginia. The Grantor and the Trustee intend that no third party have access to the Fund except as herein provided. ~~{The Fund is established initially~~

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~~as a standby to receive payments and shall not consist of any property.~~ Payments made by the provider of financial assurance pursuant to the State Water Control Board's instruction are transferred to the Trustee and are referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor as provider of financial assurance, any payments necessary to discharge any liability of the Grantor established by the State Water Control Board.

## Section ~~4~~ 3, Payment for Containment and Clean up.

The Trustee shall make payments from the Fund as the State Water Control Board shall direct, in writing, to provide for the payment of the costs of containment and clean up of a discharge of oil arising from operating the tanks and/or pipelines covered by ~~the financial assurance mechanism identified in this Agreement.~~

The Fund may not be drawn upon to cover any of the following:

- (a) Any obligation of operator under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
- (b) Bodily injury to an employee of operator arising from, and in the course of, employment by operator;
- (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by operator that is not the direct result of a discharge from an oil aboveground storage tank or pipeline;
- (e) Bodily injury or property damage for which operator is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 9VAC25-640-50.

The Trustee shall reimburse the Grantor, or other persons as specified by the State Water Control Board, from the Fund for containment and clean up in such amounts as the State Water Control Board shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the State Water Control Board specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

## Section ~~5~~ 4, Payments Comprising the Fund.

Payments made to the Trustee for the Fund shall consist of cash and securities acceptable to the Trustee.

## Section ~~6~~ 5, Trustee Management.

The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his duties with respect to the trust fund solely in the interest of the beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

- (a) Securities or other obligations of the Grantor, or any other operator of the tanks, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. §80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the federal or a state government;
- (b) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government; and
- (c) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

## Section ~~7~~ 6, Commingling and Investment.

The Trustee is expressly authorized in its discretion:

- (a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and
- (b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. §80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

## Section ~~8~~ 7, Express Powers of Trustee.

Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

- (a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private

sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;

(b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the federal or state government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

#### Section ~~9~~ 8. Taxes and Expenses.

All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.

#### Section ~~10~~ 9. Advice of Counsel.

The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any questions arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

#### Section ~~11~~ 10. Trustee Compensation.

The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

#### Section ~~12~~ 11. Successor Trustee.

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section ~~9~~ 8.

#### Section ~~13~~ 12. Instructions to the Trustee.

All orders, requests, and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in the attached Schedule B or such other designees as the Grantor may designate by amendment to Schedule B. The trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests and instructions by the State Water Control Board to the Trustee shall be in writing, signed by the Executive Director of the Department of Environmental Quality, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the State Water Control Board hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the State Water Control Board, except as provided for herein.

#### Section ~~14~~ 13. Amendment of Agreement.

This Agreement may be amended by an instrument in writing executed by the Grantor and the Trustee, or by the Trustee and the State Water Control Board if the Grantor ceases to exist.

#### Section ~~15~~ 14. Irrevocability and Termination.

Subject to the right of the parties to amend this Agreement as provided in Section ~~14~~ 13, this Trust shall be irrevocable

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and shall continue until terminated at the written direction of the Grantor and the Trustee, or by the Trustee and the State Water Control Board, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section ~~16~~ 15. Immunity and Indemnification.

The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the State Water Control Board issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section ~~17~~ 16. Choice of Law.

This Agreement shall be administered, construed, and enforced according to the laws of the Commonwealth of Virginia, or the Comptroller of the Currency in the case of National Association banks.

Section ~~18~~ 17. Interpretation.

As used in this Agreement, words in the singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals (if applicable) to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in Appendix VII of ~~9VAC25-640-10 et seq.~~ 9VAC25-640 as such regulations were constituted on the date written above.

[Signature of Grantor]

[Name of the Grantor]

[Title]

Attest:

[Signature of Trustee]

[Name of the Trustee]

[Title]

[Seal]

[Signature of Witness]

[Name of Witness]

[Title]

[Seal]

[Signature of notary]

[Name of notary] [Date] My Commission expires:

\_\_\_\_\_.

State of \_\_\_\_\_

County of \_\_\_\_\_

Of this [date], before me personally came [operator's representative] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that she/he signed her/his name thereto by like order.

[Signature of notary public]

[Name of notary public]

My Commission expires: \_\_\_\_\_

APPENDIX VIII. CERTIFICATE OF  
~~ACKNOWLEDGMENT~~ GROUP SELF-INSURANCE  
[POOL MEMBERSHIP].

~~(Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.)~~

State of \_\_\_\_\_

County of \_\_\_\_\_

~~On this [date], before me personally came [operator's representative] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that she/he signed her/his name thereto by like order.~~

[Signature of Notary Public]

[Name of Notary Public]

My Commission expires: \_\_\_\_\_

(NOTE: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.)

Name: [name of each covered location]

Address: [address of each covered location]

Policy number:

Endorsement (if applicable):

Period of coverage: [current policy period]

Name of Group self-insurance pool:

Address of Group self-insurance pool:

Name of Member:

Address of Member:

Certification:

1. [Name of Group Self-Insurance Pool], the group self-insurance pool, "Pool," as identified above, hereby certifies that it has entered into a Membership Agreement (Agreement) with the member to provide liability coverage for the following aboveground storage tank(s) and/or pipelines in connection with the insured's obligation to demonstrate financial responsibility under the Virginia Petroleum Aboveground Storage Tank and Pipeline Facility Financial Responsibility Requirements Regulation (9VAC25-590-640) for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage containment and cleanup of discharges of oil"] caused by either sudden accidental releases or nonsudden accidental releases; in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the Pool Plan (Plan) and Agreement; [if coverage is different for different tanks, pipelines, or locations, indicate the type of coverage applicable to each tank, pipeline, or location] arising from operating the aboveground storage tank(s) and/or pipelines identified above.

The limits of liability of the Pool are [insert the dollar amount] of the containment and cleanup "each occurrence" and "annual aggregate" limits of the Group's liability; if the amount of coverage is different for different types of coverage or for different aboveground storage tanks, pipelines, or locations, indicate the amount of coverage for each type of coverage and/or for each aboveground storage tank, pipeline or location insert the dollar amount] corrective action per occurrence and [insert dollar amount] third party liability per occurrence and [insert dollar amount] annual aggregate [If the amount of coverage is different for different types of coverage or for different underground storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each underground storage tank or location], exclusive of legal defense costs, which are subject to a separate limit under the Plan or Agreement. This coverage is provided under the Plan dated [insert date] and the Agreement entered into between [name of member] and [name of Pool]. The effective date of said Agreement is [date].

2. The Pool further certifies the following with respect to the coverage described in paragraph 1:

a. Bankruptcy or insolvency of the member shall not relieve the Pool of its obligations under the policy to which this certificate applies.

b. The Pool is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third party, containment and cleanup with a right of reimbursement by the member for any such payment made by the Pool. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in 9VAC25-640-70 through 9VAC25-640-120.

c. Whenever requested by the State Water Control Board, the Pool agrees to furnish to the State Water Control Board a signed duplicate original of the Agreement and Plan and all endorsements.

d. Cancellation or any other termination of the coverage by the Pool, except for nonpayment of premium or misrepresentation by the member, will be effective only upon written notice and only after the expiration of 60 days after a copy of such written notice is received by the member and the State Water Control Board. Cancellation for nonpayment of premium or misrepresentation by the member will be effective only upon written notice and only after expiration of a minimum of 15 days after a copy of such written notice is received by the member and the State Water Control Board.

e. The Pool covers claims otherwise covered by the Agreement and Plan that are reported to the Pool within six months of the effective date of cancellation or nonrenewal of the Agreement except where the new or renewed Agreement has the same retroactive date or a retroactive date earlier than that of the prior Agreement and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such Agreement renewal or termination date. Claims reported during such extended reporting period are subject to the terms, conditions, limits, including limits of liability, and exclusions of the Agreement and Plan.

I hereby certify that the wording of this instrument is identical to the wording in APPENDIX XII of 9VAC25-640 and that the Pool is licensed by the Commonwealth of Virginia's State Corporation Commission pursuant to 14VAC5-3805.

[Signature of Authorized Representative of Pool]

[Type name], [Authorized Representative] of [name of Pool]

[Address of representative]

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## APPENDIX IX. CERTIFICATION OF FINANCIAL RESPONSIBILITY.

(Note: The instructions in brackets are to be replaced by the relevant information and the brackets deleted.)

Operator hereby certifies that it is in compliance with the requirements of ~~9VAC25-640-10 et seq~~ 9VAC25-640.

The financial assurance mechanism[s] used to demonstrate financial responsibility under ~~9VAC25-640-10 et seq~~ 9VAC25-640 is [are] as follows:

Indicate type of Mechanism:

- Letter from Chief Financial Officer
- Guarantee
- Insurance Endorsement or Certificate
- Letter of Credit
- Surety Bond
- Trust Fund

Name of Issuer: \_\_\_\_\_

Mechanism Number (if applicable): \_\_\_\_\_

Total number of gallons of aboveground storage capacity for which demonstration is provided: \_\_\_\_\_

Amount of coverage for mechanism:

\$\_\_\_\_\_ containment and clean up per occurrence and annual aggregate

Effective period of coverage: \_\_\_\_\_ to \_\_\_\_\_

Do(es) mechanism(s) cover(s): containment and clean up caused by either sudden accidental discharges or nonsudden accidental discharges or accidental discharges?  Yes  No

If "No," specify in the following space the items the mechanism covers:

[Signature of operator]

[Name of operator]

[Title] [Date]

[Signature of notary]

[Name of notary] [Date] My Commission expires: \_\_\_\_\_

VA.R. Doc. No. R07-293; Filed September 25, 2007, 4:09 p.m.



## TITLE 12. HEALTH

### DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

#### Emergency Regulation

**REGISTRAR'S NOTICE:** On September 29, 2007, the President of the United States signed into law H.R. 3668, "TMA, Abstinence Education, and QI Programs Extension Act of 2007." This law enacts a six-month delay in the implementation of a previous federal law, which is the subject of this emergency regulation, requiring that all nonelectronic prescriptions for Medicaid enrollees be written on tamper-resistant pads. The Department of Medical Assistance Services has indicated that, although the text of this emergency regulation provides for an implementation date of October 1, 2007, under H.R. 3668 this emergency regulation will now become effective on April 1, 2008.

**Title of Regulation:** **12VAC30-80. Methods and Standards for Establishing Payment Rates; Other Types of Care (amending 12VAC30-80-40).**

**Statutory Authority:** §§32.1-324 and 32.1-325 of the Code of Virginia and 42 USC §1396.

**Effective Dates:** October 1, 2007, through September 30, 2008.

**Agency Contact:** Rachel Cain, Project Manager, Health Care Services Division, Pharmacy Unit, Department of Medical Assistance Services, 600 E. Broad St., Suite 1300, Richmond, VA 23219, telephone 804-371-0918, FAX 804-786-1680, or email rachel.cain@dmas.virginia.gov.

#### Preamble:

*Section 2.2-4011 of the Administrative Process Act states that an "emergency situation" is (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date. This action meets the emergency regulation authority requirements of §2.2-4011 of the Code of Virginia because it conforms the regulations to the federal requirement of Pub. L. 110-28 (amending §1903(i) of the Social Security Act), which mandates the use of tamper-resistant prescription pads for written prescriptions for Medicaid-covered drugs, and must be implemented within 280 days of the federal act's passage.*

*The United States Congress recently passed an amended appropriation bill (Pub. L. 110-28) that adds a new requirement to the federal Medicaid reimbursement process for prescription drugs. The new mandate, part of*

*the "U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007," prohibits federal financial participation for outpatient drugs where the written prescription for the drug was not written on a tamper-resistant prescription pad. This mandate is currently scheduled to go into effect October 1, 2007. The provision aims to save the federal Medicaid program money and prevent patients from illegally obtaining drugs. Currently, the Department of Medical Assistance (DMAS) does not require the use of tamper-resistant prescription pads for Medicaid-covered prescriptions. This state regulatory action will bring state Medicaid pharmacy reimbursement in line with the new federal mandate by implementing the requirement that all Medicaid-covered prescription drugs based upon a written prescription must be executed on a tamper-resistant pad.*

*DMAS based the language of this requirement directly on the language in the federal budget mandate (Pub. L. 110-28), but added a sentence defining "tamper-resistant pad" to provide additional guidance to Medicaid providers.*

#### **12VAC30-80-40. Fee-for-service providers: pharmacy.**

Payment for pharmacy services shall be the lowest of items 1 through 5 (except that items 1 and 2 will not apply when prescriptions are certified as brand necessary by the prescribing physician in accordance with the procedures set forth in 42 CFR 447.331 (c) if the brand cost is greater than the Centers for Medicare and Medicaid Services (CMS) upper limit of VMAC cost) subject to the conditions, where applicable, set forth in subdivisions 6 and 7 of this section:

1. The upper limit established by the CMS for multiple source drugs pursuant to 42 CFR 447.331 and 447.332, as determined by the CMS Upper Limit List plus a dispensing fee. If the agency provides payment for any drugs on the HCFA Upper Limit List, the payment shall be subject to the aggregate upper limit payment test.

2. The methodology used to reimburse for generic drug products shall be the higher of either (i) the lowest Wholesale Acquisition Cost (WAC) plus 10% or (ii) the second lowest WAC plus 6.0%. This methodology shall reimburse for products' costs based on a Maximum Allowable Cost (VMAC) list to be established by the single state agency.

a. In developing the maximum allowable reimbursement rate for generic pharmaceuticals, the department or its designated contractor shall:

(1) Identify three different suppliers, including manufacturers, that are able to supply pharmaceutical products in sufficient quantities. The drugs considered must be listed as therapeutically and pharmaceutically equivalent in the Food and Drug Administration's most recent version of the Approved Drug Products with Therapeutic Equivalence Evaluations (Orange Book).

Pharmaceutical products that are not available from three different suppliers, including manufacturers, shall not be subject to the VMAC list.

(2) Identify that the use of a VMAC rate is lower than the Federal Upper Limit (FUL) for the drug. The FUL is a known, widely published price provided by CMS; and

(3) Distribute the list of state VMAC rates to pharmacy providers in a timely manner prior to the implementation of VMAC rates and subsequent modifications. DMAS shall publish on its website, each month, the information used to set the Commonwealth's prospective VMAC rates, including, but not necessarily limited to:

(a) The identity of applicable reference products used to set the VMAC rates;

(b) The Generic Code Number (GCN) or National Drug Code (NDC), as may be appropriate, of reference products;

(c) The difference by which the VMAC rate exceeds the appropriate WAC price; and

(d) The identity and date of the published compendia used to determine reference products and set the VMAC rate. The difference by which the VMAC rate exceeds the appropriate WAC price shall be at least or equal to 10% above the lowest-published wholesale acquisition cost for products widely available for purchase in the Commonwealth and shall be included in national pricing compendia.

b. Development of a VMAC rate that does not have a FUL rate shall not result in the use of higher-cost innovator brand name or single source drugs in the Medicaid program.

c. DMAS or its designated contractor shall:

(1) Implement and maintain a procedure to add or eliminate products from the list, or modify VMAC rates, consistent with changes in the fluctuating marketplace. DMAS or its designated contractor will regularly review manufacturers' pricing and monitor drug availability in the marketplace to determine the inclusion or exclusion of drugs on the VMAC list; and

(2) Provide a pricing dispute resolution procedure to allow a dispensing provider to contest a listed VMAC rate. DMAS or its designated contractor shall confirm receipt of pricing disputes within 24 hours, via telephone or facsimile, with the appropriate documentation of relevant information, e.g., invoices. Disputes shall be resolved within three business days of confirmation. The pricing dispute resolution process will include DMAS' or the contractor's verification of accurate pricing to ensure consistency with marketplace pricing and drug availability. Providers will be reimbursed, as appropriate,

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based on findings. Providers shall be required to use this dispute resolution process prior to exercising any applicable appeal rights.

3. The provider's usual and customary charge to the public, as identified by the claim charge.

4. The Estimated Acquisition Cost (EAC), which shall be based on the published Average Wholesale Price (AWP) minus a percentage discount established by the General Assembly (as set forth in subdivision 8 of this section) or, in the absence thereof, by the following methodology set out in subdivisions a through c below.

a. Percentage discount shall be determined by a statewide survey of providers' acquisition cost.

b. The survey shall reflect statistical analysis of actual provider purchase invoices.

c. The agency will conduct surveys at intervals deemed necessary by DMAS.

5. Payment for pharmacy services will be as described above however, payment for legend drugs will include the allowed cost of the drug plus only one dispensing fee per month for each specific drug. Exceptions to the monthly dispensing fees shall be allowed for drugs determined by the department to have unique dispensing requirements. The dispensing fee for brand name and generic drugs is \$4.00.

6. The Program pays additional reimbursement for unit dose dispensing systems of dispensing drugs. DMAS defines its unit dose dispensing system coverage consistent with that of the Board of Pharmacy of the Department of Health Professions (18VAC110-20-420). This service is paid only for patients residing in nursing facilities. Reimbursements are based on the allowed payments described above plus the unit dose per capita fee to be calculated by DMAS' fiscal agent based on monthly per nursing home resident service per pharmacy provider. Only one service fee per month may be paid to the pharmacy for each patient receiving unit dose dispensing services. Multisource drugs will be reimbursed at the maximum allowed drug cost for specific multiple source drugs as identified by the state agency or CMS' upper limits as applicable. All other drugs will be reimbursed at drug costs not to exceed the estimated acquisition cost determined by the state agency. The original per capita fee shall be determined by a DMAS analysis of costs related to such dispensing, and shall be reevaluated at periodic intervals for appropriate adjustment. The unit dose dispensing fee is \$5.00 per recipient per month per pharmacy provider.

7. Determination of EAC was the result of a report by the Office of the Inspector General that focused on appropriate Medicaid marketplace pricing of pharmaceuticals based on

the documented costs to the pharmacy. An EAC of AWP minus 10.25% shall become effective July 1, 2002.

The dispensing fee for brand name and generic drugs of \$4.00 shall remain in effect, creating a payment methodology based on the previous algorithm (least of 1 through 5 of this subsection above) plus a dispensing fee where applicable.

8. Home infusion therapy.

a. The following therapy categories shall have a pharmacy service day rate payment allowable: hydration therapy, chemotherapy, pain management therapy, drug therapy, total parenteral nutrition (TPN). The service day rate payment for the pharmacy component shall apply to the basic components and services intrinsic to the therapy category. Submission of claims for the per diem rate shall be accomplished by use of the CMS 1500 claim form.

b. The cost of the active ingredient or ingredients for chemotherapy, pain management and drug therapies shall be submitted as a separate claim through the pharmacy program, using standard pharmacy format. Payment for this component shall be consistent with the current reimbursement for pharmacy services. Multiple applications of the same therapy shall be reimbursed one service day rate for the pharmacy services. Multiple applications of different therapies shall be reimbursed at 100% of standard pharmacy reimbursement for each active ingredient.

9. Supplemental rebate agreement. Based on the requirements in §1927 of the Social Security Act, the Commonwealth of Virginia has the following policies for the supplemental drug rebate program for Medicaid recipients:

a. The model supplemental rebate agreement between the Commonwealth and pharmaceutical manufacturers for legend drugs provided to Medicaid recipients, submitted to CMS on February 5, 2004, and entitled Virginia Supplemental Drug Rebate Agreement Contract A and Amendment #2 to Contract A has been authorized by CMS.

b. The model supplemental rebate agreement between the Commonwealth and pharmaceutical manufacturers for drugs provided to Medicaid recipients, submitted to CMS on February 5, 2004, and entitled Virginia Supplemental Drug Rebate Agreement Contract B and Amendment #2 to Contract B has been authorized by CMS.

c. The model supplemental rebate agreement between the Commonwealth and pharmaceutical manufacturers for drugs provided to Medicaid recipients, submitted to CMS on February 5, 2004, and entitled Virginia Supplemental Drug Rebate Agreement Contract C, and Amendments #1 and #2 to Contract C has been authorized by CMS.

d. Supplemental drug rebates received by the state in excess of those required under the national drug rebate agreement will be shared with the federal government on the same percentage basis as applied under the national drug rebate agreement.

e. Prior authorization requirements found in §1927(d)(5) of the Social Security Act have been met.

f. Nonpreferred drugs are those that were reviewed by the Pharmacy and Therapeutics Committee and not included on the preferred drug list. Nonpreferred drugs will be made available to Medicaid beneficiaries through prior authorization.

g. Payment of supplemental rebates may result in a product's inclusion on the PDL.

10. Tamper-resistant prescription pads. For prescriptions written on or after October 1, 2007, DMAS shall not provide reimbursement for covered outpatient drugs (as defined in §1927(k)(2) of the Social Security Act) for which the prescription was executed in written (and nonelectronic) form unless the prescription was executed on a tamper-resistant pad. Tamper-resistant pads are defined as pads that contain security features specifically designed to prevent alterations and forgeries, and as further defined in agency guidance documents.

VA.R. Doc. No. R08-883; Filed September 24, 2007, 3:00 p.m.

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**TITLE 13. HOUSING**

**VIRGINIA HOUSING DEVELOPMENT AUTHORITY**

**Proposed Regulation**

**REGISTRAR'S NOTICE:** The Virginia Housing Development Authority is exempt from the Administrative Process Act (§2.2-4000et seq. of the Code of Virginia) pursuant to §2.2-4002A 4; however, under the provisions of §2.2-4031, it is required to publish all proposed and final regulations.

**Title of Regulation:** **13VAC10-40. Rules and Regulations for Single Family Mortgage Loans to Persons and Families of Low and Moderate Income (amending 13VAC10-40-20, 13VAC10-40-60, 13VAC10-40-80, 13VAC10-40-100, 13VAC10-40-110, 13VAC10-40-120, 13VAC10-40-130, 13VAC10-40-170, 13VAC10-40-190, 13VAC10-40-210, 13VAC10-40-230).**

**Statutory Authority:** §36-55.30:3 of the Code of Virginia.

**Public Hearing Information:**

October 23, 2007 - 10 a.m. - Virginia Housing Development Authority, 301 South Belvidere Street, Richmond, VA

**Public comments:** Public comments may be submitted until 10 a.m. on October 23, 2007.

**Agency Contact:** J. Judson McKellar, Jr., General Counsel, Virginia Housing Development Authority, 601 S. Belvidere Street, Richmond, VA 23220, telephone (804) 343-5540, FAX (804) 783-6701, or email judson.mckellar@vhda.com.

**Summary:**

*The proposed amendments make several changes to the Authority's rules and regulations for single family mortgage loans to persons and families of low and moderate income including (i) the approval requirements for originating and service agents, (ii) establishment of maximum sales prices and maximum gross income levels, (iii) administration of the Authority's convention and Flexible Alternative loan programs, and (iv) the standards used by the Authority in underwriting loans. In addition, the amendments make other miscellaneous administrative clarification changes.*

**13VAC10-40-20. Origination and servicing of mortgage loans.**

A. The originating of mortgage loans and the processing of applications for the making or financing thereof in accordance herewith shall, except as noted in subsection G of this section, be performed through commercial banks, savings and loan associations, private mortgage bankers, redevelopment and housing authorities, and agencies of local government approved as originating agents ("originating agents") of the authority. The servicing of mortgage loans shall, except as noted in subsection H of this section, be performed through commercial banks, savings and loan associations and private mortgage bankers approved as servicing agents ("servicing agents") of the authority.

To be initially approved as an originating agent or as a servicing agent and to continue to be so approved, the applicant must meet the following qualifications:

1. Be authorized to do business in the Commonwealth of Virginia; and be licensed as a mortgage lender or broker, as applicable, under the Virginia Mortgage Lender and Broker Act as set forth in Chapter 16 (§6.1-408 et seq.) of Title 6.1 of the Code of Virginia (including nonprofit corporations that may be exempt from licensing when making mortgage loans on their own behalf under subdivision 4 of §6.1-411 of the Code of Virginia); provided, however, that such licensing requirement shall not apply to persons exempt from licensure under:

a. Subdivision 2 of §6.1-411 of the Code of Virginia (any person subject to the general supervision of or subject to examination by the Commissioner of the Bureau of Financial Institutions of the Virginia State Corporation Commission).

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b. Subdivision 3 of §6.1-411 of the Code of Virginia (any lender authorized to engage in business as a bank, savings institution or credit union under the laws of the United States, any state or territory of the United States, or the District of Columbia, and subsidiaries and affiliates of such entities, which lender, subsidiary or affiliate is subject to the general supervision or regulation of or subject to audit or examination by a regulatory body or agency of the United States, any state or territory of the United States, or the District of Columbia), or

c. Subdivision 5 of §6.1-411 of the Code of Virginia (agencies of the federal government, or any state or municipal government, or any quasi-governmental agency making or brokering mortgage loans under the specific authority of the laws of any state or the United States).

2. Have a net worth equal to or in excess of \$250,000 \$500,000 or such other amount as the executive director shall from time to time deem appropriate, except that this qualification requirement shall not apply to redevelopment and housing authorities and agencies of local government;

3. Have a staff with demonstrated ability and experience in mortgage loan origination ~~and~~, underwriting, processing and closing (in the case of an originating agent applicant) or servicing (in the case of a servicing agent applicant); ~~and~~

4. To be approved as an originating agent, have a physical office located in Virginia that is open to the general public during commercially reasonable business hours, staffed with individuals qualified to take mortgage loan applications, and to which the general public may physically go to make an application for a mortgage loan;

5. To be approved as an originating agent, be eligible to, and have a staff qualified to (as set forth in subdivision 3 of this subsection), originate mortgage loans under all of the authority's single-family mortgage loan programs (not including the Rural Development loan program);

6. Have a fidelity bond and mortgage errors and omissions coverage in an amount at least equal to \$500,000 and provide the authority a certificate from the insurance carrier naming the authority as a party in interest to the bond, or the policies or bonds shall name the authority as one of the parties insured. The policy's deductible clause may be for any amount up to the greater of \$100,000 or 5.0% of the face amount of the policy;

7. Have a past history of satisfactory performance in the authority's and other mortgage lenders', insurers', guarantors' and investors' mortgage programs that, in the determination of the executive director, demonstrates that the applicant will be capable of meeting its obligations under the authority's programs, and provided further that, any applicant that has been previously terminated as an

originating by the Authority shall not be eligible to reapply for 24 months after the effective date of such termination; and

~~4. Such~~ 8. Meet such other qualifications as the executive director shall deem to be related to the performance of its duties and responsibilities.

Notwithstanding the foregoing, any applicant that has been approved and has entered into a servicing or origination agreement as of November 13, 2007, but that does not meet the above requirements, shall have until March 31, 2009, to comply with such requirements.

Notwithstanding the foregoing, in the event that the executive director determines that it is reasonable or necessary (after taking into consideration the number of existing origination and servicing agents, the current and expected level of loan production and demand for mortgage loans, and the current and expected resources available to the authority to make mortgage loans) to cease approving additional originating and servicing agents, the authority may at any time decline to accept further applications and to approve applications previously submitted.

Each originating agent approved by the authority shall enter into an originating agreement ("originating agreement"), with the authority containing such terms and conditions as the executive director shall require with respect to the origination and processing of mortgage loans hereunder. Each servicing agent approved by the authority shall enter into a servicing agreement with the authority containing such terms and conditions as the executive director shall require with respect to the servicing of mortgage loans.

An applicant may be approved as both an originating agent and a servicing agent ("originating and servicing agent"). Each originating and servicing agent shall enter into both an originating agreement and a servicing agreement.

Once such agreements are executed, continued participation in the authority's programs shall be subject to the terms and conditions in such agreements.

For the purposes of this chapter, the term "originating agent" shall hereinafter be deemed to include the term "originating and servicing agent," unless otherwise noted or the context indicates otherwise. The term "servicing agent" shall continue to mean an agent authorized only to service mortgage loans.

Originating agents and servicing agents shall maintain adequate books and records with respect to mortgage loans which they originate and process or service, as applicable, shall permit the authority to examine such books and records, and shall submit to the authority such reports (including annual financial statements) and information as the authority may require. The fees payable to the originating agents and servicing agents for originating and processing or for servicing mortgage loans hereunder shall be established from

time to time by the executive director and shall be set forth in the originating agreements and servicing agreements applicable to such originating agents and servicing agents.

B. The executive director shall allocate funds for the making or financing of mortgage loans hereunder in such manner, to such persons and entities, in such amounts, for such period, and subject to such terms and conditions as he shall deem appropriate to best accomplish the purposes and goals of the authority. Without limiting the foregoing, the executive director may allocate funds (i) to mortgage loan applicants on a first-come, first-serve or other basis, (ii) to originating agents and state and local government agencies and instrumentalities for the origination of mortgage loans to qualified applicants and/or (iii) to builders for the permanent financing of residences constructed or rehabilitated or to be constructed or rehabilitated by them and to be sold to qualified applicants. In determining how to so allocate the funds, the executive director may consider such factors as he deems relevant, including any of the following:

1. The need for the expeditious commitment and disbursement of such funds for mortgage loans;
2. The need and demand for the financing of mortgage loans with such funds in the various geographical areas of the Commonwealth;
3. The cost and difficulty of administration of the allocation of funds;
4. The capability, history and experience of any originating agents, state and local governmental agencies and instrumentalities, builders, or other persons and entities (other than mortgage loan applicants) who are to receive an allocation; and
5. Housing conditions in the Commonwealth.

In the event that the executive director shall determine to make allocations of funds to builders as described above, the following requirements must be satisfied by each such builder:

1. The builder must have a valid contractor's license in the Commonwealth;
2. The builder must have at least three years' experience of a scope and nature similar to the proposed construction or rehabilitation; and
3. The builder must submit to the authority plans and specifications for the proposed construction or rehabilitation which are acceptable to the authority.

The executive director may from time to time take such action as he may deem necessary or proper in order to solicit applications for allocation of funds hereunder. Such actions may include advertising in newspapers and other media, mailing of information to prospective applicants and other members of the public, and any other methods of public

announcement which the executive director may select as appropriate under the circumstances. The executive director may impose requirements, limitations and conditions with respect to the submission of applications as he shall consider necessary or appropriate. The executive director may cause market studies and other research and analyses to be performed in order to determine the manner and conditions under which funds of the authority are to be allocated and such other matters as he shall deem appropriate relating thereto. The authority may also consider and approve applications for allocations of funds submitted from time to time to the authority without any solicitation therefor on the part of the authority.

C. This chapter constitutes a portion of the originating guide of the authority. The processing guide and all exhibits and other documents referenced herein are not included in, and shall not be deemed to be a part of this chapter. The executive director is authorized to prepare and from time to time revise a processing guide and a servicing guide which shall set forth the accounting and other procedures to be followed by all originating agents and servicing agents responsible for the origination, closing and servicing of mortgage loans under the applicable originating agreements and servicing agreements. Copies of the processing guide and the servicing guide shall be available upon request. The executive director shall be responsible for the implementation and interpretation of the provisions of the originating guide (including the processing guide) and the servicing guide.

D. The authority may from time to time (i) make mortgage loans directly to mortgagors with the assistance and services of its originating agents and (ii) agree to purchase individual mortgage loans from its originating agents or servicing agents upon the consummation of the closing thereof. The review and processing of applications for such mortgage loans, the issuance of mortgage loan commitments therefor, the closing and servicing (and, if applicable, the purchase) of such mortgage loans, and the terms and conditions relating to such mortgage loans shall be governed by and shall comply with the provisions of the applicable originating agreement or servicing agreement, the originating guide, the servicing guide, the Act and this chapter.

If the applicant and the application for a mortgage loan meet the requirements of the Act and this chapter, the executive director may issue on behalf of the authority a mortgage loan commitment to the applicant for the financing of the single family dwelling unit. Such mortgage loan commitment shall be issued only upon the determination of the authority that such a mortgage loan is not otherwise available from private lenders upon reasonably equivalent terms and conditions, and such determination shall be set forth in the mortgage loan commitment. The original principal amount and term of such mortgage loan, the amortization period, the terms and conditions relating to the prepayment thereof, and such other terms, conditions and requirements as the executive director

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deems necessary or appropriate shall be set forth or incorporated in the mortgage loan commitment issued on behalf of the authority with respect to such mortgage loan.

E. The authority may purchase from time to time existing mortgage loans with funds held or received in connection with bonds issued by the authority prior to January 1, 1981, or with other funds legally available therefor. With respect to any such purchase, the executive director may request and solicit bids or proposals from the authority's originating agents and servicing agents for the sale and purchase of such mortgage loans, in such manner, within such time period and subject to such terms and conditions as he shall deem appropriate under the circumstances. The sales prices of the single family housing units financed by such mortgage loans, the gross family incomes of the mortgagors thereof, and the original principal amounts of such mortgage loans shall not exceed such limits as the executive director shall establish, subject to approval or ratification by resolution of the board. The executive director may take such action as he deems necessary or appropriate to solicit offers to sell mortgage loans, including mailing of the request to originating agents and servicing agents, advertising in newspapers or other publications and any other method of public announcement which he may select as appropriate under the circumstances. After review and evaluation by the executive director of the bids or proposals, he shall select those bids or proposals that offer the highest yield to the authority on the mortgage loans (subject to any limitations imposed by law on the authority) and that best conform to the terms and conditions established by him with respect to the bids or proposals. Upon selection of such bids or proposals, the executive director shall issue commitments to the selected originating agents and servicing agents to purchase the mortgage loans, subject to such terms and conditions as he shall deem necessary or appropriate. Upon satisfaction of the terms of the commitments, the executive director shall execute such agreements and documents and take such other action as may be necessary or appropriate in order to consummate the purchase and sale of the mortgage loans. The mortgage loans so purchased shall be serviced in accordance with the applicable originating agreement or servicing agreement and the servicing guide. Such mortgage loans and the purchase thereof shall in all respects comply with the Act and the authority's rules and regulations.

F. The executive director may, in his discretion, delegate to one or more originating agents all or some of the responsibility for underwriting, issuing commitments for mortgage loans and disbursing the proceeds hereof without prior review and approval by the authority. The executive director may delegate to one or more servicing agents all or some of the responsibility for underwriting and issuing commitments for the assumption of existing authority mortgage loans without prior review and approval by the authority. If the executive director determines to make any

such delegation, he shall establish criteria under which originating agents may qualify for such delegation. If such delegation has been made, the originating agents shall submit all required documentation to the authority at such time as the authority may require. If the executive director determines that a mortgage loan does not comply with any requirement under the originating guide, the applicable originating agreement, the Act or this chapter for which the originating agent was delegated responsibility, he may require the originating agents to purchase such mortgage loan, subject to such terms and conditions as he may prescribe.

G. The authority may utilize financial institutions, mortgage brokers and other private firms and individuals and governmental entities ("field originators") approved by the authority for the purpose of receiving applications for mortgage loans. To be approved as a field originator, the applicant must meet the following qualifications:

1. Be authorized to do business in the Commonwealth of Virginia;
2. Have made any necessary filings or registrations and have received any and all necessary approvals or licenses in order to receive applications for mortgage loans in the Commonwealth of Virginia;
3. Have the demonstrated ability and experience in the receipt and processing of mortgage loan applications; and
4. Have such other qualifications as the executive director shall deem to be related to the performance of its duties and responsibilities.

Each field originator approved by the authority shall enter into such agreement as the executive director shall require with respect to the receipt of applications for mortgage loans. Field originators shall perform such of the duties and responsibilities of originating agents under this chapter as the authority may require in such agreement.

Field originators shall maintain adequate books and records with respect to mortgage loans for which they accept applications, shall permit the authority to examine such books and records, and shall submit to the authority such reports and information as the authority may require. The fees to the field originators for accepting applications shall be payable in such amount and at such time as the executive director shall determine.

In the case of mortgage loans for which applications are received by field originators, the authority may process and originate the mortgage loans; accordingly, unless otherwise expressly provided, the provisions of this chapter requiring the performance of any action by originating agents shall not be applicable to the origination and processing by the authority of such mortgage loans, and any or all of such actions may be performed by the authority on its own behalf.

H. The authority may service mortgage loans for which the applications were received by field originators or any mortgage loan which, in the determination of the authority, originating agents and servicing agents will not service on terms and conditions acceptable to the authority or for which the originating agent or servicing agent has agreed to terminate the servicing thereof.

Part II  
Program Requirements

**13VAC10-40-60. Eligible dwellings.**

A. In order to qualify as an eligible dwelling for which an authority loan may be made, the residence must:

1. Be located in the Commonwealth;
2. Be a one-family detached residence, a townhouse or one unit of an authority approved condominium; ~~and~~
3. Satisfy the acquisition cost requirements set forth below; and
4. Be owned or to be owned by the applicant in the form of fee simple interest.

The authority may decline to finance more than 25% of the units in any one condominium project, planned unit development (PUD) or subdivision if the executive director determines that financing additional units would be detrimental to the authority's financial interests after taking into consideration the then current and expected demand and supply of housing in the applicable geographic region.

B. The acquisition cost of an eligible dwelling may not exceed certain limits established by the U.S. Department of the Treasury in effect at the time of the application. Note: In all cases for new loans such federal limits equal or exceed the authority's sales price limits shown in 13VAC10-40-80. Therefore, for new loans the residence is an eligible dwelling if the acquisition cost is not greater than the authority's sales price limit. In the event that the acquisition cost exceeds the authority's sales price limit, the originating agent must contact the authority to determine if the residence is an eligible dwelling.

1. To determine if the acquisition cost is at or below the federal limits for assumptions, the originating agent or, if applicable, the servicing agent must in all cases contact the authority (see 13VAC10-40-140 ~~below~~).
2. Acquisition cost means the cost of acquiring the eligible dwelling from the seller as a completed residence.
  - a. Acquisition cost includes:
    - (1) All amounts paid, either in cash or in kind, by the eligible borrower (or a related party or for the benefit of an eligible borrower) to the seller (or a related party or for the benefit of the seller) as consideration for the

eligible dwelling. Such amounts include amounts paid for items constituting fixtures under state law, but not for items of personal property not constituting fixtures under state law. (See Exhibit R for examples of fixtures and items of personal property.)

(2) The reasonable costs of completing or rehabilitating the residence (whether or not the cost of completing construction or rehabilitation is to be financed with the mortgage loan) if the eligible dwelling is incomplete or is to be rehabilitated. As an example of reasonable completion cost, costs of completing the eligible dwelling so as to permit occupancy under local law would be included in the acquisition cost. A residence which includes unfinished areas (i.e. an area designed or intended to be completed or refurbished and used as living space, such as the lower level of a tri-level residence or the upstairs of a Cape Cod) shall be deemed incomplete, and the costs of finishing such areas must be included in the acquisition cost.

(3) The cost of land on which the eligible dwelling is located and which has been owned by an eligible borrower for a period no longer than two years prior to the construction of the structure comprising the eligible dwelling.

b. Acquisition cost does not include:

(1) Usual and reasonable settlement or financing costs. Such excluded settlement costs include title and transfer costs, title insurance, survey fees and other similar costs. Such excluded financing costs include credit reference fees, legal fees, appraisal expenses, points which are paid by an eligible borrower, or other costs of financing the residence. Such amounts must not exceed the usual and reasonable costs which otherwise would be paid. Where the buyer pays more than a pro rata share of property taxes, for example, the excess is to be treated as part of the acquisition cost.

(2) The imputed value of services performed by an eligible borrower or members of his family (brothers and sisters, spouse, ancestors and lineal descendants) in constructing or completing the residence.

3. The originating agent is required to obtain from each eligible borrower a completed affidavit of borrower which shall include a calculation of the acquisition cost of the eligible dwelling in accordance with this subsection B. The originating agent shall assist each eligible borrower in the correct calculation of such acquisition cost. The affidavit of seller shall also certify as to the acquisition cost of the eligible dwelling.

4. The originating agent shall for each new loan determine whether the acquisition cost of the eligible dwelling exceeds the authority's applicable sales price limit shown in 13VAC10-40-80. If the acquisition cost exceeds such

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limit, the originating agent must contact the authority to determine if the residence is an eligible dwelling for a new loan. (For an assumption, the originating agent or, if applicable, the servicing agent must contact the authority for this determination in all cases, see 13VAC10-40-140). Also, as part of its review, the originating agent must review the affidavit of borrower submitted by each mortgage loan applicant and must make a determination that the acquisition cost of the eligible dwelling has been calculated in accordance with this subsection B. In addition, the originating agent must compare the information contained in the affidavit of borrower with the information contained in the affidavit of seller and other sources and documents such as the contract of sale for consistency of representation as to acquisition cost.

5. The authority reserves the right to obtain an independent appraisal in order to establish fair market value and to determine whether a dwelling is eligible for the mortgage loan requested.

## **13VAC10-40-80. Sales price limits.**

~~The authority's executive director shall, from time to time, establish the applicable maximum allowable sales price prices. Each such maximum allowable sales price shall be 95% expressed as a percentage of the applicable maximum purchase prices (except that the maximum allowable sales price for targeted area residences shall be the same as are established for nontargeted residences) price permitted or approved by the U.S. Department of the Treasury pursuant to the federal tax code- or as a dollar amount, which percentage or dollar amount may vary by loan program and geographic region as determined by the executive director, after taking into consideration such factors as he deems appropriate, including, without limitation, the following factors:~~

1. The current and anticipated financial resources available to the authority to make mortgage loans;
2. The current and anticipated financial resources available to potential applicants from sources other than the authority to finance mortgage loans;
3. The current and anticipated demand for mortgage loans;
4. The prevailing mortgage loan terms available to potential applicants; and
5. The current and anticipated need for targeted or subsidized lending in each region based upon financial conditions and the housing market in such region.

The executive director shall apply the foregoing factors to establish the maximum allowable sales prices that enable the authority to effectively and efficiently allocate its current and anticipated financial resources so as to best meet the current and future housing needs of the citizens throughout the Commonwealth.

The authority shall from time to time inform its originating agents and servicing agents by written notification thereto of the ~~dollar amounts of the~~ foregoing maximum allowable sales prices under this section expressed in dollar amounts for each area of the state, as established by the executive director. Any changes ~~into~~ to the dollar amounts of such maximum allowable sales prices shall be effective as of such date as the executive director shall determine (subject to any exceptions for pending loan reservations or applications as the executive director may determine), and authority is reserved to the executive director to implement any such changes on such date or dates as he shall deem necessary or appropriate to best accomplish the purposes of the program.

## **13VAC10-40-100. Maximum gross income.**

~~A.~~ As provided in 13VAC10-40-50 A 6, the gross income of the applicant or applicants for an authority mortgage loan may not exceed the applicable income limitation imposed by the U.S. Department of the Treasury. Because the income limits of the authority imposed by this section apply to all loans to which such federal limits apply and are in all cases below such federal limits, the requirements of 13VAC10-40-50 A 6 are automatically met if the applicant's or applicants' gross income does not exceed the applicable limits set forth in this section.

For the purposes hereof, the term "gross income" means the combined annualized gross income of all persons residing or intending to reside in a dwelling unit, from whatever source derived and before taxes or withholdings. For the purpose of this definition, annualized gross income means gross monthly income multiplied by 12. "Gross monthly income" is, in turn, the sum of monthly gross pay plus any additional income from overtime, part-time employment, bonuses, dividends, interest, royalties, pensions, Veterans Administration compensation, net rental income plus other income (such as alimony, child support, public assistance, sick pay, social security benefits, unemployment compensation, income received from trusts, and income received from business activities or investments).

~~B. For all loans, except loans to be guaranteed by the Rural Development, the~~ The executive director shall, from time to time, establish the applicable maximum gross incomes. Each such maximum gross income shall be expressed as a percentage (which may be based on the number of persons expected to occupy the dwelling upon financing of the mortgage loan) of the applicable median family income (as defined in Section 143(f)(4) of the Internal Revenue Code of 1986, as amended) (the "median family income") as follows: and referred to herein as the "median family income") or as a dollar amount, which percentage or dollar amount may vary by loan program and geographic region as determined by the executive director, after taking into consideration such factors as he deems appropriate, including, without limitation, the following factors:

~~Number of Persons to~~  
~~Percentage of applicable median family in~~  
~~come~~

~~Occupy Dwelling~~  
~~(regardless of whether residence is ne~~  
~~w~~

~~construction, existing or substan~~  
~~tially~~

~~rehabilitated)~~

~~2 or fewer persons~~  
~~85%~~

~~3 or more persons~~  
~~100%~~

The executive director may from time to time establish maximum gross incomes equal to the following percentages of applicable median family income (as so defined) with respect to such mortgage loans as he may designate on which the interest rate has been reduced due to financial support by the authority:

~~Number of Persons to~~ ~~Percentage of applicable~~  
~~median family income~~

~~Occupy Dwelling~~ ~~(regardless of whether residence~~  
~~is new~~

~~construction, existing or substantially~~

~~rehabilitated)~~

~~2 or fewer persons~~ ~~65%~~

~~3 or more persons~~ ~~80%~~

1. The current and anticipated financial resources available to the authority to make mortgage loans;

2. The current and anticipated financial resources available to potential applicants from sources other than the authority to finance mortgage loans;

3. The current and anticipated demand for mortgage loans;

4. The prevailing mortgage loan terms available to potential applicants; and

5. The current and anticipated need for targeted or subsidized lending in each region based upon financial conditions and the housing market in such region.

The executive director ~~may from time~~ shall apply the foregoing factors to ~~time~~ establish the maximum gross incomes equal to the following percentages of applicable median family income (as so defined) with respect to such mortgage loans as he may designate if he determines that such maximum gross incomes will enable the Authority to assist the state in achieving its economic and housing goals and policies: that enable the authority to effectively and efficiently allocate its current and anticipated financial resources so as to best meet the current and future housing needs of the citizens throughout the Commonwealth.

~~Number of Persons to~~ ~~Percentage of applicable me~~  
~~dian family income~~

~~Occupy Dwelling~~ ~~(regardless of whether resi~~  
~~dence is new~~

~~construction, existing or substantially~~

~~rehabilitated)~~

~~2 or fewer persons~~ ~~95%~~

~~3 or more persons~~ ~~110%~~

The authority shall from time to time inform its originating agents and servicing agents by written notification thereto of the foregoing maximum gross ~~income limits~~ incomes under this ~~subsection A~~ section expressed in dollar amounts for each area of the state, as established by the executive director, and the number of persons to occupy the dwelling, if applicable. Any changes to the dollar amounts of such ~~income limits~~ maximum gross incomes shall be effective as of such date as the executive director shall determine (subject to any exceptions for pending loan reservations or applications as the executive director may determine), and authority is reserved to the executive director to implement any such changes on such date or dates as he shall deem necessary or appropriate to best accomplish the purposes of the program.

C. With respect to a loan to be guaranteed by Rural Development, the maximum income shall be the lesser of the maximum gross income determined in accordance with §10-40-100 A or Rural Development income limits in effect at the time of application.

**13VAC10-40-110. Calculation of maximum loan amount.**

Single family detached residence, townhouse (fee simple ownership) and approved condominium--Maximum of 100% (or, in the case of an FHA, VA, Rural Development loan or a loan with private mortgage insurance, such other percentage as may be permitted by FHA, VA, Rural Development or the private mortgage insurance provider) of the lesser of the sales

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price or appraised value, except as may otherwise be approved by the ~~authority executive director; provided, however, the executive director may establish lower percentages if the executive director determines that lower percentages are necessary to protect the authority's financial interests or to enable the authority to effectively and efficiently allocate its current and anticipated financial resources so as to best meet the current and future housing needs of the citizens throughout the Commonwealth.~~

In the case of an FHA, VA or Rural Development loan, the FHA, VA or Rural Development insurance fees or guarantee fees charged in connection with such loan (and, if an FHA loan, the FHA permitted closing costs as well) may be included in the calculation of the maximum loan amount in accordance with applicable FHA, VA or Rural Development requirements; provided, however, that in no event shall this revised maximum loan amount which includes such fees and closing costs be permitted to exceed the authority's maximum allowable sales price limits set forth herein.

### **13VAC10-40-120. Mortgage insurance requirements.**

Unless the loan is an FHA, VA or Rural Development loan, the borrower or borrowers are required to purchase at time of loan closing full private mortgage insurance (~~25% to 100% coverage, as the authority shall determine~~) (in an amount equal to the percentage of the loan that exceeds 80% of the lesser or sales price or appraised value of the property or such higher percentage as the executive director may determine is necessary to protect the authority's financial interests) on each loan the amount of which exceeds 80% of the lesser of sales price or appraised value of the property to be financed. Such insurance shall be issued by a company acceptable to the authority. The originating agent is required to escrow for annual payment of mortgage insurance, unless an alternative payment plan is approved by the authority. If the authority requires FHA, VA or Rural Development insurance or guarantee, the loan will either, at the election of the authority, (a) be closed in the authority's name in accordance with the procedures and requirements herein or (b) be closed in the originating agent's name and purchased by the authority once the FHA Certificate of Insurance, VA Guaranty or Rural Development Guaranty has been obtained or subject to the condition that such FHA Certificate of Insurance, VA Guaranty or Rural Development Guaranty be obtained. In the event that the authority purchases an FHA, VA or Rural Development loan, the originating agent must enter into a purchase and sale agreement on such form as shall be provided by the authority. For assumptions of conventional loans (i.e., loans other than FHA, VA or Rural Development loans), full private mortgage insurance as described above is required unless waived by the authority.

The executive director may waive the requirements for private mortgage insurance in the preceding paragraph for a loan having a principal amount in excess of 80% of the lesser

of sales price or appraised value of the property to be financed if the applicant satisfies the criteria set forth in subdivisions 11 through 17 of 13VAC10-40-230 or if the executive director otherwise determines that the financial integrity of the program is protected by the financial strength of the applicant or applicants or the terms of the financing.

### **13VAC10-40-130. Underwriting.**

A. In general, to be eligible for authority financing, an applicant or applicants must satisfy the following underwriting criteria which demonstrate the willingness and ability to repay the mortgage debt and adequately maintain the financed property.

1. The applicant or applicants must document the receipt of a stable current income which indicates that the applicant or applicants will receive future income which is sufficient to enable the timely repayment of the mortgage loan as well as other existing obligations and living expenses.
2. The applicant or, in the case of multiple applicants, the applicants individually and collectively must possess a credit history which reflects the ability to successfully meet financial obligations and a willingness to repay obligations in accordance with established credit repayment terms.
3. An applicant having a foreclosure instituted by the authority on his property financed by an authority mortgage loan will not be eligible for a mortgage loan hereunder. The authority will consider previous foreclosures (other than on authority financed loans) on an exception basis based upon circumstances surrounding the cause of the foreclosure, length of time since the foreclosure, the applicant's subsequent credit history and overall financial stability. Under no circumstances will an applicant be considered for an authority loan within three years from the date of the foreclosure. The authority has complete discretion to decline to finance a loan when a previous foreclosure is involved.
4. The applicant or applicants must document that sufficient funds will be available for required down payment and closing costs.
  - a. The terms and sources of any loan to be used as a source for down payment or closing costs must be reviewed and approved in advance of loan approval by the authority.
  - b. Sweat equity, the imputed value of services performed by an eligible borrower or members of his family (brothers and sisters, spouse, ancestors and lineal descendants) in constructing or completing the residence, generally is not an acceptable source of funds for down payment and closing costs. Any sweat equity allowance must be approved by the authority prior to loan approval.
5. Proposed monthly housing expenses compared to current monthly housing expenses will be reviewed. If

there is a substantial increase in such expenses, the applicant or applicants must demonstrate his ability to pay the additional expenses.

6. All applicants are encouraged to attend a home ownership educational program to be better prepared to deal with the home buying process and the responsibilities related to homeownership. The authority may require all applicants applying for certain authority loan programs to complete an authority approved homeownership education program prior to loan approval.

B. In addition to the requirements set forth in subsection A of this section, the following requirements must be met in order to satisfy the authority's underwriting requirements for conventional loans. However, additional or more stringent requirements may be imposed (i) by private mortgage insurance companies with respect to those loans on which private mortgage insurance is required or (ii) on loans as described in the last paragraph of 13VAC10-40-120.

1. The following rules apply to the authority's employment and income requirement.

a. Employment for the preceding two-year period must be documented. Education or training for employment during this two-year period shall be considered in satisfaction of this requirement if such education or training is related to an applicant's current line of work and adequate future income can be anticipated because such education and training will expand the applicant's job opportunities. The applicant must be employed a minimum of six months with present employer. An exception to the six-month requirement can be granted by the authority if it can be determined that the type of work is similar to previous employment and previous employment was of a stable nature.

b. Note: Under the tax code, the residence may not be expected to be used in trade or business. (See 13VAC10-40-50 C.) Any self-employed applicant must have a minimum of two years of self-employment with the same company and in the same line of work. In addition, the following information is required at the time of application:

(1) Federal income tax returns for the two most recent tax years.

(2) Balance sheets and profit and loss statements prepared by an independent public accountant.

In determining the income for a self-employed applicant, income will be averaged for the two-year period.

c. The following rules apply to income derived from sources other than primary employment.

(1) When considering alimony and child support. A copy of the legal document and sufficient proof must be

submitted to the authority verifying that alimony and child support are court ordered and are being received. Child support payments for children 15 years or older are not accepted as income in qualifying an applicant or applicants for a loan.

(2) When considering social security and other retirement benefits. Social Security Form No. SSA 2458 must be submitted to verify that applicant is receiving social security benefits. Retirement benefits must be verified by receipt or retirement schedules. VA disability benefits must be verified by the VA. Educational benefits and social security benefits for dependents 15 years or older are not accepted as income in qualifying an applicant or applicants for a loan.

(3) All part-time employment must be continuous for a minimum of 24 months, except that the authority may consider part-time employment that is continuous for more than 12 months but less than 24 months if such part-time employment is of a stable nature and is likely to continue after closing of the mortgage loan.

(4) Overtime earnings must be guaranteed by the employer or verified for a minimum of two years. Bonus and commissions must be reasonably predictable and stable and the applicant's employer must submit evidence that they have been paid on a regular basis and can be expected to be paid in the future.

2. The following rules apply to each applicant's credit:

a. The authority requires that an applicant's previous credit experience be satisfactory. Poor credit references without an acceptable explanation will cause a loan to be rejected. Satisfactory credit references and history are considered to be important requirements in order to obtain an authority loan.

b. An applicant will not be considered for a loan if the applicant has been adjudged bankrupt within the past two years. If longer than two years, the applicant must submit a written explanation giving details surrounding the bankruptcy. The authority has complete discretion to decline a loan when a bankruptcy is involved.

c. An applicant is required to submit a written explanation for all judgments and collections. In most cases, judgments and collections must be paid before an applicant will be considered for an authority loan.

3. The authority reserves the right to obtain an independent appraisal in order to establish the fair market value of the property and to determine whether the dwelling is eligible for the mortgage loan requested.

4. The applicant or applicants satisfy the authority's minimum income requirement for financing if the monthly principal and interest (at the rate determined by the authority), tax, insurance ("PITI") and other additional

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monthly fees such as condominium assessments (60% of the monthly condominium assessment shall be added to the PITI figure) association fees (excluding unit utility charges), townhouse assessments, etc. do not exceed 32% of monthly gross income and if the monthly PITI plus outstanding monthly debt payments with more than ~~six~~ 10 months duration (and payments on debts lasting less than ~~six~~ 10 months, if making such payments will adversely affect the applicant's or applicants' ability to make mortgage loan payments during the months following loan closing) do not exceed 40% of monthly gross income (see Exhibit B). However, with respect to those mortgage loans on which private mortgage insurance is required, the private mortgage insurance company may impose more stringent requirements. If either of the percentages set forth above are exceeded, compensating factors may be used by the Authority, in its sole discretion, to approve the mortgage loan.

5. Funds necessary to pay the downpayment and closing costs must be deposited at the time of loan application. The authority does not permit an applicant to borrow funds for this purpose unless approved in advance by the authority. If the funds are being held in an escrow account by the real estate broker, builder or closing attorney, the source of the funds must be verified. A verification of deposit from the parties other than financial institutions authorized to handle deposited funds is not acceptable.

6. ~~A gift letter is required when an applicant proposes to obtain funds as a gift from a third party. The gift letter must confirm that there is~~ may receive a gift from only a relative, employer or nonprofit entity not involved in the transfer or financing of the property. The individual(s) making the gift must provide a letter to the authority confirming that the transfer of funds is a gift with no obligation on the part of an applicant to repay the funds at any time. The party making the gift must submit proof that the funds are available. The executive director may approve gifts from other sources provided the executive director determines that such transfer of funds to the applicant is not subject to repayment by the applicant and is not made in consideration of any past or future obligation of the applicant or in consideration of any terms of the property transfer or mortgage loan transaction.

7. Seller contributions for settlement or financing costs (including closing costs, discount points and upfront mortgage insurance premiums) may not exceed the lesser of 6.0% of the sales price or the amount permitted by the applicable mortgage insurer guidelines.

C. The following rules are applicable to FHA loans only.

1. The authority will normally accept FHA underwriting requirements and property standards for FHA loans. However, the applicant or applicants must satisfy the underwriting criteria set forth in subsection A of this

section and most of the authority's basic eligibility requirements including those described in 13VAC10-40-30 through 13VAC10-40-100 hereof remain in effect due to treasury restrictions or authority policy.

2. The applicant's or applicants' mortgage insurance premium fee may be included in the FHA acquisition cost and may be financed provided that the final loan amount does not exceed the authority's maximum allowable sales price. In addition, in the case of a condominium, such fee may not be paid in full in advance but instead is payable in annual installments.

3. The FHA allowable closing fees may be included in the FHA acquisition cost and may be financed provided the final loan amount does not exceed the authority's maximum allowable sales price.

4. FHA appraisals are acceptable. VA certificates of reasonable value (CRV's) are acceptable if acceptable to FHA.

D. The following rules are applicable to VA loans only.

1. The authority will normally accept VA underwriting requirements and property guidelines for VA loans. However, the applicant or applicants must satisfy the underwriting criteria set forth in subsection A of this section and most of the authority's basic eligibility requirements (including those described in 13VAC10-40-30 through 13VAC10-40-100) remain in effect due to treasury restrictions or authority policy.

2. The funding fee can be included in loan amount provided the final loan amount does not exceed the authority's maximum allowable sales price.

3. VA certificates of reasonable value (CRV's) are acceptable in lieu of an appraisal.

E. The following rules are applicable to Rural Development loans only.

1. The authority will normally accept Rural Development underwriting requirements and property standards for Rural Development loans. However, the applicant or applicants must satisfy the underwriting criteria set forth in subsection A of this section and most of the authority's basic eligibility requirements including those described in 13VAC10-40-30 through 13VAC10-40-100 remain in effect due to treasury restrictions or authority policy.

2. The Rural Development guarantee fee can be included in loan amount provided the final loan amount does not exceed the authority's maximum allowable sales price.

F. With respect to FHA, VA, RD and conventional loans, the authority permits the deposit of a sum of money (the "buydown funds") by a party (the "provider") with an escrow agent, a portion of which funds are to be paid to the authority each month in order to reduce the amount of the borrower's or

borrowers' monthly payment during a certain period of time. Such arrangement is governed by an escrow agreement for buydown mortgage loans (see Exhibit V) executed at closing (see 13VAC10-40-180 for additional information). The escrow agent will be required to sign a certification (Exhibit X) in order to satisfy certain insurer or guarantor requirements. For the purposes of underwriting buydown mortgage loans, the reduced monthly payment amount may be taken into account based on insurer or guarantor guidelines then in effect (see also subsection C, D or E of this section, as applicable).

G. Unlike the program described in subsection E of this section which permits a direct buydown of the borrower's or borrowers' monthly payment, the authority also from time to time permits the buydown of the interest rate on a conventional, FHA or VA mortgage loan for a specified period of time.

**13VAC10-40-170. Commitment (Exhibit J).**

A. Upon approval of the applicant or applicants, the authority will send a mortgage loan commitment to the borrower or borrowers in care of the originating agent. The originating agent shall ask the borrower or borrowers to indicate acceptance of the mortgage loan commitment by signing and returning it to the originating agent ~~within 15 days after the date of the commitment or~~ prior to settlement, ~~whichever occurs first.~~

A commitment must be issued in writing by an authorized officer of the authority and signed by the applicant or applicants before a loan may be closed. The term of a commitment may be extended in certain cases upon written request by the applicant or applicants and approved by the authority. If an additional commitment is issued to an applicant or applicants, the interest rate may be higher than the rate offered in the original commitment. Such new rate and the availability of funds therefor shall in all cases be determined by the authority in its discretion.

B. If the application fails to meet any of the standards, criteria and requirements herein, a loan rejection letter will be issued by the authority (see Exhibit L). In order to have the application reconsidered, the applicant or applicants must resubmit the application within 30 days after loan rejection. If the application is so resubmitted, the credit documentation cannot be more than 90 days old and the appraisal not more than six months old.

**13VAC10-40-190. Property guidelines.**

A. For each application the authority must make the determination that the property will constitute adequate security for the loan. That determination shall in turn be based solely upon a real estate appraisal's determination of the value and condition of the property. Such appraisal must be performed by an appraiser licensed in the Commonwealth of Virginia.

When the residence is located in an area experiencing a decline in property values as determined by the appraiser or the executive director based upon objective quantitative data, the executive director may establish additional requirements, including, without limitation, lower loan to value ratios, for such loan as determined necessary by the executive director to protect the financial interests of the authority.

All properties must be structurally sound and in adequate condition to preserve the continued marketability of the property and to protect the health and safety of the occupants. Eligible properties must possess features which are acceptable to typical purchasers in the subject market area and provide adequate amenities. Eligible properties must meet ~~FNMA~~ Fannie Mae and ~~FHLMC~~ Freddie Mac property guidelines unless otherwise approved by the authority.

All properties must be structurally sound and in adequate condition to preserve the continued marketability of the property and to protect the health and safety of the occupants. Eligible properties must possess features that are acceptable to typical purchasers in the subject market area and provide adequate amenities. Eligible properties must meet FNMA and FHLMC property guidelines unless otherwise approved by the authority.

In addition, manufactured housing, both new construction and certain existing, may be financed only if the loan is insured 100% by FHA (see subsection C of this section). The authority may also impose other property requirements and offer other financing terms for manufactured housing, provided that the executive director determines that such property requirements and financing terms adequately protect the financial integrity of the program.

B. The following rules apply to conventional loans.

1. The following requirements apply to both new construction and existing housing to be financed by a conventional loan: (i) all property must be located on a state maintained road; provided, however, that the authority may, on a case-by-case basis, approve financing of property located on a private road acceptable to the authority if the right to use such private road is granted to the owner of the residence pursuant to a recorded right-of-way agreement providing for the use of such private road and a recorded maintenance agreement provides for the maintenance of such private road on terms and conditions acceptable to the authority (any other easements or rights-of-way to state maintained roads are not acceptable as access to properties); (ii) any easements, covenants or restrictions which will adversely affect the marketability of the property, such as high-tension power lines, drainage or other utility easements will be considered on a case-by-case basis to determine whether such easements, covenants or restrictions will be acceptable to the authority; (iii) property with available water and sewer hookups must utilize them; and (iv) property without available water and

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sewer hookups may have their own well and septic system; provided that joint ownership of a well and septic system will be considered on a case-by-case basis to determine whether such ownership is acceptable to the authority, provided further that cisterns will be considered on a case-by-case basis to determine whether the cistern will be adequate to serve the property.

2. New construction financed by a conventional loan must also meet Virginia Uniform Statewide Building Code and local code.

C. The following rules apply to FHA, VA or Rural Development loans.

1. Both new construction and existing housing financed by an FHA, VA or Rural Development loan must meet all applicable requirements imposed by FHA, VA or Rural Development.

2. Manufactured housing being financed by FHA loans must also meet federal manufactured home construction and safety standards, satisfy all FHA insurance requirements, be on a permanent foundation to be enclosed by a perimeter masonry curtain wall conforming to standards of the Virginia Uniform Statewide Building Code, be permanently affixed to the site owned by the borrower or borrowers and be insured 100% by FHA under its section 203B program. In addition, the property must be classified and taxed as real estate and no personal property may be financed.

## **13VAC10-40-210. Condominium requirements.**

A. For conventional loans, the originating agent must provide evidence that the condominium meets the eligibility requirements of either ~~FNMA Fannie Mae~~ or ~~FHLMC Freddie Mac~~. The originating agent must submit evidence at the time the borrower's or borrowers' application is submitted to the authority for approval. The executive director may require additional evidence of marketability of the condominium unit, such as a market study prepared by qualified professional, if the executive director determines that such additional evidence is necessary to protect the financial interests of the authority.

B. For FHA, VA or Rural Development loans, the authority will accept a loan to finance a condominium if the condominium is approved by FHA, in the case of an FHA loan, by VA, in the case of a VA loan or be Rural Development, in the case of a Rural Development loan.

C. The executive director may waive any requirements in subsections A and B of this section if he determines that any additional risk as a result of such waiver is adequately compensated or otherwise covered by the terms of the mortgage loan or the financial strength or credit of the applicant or applicants.

## **13VAC10-40-230. Flexible alternative mortgage loan programs.**

The executive director may establish flexible alternative mortgage loan programs. 13VAC10-40-10 through 13VAC10-40-220 shall apply to such flexible alternative mortgage loan programs, with the following modifications:

1. The following requirements shall not apply: (i) the new mortgage requirement; (ii) the requirements as to the use of the property in a trade or business; (iii) the requirements as to acquisition cost and sales price of the property to be financed; (iv) the requirement that each applicant shall not have had a present ownership interest in his principal residence within the preceding three years; (v) the net worth requirement; (vi) the requirements for the payment by the seller of an amount equal to 1.0% of the loan in 13VAC10-40-160 D 2; and (vii) the lot size restriction in 13VAC10-40-50 C 3.

2. The gross income of the applicant or applicants shall not exceed 120% of the applicable median family income without regard to household size, provided, however, that the authority may increase such percentage of applicable median family income, not to exceed 150%, if the executive director determines that it is necessary to provide financing in underserved areas identified by the executive director to persons with disabilities (i.e., physically or mentally disabled, as determined by the executive director on the basis of medical evidence from a licensed physician or other appropriate evidence satisfactory to the executive director), to applicants with a household size of two or more persons, or other similarly underserved individuals identified by the executive director.

3. At the time of closing, each applicant must occupy or intend to occupy within 60 days (90 days in the case of new construction) the property to be financed as his principal residence.

4. The property to be financed must be one of the following types: (i) a single family residence (attached or detached); (ii) a unit in a condominium or PUD which is approved for financing by ~~FNMA Fannie Mae~~ or ~~FHLMC Freddie Mac~~ or satisfies the requirements for such financing, except that the executive director may waive any of such requirements if he determines that any additional risk as a result of such waiver is adequately compensated or otherwise covered by the terms of the mortgage loan or the financial strength or credit of the applicant or applicants; or (iii) a doublewide manufactured home permanently affixed to the land.

5. The land, residence and all other improvements on the property to be financed must be expected to be used by the borrower or borrowers primarily for residential purposes.

6. Personal property which is related to the use and occupancy of the property as the principal residence of the

borrower or borrowers and is customarily transferred with single family residences may be included in the real estate contract, transferred with the residence and financed by the loan; however, the value of such personal property shall not be considered in the appraised value.

7. The principal amount of the mortgage loan shall not exceed the limits established by ~~FNMA~~ Fannie Mae or ~~FHLMC~~ Freddie Mac for single family residences.

8. The maximum loan amount shall be calculated as follows:

a. If the authority loan will be used to acquire the residence, the loan amount (plus all subordinate debt to be secured by the property after closing of the authority loan) may not exceed 100% of the lesser of appraised value or sales price; provided, however, the executive director may establish a lower percentage if the executive director determines that such lower percentage is necessary to protect the authority's financial interests or to enable the authority to effectively and efficiently allocate its current and anticipated financial resources so as to best meet the current and future housing needs of the citizens throughout the Commonwealth. In the case of loans to finance such acquisition, the executive director may approve additional subordinate financing if he determines that any additional risk as a result of such additional subordinate financing is adequately compensated or otherwise covered by the terms of the mortgage loan or the financial strength or credit of the applicant or applicants.

b. If the loan proceeds will not be used to finance the acquisition of the residence, the loan amount (plus all subordinate debt to be secured by the property after closing of the authority loan) may not exceed the lesser of the current appraised value of the property or the sum of (i) the payoff (if any) of the applicant's existing first mortgage loan; (ii) the payoff (if any) of applicant's or applicants' subordinate mortgage loans (provided such loans do not permit periodic advancement of loan proceeds) closed for not less than 12 months preceding the date of the closing of the authority loan and the payoff (if any) of applicant's or applicants' home equity line of credit loan (i.e., loan that permits periodic advancement of proceeds) with no more than \$2,000 in advances within the 12 months preceding the date of the closing of the authority loan, excluding funds used for the purpose of documented improvements to the residence; (iii) improvements to be performed to the property after the closing of the authority loan and for which loan proceeds will be escrowed at closing; (iv) closing costs, discount points, fees and escrows payable in connection with the origination and closing of the authority loan; and (v) up to \$500 to be payable to applicant or applicants at closing.

c. If the applicant or applicants request to receive loan proceeds at closing in excess of the limit set forth in clause (v) of subdivision 8 b of this section, the loan amount (plus all subordinate debt to be secured by the property after closing of the authority loan) may be increased to finance such excess cash up to a loan amount not in excess of 95% of the current appraised value. To be eligible for such increased financing, the applicant's or applicants' credit score may be no less than 660, and the financial integrity of the flexible alternative program must be protected by an upward adjustment to the rate of interest charged to the applicant or applicants or otherwise.

d. If the applicant's or applicants' existing mortgage loan to be refinanced is an authority mortgage loan, the applicant or applicants may request a streamlined refinance of the authority mortgage loan in which the authority may require less underwriting documentation (e.g., verification of employment) and may charge reduced points and fees. For such streamlined refinances, the loan amount (plus all subordinate debt to be secured by the property after closing of the authority loan) is limited to (i) the payoff of the existing authority mortgage loan and (ii) required closing costs, discount points, fees and escrows payable in connection with the origination and closing of the new authority loan, provided, however, that the loan amount (plus all subordinate debt to be secured by the property after closing of the authority loan) may not exceed 100% of the greatest of original appraised value, current real estate tax assessment, current appraised value or other alternative valuation method approved by the authority. To be eligible for such streamlined refinance, the applicant's or applicants' payment history on the current authority loan may not include any 30 day late payments within the previous 24-month period (12 months for applicants whose current authority loans do not carry mortgage insurance) and no bankruptcy since the closing of the original mortgage loan. In approving such streamlined refinance, the executive director must determine that any additional risk is outweighed by the demonstrated satisfactory payment history of applicant to the authority.

e. In addition to the foregoing maximum loan amounts under this section, the executive director may approve the disbursement of additional amounts to finance closing costs and fees and costs of rehabilitation and improvements to be completed subsequent to the closing. Except for loans financed under the program described in subdivision 24 of this subsection, these additional amounts may not exceed 5.0% of the lesser of sales price (if any) or appraised value, provided, however, that in addition to such 5.0%, amounts not to exceed 5.0% of the lesser of sales price (if any) or appraised value may be

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funded for the costs of rehabilitation and improvements to retrofit the residence or add accessibility features to accommodate the needs of a disabled occupant or to provide for visitability by disabled individuals.

9. Mortgage insurance shall not be required, except that in the case of manufactured homes mortgage insurance shall be required in accordance with 13VAC10-40-120.

10. (Reserved.)

11. The applicant or applicants must have a history of receiving stable income from employment or other sources with a reasonable expectation that the income will continue in the foreseeable future; typically, verification of two years' stable income will be required; and education or training in a field related to the employment of the applicant or applicants may be considered to meet no more than one year of this requirement.

12. The applicant or applicants must possess a credit history as of the date of loan application satisfactory to the authority and, in particular, must satisfy the following: (i) for each applicant, no bankruptcy or foreclosure within the preceding three years; for each applicant, no housing payment past due for 30 days in the preceding 24 months; for a single applicant individually and all multiple applicants collectively, no more than one payment past due for 30 days or more on any other debt or obligation within the preceding 12 months; for each applicant, no outstanding collection, judgment, charge off, repossession or 30-day past due account; and a minimum credit score of 620 if the loan-to-value ratio is 95% or less or 660 if the loan-to-value ratio exceeds 95% (credit scores as referenced in these regulations shall be determined by obtaining credit scores for each applicant from a minimum of three repositories and using the middle score in the case of a single applicant and the lowest middle score in the case of multiple applicants); or (ii) for each applicant, no previous bankruptcy or foreclosure; for a single applicant individually and all multiple applicants collectively, no outstanding collection, judgment, charge off or repossession within the past 12 months or more than one 30-day past due account within the past 12 months and no more than four 30-day past due accounts within the past 24 months; for each applicant, no previous housing payment past due for 30 days; for a single applicant individually and all multiple applicants collectively, minimum of three sources of credit with satisfactory payment histories for the most recent 24-month period; for a single applicant individually and all multiple applicants collectively, no more than nine accounts currently open; and for a single applicant individually and all multiple applicants collectively, no more than three new accounts opened in the past 12 months (in establishing guidelines to implement the flexible alternative mortgage loan programs, the authority may refer to the credit requirements in clause

(i) of this subdivision as the "alternative" credit requirements and the requirements in clause (ii) of this subdivision as the "standard" credit requirements).

If the executive director determines it is necessary to protect the financial integrity of the flexible alternative program, the executive director may require that applicant or applicants for loans having loan-to-value ratios in excess of 97% meet the alternative credit requirements in clause (i) of this subdivision.

13. Homeownership education approved by the authority shall be required for any borrower who is a first time homeowner if the loan-to-value ratio exceeds 95%. This requirement shall be waived if the applicant or applicants have a credit score of 660 or greater (see subdivision 12 of this section for the manner of determining credit scores); unless the executive director determines that such homeownership education is necessary to protect its financial interests;

14. Seller contributions for closing costs and other amounts payable by the borrower or borrowers in connection with the purchase or financing of the property shall not exceed 4.0% of the contract price.

15. Sources of funds for the down payment and closing costs payable by the borrower shall be limited to the borrower's or borrowers' funds, gifts or unsecured loans from relatives, grants from employers or nonprofit entities not involved in the transfer or financing of the property, and unsecured loans on terms acceptable to the authority (payments on any unsecured loans permitted under this subdivision shall be included in the calculation of the debt/income ratios described below), and documentation of such sources of funds shall be in form and substance acceptable to the authority.

16. The maximum debt ratios shall be 35% and 43% in lieu of the ratios of 32% and 40%, respectively, set forth in 13VAC10-40-130 B 4.

17. Cash reserves at least equal to two months' loan payments must be held by the applicant or applicants if the loan-to-value ratio exceeds 95%; cash reserves at least equal to one month's loan payment must be held by the applicant or applicants if the loan-to-value ratio is greater than 90% and is less than or equal to 95%; and no cash reserves shall be required if the loan-to-value ratio is 90% or less.

18. The payment of points (a point being equal to 1.0% of the loan amount) in addition to the origination fee shall be charged as follows: if the loan-to-value ratio is 90% or less, one-half of one point shall be charged; if the loan-to-value ratio is greater than 90% and is less than or equal to 95%, one point shall be charged; and if the loan-to-value ratio exceeds 95%, one and one-half point shall be charged. If the executive director determines that the

financial integrity of the flexible alternative program is protected, by an adjustment to the rate of interest charged to the applicant or applicants or otherwise, the authority may provide the applicant or applicants with the option of an alternative point requirement.

In addition to the above, a reduction of one-half of one point will be made to the applicant or applicants meeting the credit requirements in clause 12 (i) above with a credit score of 700 or greater (see subdivision 12 of this section for the manner of determining credit scores).

19. The interest rate which would otherwise be applicable to the loan shall be reduced by .25% if the loan-to-value ratio is 80% or less.

20. The documents relating to requirements of the federal tax code governing tax-exempt bonds shall not be required.

21. For assumptions of loans, the above requirements for occupancy of the property as the borrower's or borrowers' principal residence, the above income limit, and the underwriting criteria in the regulations as modified by this section must be satisfied.

22. The authority may require that any or all loans financed under such alternative mortgage programs be serviced by the authority.

23. The authority may accept an approval of an automated underwriting system in lieu of satisfaction of the foregoing requirements for the flexible alternative program if the executive director determines that such delegated underwriting system is designed so as to adequately protect the financial integrity of the flexible alternative program.

24. The executive director may establish a flexible alternative rehabilitation mortgage loan program. The regulations set forth in subdivisions 1 through 23 of this section shall apply to such flexible alternative rehabilitation mortgage loan program, with the following modifications:

a. At the time of closing, each applicant must occupy or intend to occupy within 180 days the property to be financed as his principal residence;

b. The provision of clause (iii) of subdivision 4 of this section permitting the financing of a doublewide manufactured home permanently affixed to the land shall not apply.

c. The maximum loan amount for a purchase shall be 100% of the lesser of (i) the sum of purchase price plus rehabilitation costs; or (ii) the as completed appraised value. The maximum loan amount for a refinance shall be 100% of the lesser of (i) the outstanding principal balance plus rehabilitation costs; or (ii) the as completed appraised value.

d. The rehabilitation costs to be financed may not exceed an amount equal to 50% of the as completed appraised value.

e. Loan proceeds may be used to finance the purchase and installation of eligible improvements. Improvements that are eligible for financing are structural alterations, repairs, additions to the residence itself, or other improvements (including appliances) upon or in connection with the residence. In order to be eligible, such improvements must substantially protect or improve the basic livability or utility of the residence. Improvements that are physically removed from the residence but that are located on the property occupied by the residence may be eligible for financing if these improvements substantially protect or improve the basic livability or utility of the residence (i.e., installation of a septic tank or the drilling of a well). Luxury items (such as swimming pools and spas) shall not be eligible for financing hereunder.

f. Loan proceeds may not be used to finance any improvements that have been completed at the time the application is submitted to the authority.

g. All work financed with the loan proceeds shall be performed by a contractor duly licensed in Virginia to perform such work and be performed pursuant to a validly issued building permit, if required, and shall comply with all applicable state and local health, housing, building, fire prevention and housing maintenance codes and other applicable standards and requirements. Compliance with the foregoing shall be evidenced by such documents and certifications as shall be prescribed by the executive director.

h. The executive director may require the applicant or applicants to establish a contingency fund for the mortgage loan in an amount adequate to ensure sufficient reserve funds for the proper completion of the proposed improvements in the event of cost over runs. The executive director may also require a holdback from each disbursement of loan proceeds until completion of the residence.

i. The executive director may approve originating agents to originate the acquisition/rehabilitation loans. To be so approved, the originating agent must have a staff with demonstrated ability and experience in acquisition/rehabilitation mortgage loan origination, processing and administration.

j. In addition to the payment of points set forth in subdivision 18 of this section, the originating agent may collect an escrow administration fee and an inspection fee in an amount determined by the executive director to compensate the originating agent for administering the

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disbursement of the mortgage loan during the rehabilitation of the residence.

Except as modified hereby, all of the requirements, terms and conditions set forth in 13VAC10-40-10 through 13VAC10-40-220 shall apply to the flexible alternative mortgage loan programs.

VA.R. Doc. No. R08-967; Filed September 26, 2007, 9:37 a.m.

## Proposed Regulation

**Title of Regulation:** 13VAC10-180. Rules and Regulations for Allocation of Low-Income Housing Tax Credits (amending 13VAC10-180-60, 13VAC10-180-100).

**Statutory Authority:** §36-55.30:3 of the Code of Virginia.

**Public Hearing Information:**

October 23, 2007 - 10:00 a.m. - Virginia Housing Development Authority, 601 S. Belvidere Street, Richmond, VA

**Public comments:** Public comments may be submitted until October 23, 2007.

**Agency Contact:** J. Judson McKellar, Jr., General Counsel, Virginia Housing Development Authority, 601 S. Belvidere Street, Richmond, VA 23220, telephone (804) 343-5540, FAX (804) 783-6701, or email judson.mckellar@vhda.com.

**Summary:**

*The proposed amendments (i) add a point category identified as high priority for rehabilitation by Rural Development, (ii) add a point category for smaller developments, (iii) increase the threshold score, and (iv) restrict developments financed by tax-exempt bonds from receiving tax credits if more than 50% of the tax-exempt bonds are retired prior to the end of the first credit year.*

**13VAC10-180-60. Review and selection of applications; reservation of credits.**

The executive director may divide the amount of credits into separate pools and each separate pool may be further divided into separate tiers. The division of such pools and tiers may be based upon one or more of the following factors: geographical areas of the state; types or characteristics of housing, construction, financing, owners, occupants, or source of credits; or any other factors deemed appropriate by him to best meet the housing needs of the Commonwealth.

An amount, as determined by the executive director, not less than 10% of the Commonwealth's annual state housing credit ceiling for credits, shall be available for reservation and allocation to buildings or developments with respect to which the following requirements are met:

1. A "qualified nonprofit organization" (as described in §42(h)(5)(C) of the IRC) which is authorized to do

business in Virginia and is determined by the executive director, on the basis of such relevant factors as he shall consider appropriate, to be substantially based or active in the community of the development and is to materially participate (regular, continuous and substantial involvement as determined by the executive director) in the development and operation of the development throughout the "compliance period" (as defined in §42(i)(1) of the IRC); and

2. (i) The "qualified nonprofit organization" described in the preceding subdivision 1 is to own (directly or through a partnership), prior to the reservation of credits to the buildings or development, all of the general partnership interests of the ownership entity thereof; (ii) the executive director of the authority shall have determined that such qualified nonprofit organization is not affiliated with or controlled by a for-profit organization; (iii) the executive director of the authority shall have determined that the qualified nonprofit organization was not formed by one or more individuals or for-profit entities for the principal purpose of being included in any nonprofit pools (as defined below) established by the executive director, and (iv) the executive director of the authority shall have determined that no staff member, officer or member of the board of directors of such qualified nonprofit organization will materially participate, directly or indirectly, in the proposed development as a for-profit entity.

In making the determinations required by the preceding subdivision 1 and clauses (ii), (iii) and (iv) of subdivision 2 of this section, the executive director may apply such factors as he deems relevant, including, without limitation, the past experience and anticipated future activities of the qualified nonprofit organization, the sources and manner of funding of the qualified nonprofit organization, the date of formation and expected life of the qualified nonprofit organization, the number of paid staff members and volunteers of the qualified nonprofit organization, the nature and extent of the qualified nonprofit organization's proposed involvement in the construction or rehabilitation and the operation of the proposed development, the relationship of the staff, directors or other principals involved in the formation or operation of the qualified nonprofit organization with any persons or entities to be involved in the proposed development on a for-profit basis, and the proposed involvement in the construction or rehabilitation and operation of the proposed development by any persons or entities involved in the proposed development on a for-profit basis. The executive director may include in the application of the foregoing factors any other nonprofit organizations which, in his determination, are related (by shared directors, staff or otherwise) to the qualified nonprofit organization for which such determination is to be made.

For purposes of the foregoing requirements, a qualified nonprofit organization shall be treated as satisfying such

requirements if any qualified corporation (as defined in §42(h)(5)(D)(ii) of the IRC) in which such organization (by itself or in combination with one or more qualified nonprofit organizations) holds 100% of the stock satisfies such requirements.

The applications shall include such representations and warranties and such information as the executive director may require in order to determine that the foregoing requirements have been satisfied. In no event shall more than 90% of the Commonwealth's annual state housing credit ceiling for credits be available for developments other than those satisfying the preceding requirements. The executive director may establish such pools (nonprofit pools) of credits as he may deem appropriate to satisfy the foregoing requirement. If any such nonprofit pools are so established, the executive director may rank the applications therein and reserve credits to such applications before ranking applications and reserving credits in other pools, and any such applications in such nonprofit pools not receiving any reservations of credits or receiving such reservations in amounts less than the full amount permissible hereunder (because there are not enough credits then available in such nonprofit pools to make such reservations) shall be assigned to such other pool as shall be appropriate hereunder; provided, however, that if credits are later made available (pursuant to the IRC or as a result of either a termination or reduction of a reservation of credits made from any nonprofit pools or a rescission in whole or in part of an allocation of credits made from such nonprofit pools or otherwise) for reservation and allocation by the authority during the same calendar year as that in which applications in the nonprofit pools have been so assigned to other pools as described above, the executive director may, in such situations, designate all or any portion of such additional credits for the nonprofit pools (or for any other pools as he shall determine) and may, if additional credits have been so designated for the nonprofit pools, reassign such applications to such nonprofit pools, rank the applications therein and reserve credits to such applications in accordance with the IRC and this chapter. In the event that during any round (as authorized hereinbelow) of application review and ranking the amount of credits reserved within such nonprofit pools is less than the total amount of credits made available therein, the executive director may either (i) leave such unreserved credits in such nonprofit pools for reservation and allocation in any subsequent round or rounds or (ii) redistribute, to the extent permissible under the IRC, such unreserved credits to such other pool or pools as the executive director shall designate reservations therefore in the full amount permissible hereunder (which applications shall hereinafter be referred to as "excess qualified applications") or (iii) carry over such unreserved credits to the next succeeding calendar year for the inclusion in the state housing credit ceiling (as defined in §42(h)(3)(C) of the IRC) for such year. Notwithstanding anything to the contrary herein, no reservation of credits shall be made from any nonprofit pools

to any application with respect to which the qualified nonprofit organization has not yet been legally formed in accordance with the requirements of the IRC. In addition, no application for credits from any nonprofit pools or any combination of pools may receive a reservation or allocation of annual credits in an amount greater than \$650,000 unless credits remain available in such nonprofit pools after all eligible applications for credits from such nonprofit pools receive a reservation of credits.

Notwithstanding anything to the contrary herein, applicants relying on the experience of a local housing authority for developer experience points described hereinbelow and/or using Hope VI funds from HUD in connection with the proposed development shall not be eligible to receive a reservation of credits from any nonprofit pools.

The authority shall review each application, and, based on the application and other information available to the authority, shall assign points to each application as follows:

1. Readiness.

a. Written evidence satisfactory to the authority of unconditional approval by local authorities of the plan of development or site plan for the proposed development or that such approval is not required. (40 points; applicants receiving points under this subdivision 1 a are not eligible for points under subdivision 5 a below)

b. Written evidence satisfactory to the authority (i) of proper zoning or special use permit for such site or (ii) that no zoning requirements or special use permits are applicable. (40 points)

2. Housing needs characteristics.

a. Submission of the form prescribed by the authority with any required attachments, providing such information necessary for the authority to send a letter addressed to the current chief executive officer (or the equivalent) of the locality in which the proposed development is located, soliciting input on the proposed development from the locality within the deadlines established by the executive director. (10 points; failure to make timely submission, minus 50 points)

b. (1) A letter dated within three months prior to the application deadline addressed to the authority and signed by the chief executive officer of the locality in which the proposed development is to be located stating, without qualification or limitation, the following:

"The construction or rehabilitation of (name of development) and the allocation of federal housing tax credits available under IRC Section 42 for that development will help meet the housing needs and priorities of (name of locality). Accordingly, (name of locality) supports the allocation of federal housing tax

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credits requested by (name of applicant) for that development." (50 points)

(2) No letter from the chief executive officer of the locality in which the proposed development is to be located, or a letter addressed to the authority and signed by such chief executive officer stating neither support (as described in subdivision b (1) above) nor opposition (as described in subdivision b (3) below) as to the allocation of credits to the applicant for the development. (25 points)

(3) A letter in response to its notification to the chief executive officer of the locality in which the proposed development is to be located opposing the allocation of credits to the applicant for the development. In any such letter, the chief executive officer must certify that the proposed development is not consistent with current zoning or other applicable land use regulations. (0 points)

c. Documentation in a form approved by the authority from the chief executive officer (or the equivalent) of the local jurisdiction in which the development is to be located (including the certification described in the definition of revitalization area in 13VAC10-180-10) that the area in which the proposed development is to be located is a revitalization area and the proposed development is an integral part of the local government's plan for revitalization of the area. (25 points)

d. If the proposed development is located in a qualified census tract as defined in §42(d)(5)(C)(ii) of the IRC and is in a revitalization area. (5 points)

e. Commitment by the applicant to give leasing preference to individuals and families (i) on public housing waiting lists maintained by the local housing authority operating in the locality in which the proposed development is to be located and notification of the availability of such units to the local housing authority by the applicant or (ii) on section 8 (as defined in 13VAC10-180-90) waiting lists maintained by the local or nearest section 8 administrator for the locality in which the proposed development is to be located and notification of the availability of such units to the local section 8 administrator by the applicant. (10 points; Applicants receiving points under this subdivision may not require an annual minimum income requirement for prospective tenants that exceeds the greater of \$3,600 or 2.5 times the portion of rent to be paid by such tenants.)

f. Any of the following: (i) firm financing commitment(s) from the local government, local housing authority, Federal Home Loan Bank affordable housing funds, or the Rural Development for a below-market rate loan or grant; (ii) a resolution passed by the locality in which the proposed development is to be located committing such financial support to the development in a form approved

by the authority; or (iii) a commitment to donate land, buildings or waive tap fee waivers from the local government. (The amount of such financing or dollar value of local support will be divided by the total development sources of funds and the proposed development receives two points for each percentage point up to a maximum of 40 points.)

g. Any development subject to (i) HUD's Section 8 or Section 236 programs or (ii) Rural Development's 515 program, at the time of application. (20 points)

h. Any development receiving (i) a real estate tax abatement on the increase in the value of the development or (ii) new project-based subsidy from HUD or Rural Development for the greater of 5 units or 10% of the units of the proposed development. (10 points)

i. Any proposed development located in a census tract that has less than a 10% poverty rate (based upon Census Bureau data) with no other tax credit units in such census tract. (25 points)

j. Any proposed development listed in the top 25 developments identified by Rural Development as high priority for rehabilitation at the time the application is submitted to the authority. (15 points)

### 3. Development characteristics.

a. The average unit size. (100 points multiplied by the sum of the products calculated by multiplying, for each unit type as defined by the number of bedrooms per unit, (i) the quotient of the number of units of a given unit type divided by the total number of units in the proposed development, times (ii) the quotient of the average actual gross square footage per unit for a given unit type minus the lowest gross square footage per unit for a given unit type established by the executive director divided by the highest gross square footage per unit for a given unit type established by the executive director minus the lowest gross square footage per unit for a given unit type established by the executive director. If the average actual gross square footage per unit for a given unit type is less than the lowest gross square footage per unit for a given unit type established by the executive director or greater than the highest gross square footage per unit for a given unit type established by the executive director, the lowest or highest, as the case may be, gross square footage per unit for a given unit type established by the executive director shall be used in the above calculation rather than the actual gross square footage per unit for a given unit type.)

b. Evidence satisfactory to the authority documenting the quality of the proposed development's amenities as determined by the following:

(1) The following points are available for any application:

(a) If 2-bedroom units have 1.5 bathrooms and 3-bedroom units have 2 bathrooms. (15 points multiplied by the percentage of units meeting these requirements)

(b) If a community/meeting room with a minimum of 800 square feet is provided. (5 points)

(c) Brick covering 30% or more of the exterior walls. (20 points times the percentage of exterior walls covered by brick)

(d) If all kitchen and laundry appliances meet the EPA's Energy Star qualified program requirements. (5 points)

(e) If all the windows meet the EPA's Energy Star qualified program requirements. (5 points)

(f) If every unit in the development is heated and air conditioned with either (i) heat pump units with both a SEER rating of 14.0 or more and a HSPF rating of 9.0 or more or thru-the-wall heat pump equipment that has an EER rating of 12.0 or more or (ii) air conditioning units with a SEER rating of 14.0 or more, combined with a gas furnace with an AFUE rating of 90% or more. (10 points)

(g) If the development has a minimum STC (sound transmission class) rating of 52 for the floor construction between units. (3 points)

(h) If the water expense is submetered (the tenant will pay monthly or bimonthly bill). (5 points)

(i) If each bathroom contains only low-flow faucets and showerheads as defined by the authority. (3 points)

(j) If each unit is provided with the necessary infrastructure for high-speed cable, DSL or wireless Internet service. (1 point)

(2) The following points are available to applications electing to serve elderly and/or physically disabled tenants:

(a) If all cooking ranges have front controls. (1 point)

(b) If all units have an emergency call system. (3 points)

(c) If all bathrooms have an independent or supplemental heat source. (1 point)

(d) If all entrance doors to each unit have two eye viewers, one at 48 inches and the other at standard height. (1 point)

(3) The following points are available to proposed developments which rehabilitate or adaptively reuse an existing structure:

(a) If all existing, single-glazed windows in good condition have storm windows, and all windows in poor condition are replaced with new windows with integral

storm sash or insulating glass. The insulating glass metal windows must have a thermal break. The insulated glass must have a 10-year warranty against breakage of the seal. (3 points)

(b) If the structure is historic, by virtue of being listed individually in the National Register of Historic Places, or due to its location in a registered historic district and certified by the Secretary of the Interior as being of historical significance to the district, and the rehabilitation will be completed in such a manner as to be eligible for historic rehabilitation tax credits. (5 points)

The maximum number of points that may be awarded under any combination of the scoring categories under subdivision 3 b of this section is 60 points.

c. Any nonelderly development in which the greater of 5 units or 10% of the units (i) provide federal project-based rent subsidies or equivalent assistance in order to ensure occupancy by extremely low-income persons; (ii) conform to HUD regulations interpreting the accessibility requirements of §504 of the Rehabilitation Act; and (iii) are actively marketed to people with special needs in accordance with a plan submitted as part of the application for credits (if special needs includes mobility impairments, the units described above must include roll-in showers and roll-under sinks and ranges). (50 points)

d. Any nonelderly development in which the greater of 5 units or 10% of the units (i) have rents within HUD's Housing Choice Voucher (HCV) payment standard; (ii) conform to HUD regulations interpreting the accessibility requirements of §504 of the Rehabilitation Act; and (iii) are actively marketed to people with mobility impairments including HCV holders in accordance with a plan submitted as part of the application for credits. (30 points)

e. Any nonelderly development in which 4.0% of the units (i) conform to HUD regulations interpreting the accessibility requirements of §504 of the Rehabilitation Act and (ii) are actively marketed to people with mobility impairments in accordance with a plan submitted as part of the application for credits. (15 points)

f. Any development located within one-half mile of an existing commuter rail, light rail or subway station or one-quarter mile of one or more existing public bus lines. (10 points, unless the development is located within the geographical area established by the executive director for a pool of credits for northern Virginia, in which case, the development will receive 20 points if the development is ranked against other developments in such northern Virginia pool, 10 points if the development is ranked against other developments in any other pool of credits established by the executive director)

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g. Any development for which the applicant agrees to obtain EarthCraft certification prior to the issuance of an IRS Form 8609 with the proposed development's architect certifying in the application that the development's design will meet the criteria for such EarthCraft certification. (15 points)

h. Any development in which the applicant proposes to produce up to 100 low-income housing units. (25 points for producing one low-income housing unit, minus .25 points for each additional low-income housing unit produced down to .25 points for 100 low-income housing units and 0 points for any development that produces over 100 low-income housing units.)

4. Tenant population characteristics. Commitment by the applicant to give a leasing preference to individuals and families with children in developments that will have no more than 20% of its units with one bedroom or less. (15 points; plus 0.75 points for each percent of the low-income units in the development with three or more bedrooms up to an additional 15 points for a total of no more than 30 points)

5. Sponsor characteristics.

a. Evidence that the principal or principals, as a group or individually, for the proposed development have developed (i) at least three tax credit developments that contain at least three times the number of housing units in the proposed development or (ii) at least six tax credit developments that contain at least the number of housing units in the proposed development. (50 points; applicants receiving points under this subdivision 5 a are not eligible for points under subdivision 1 a above)

b. Evidence that the principal or principals for the proposed development have developed at least one tax credit development that contains at least the number of housing units in the proposed development. (10 points)

c. Any applicant that includes a principal that was a principal in a development at the time the authority reported such development to the IRS for an uncorrected major violation of health, safety and building codes. (minus 50 points for a period of three years after the violation has been corrected)

d. Any applicant that includes a principal that was a principal in a development at the time the authority reported such development to the IRS for noncompliance that has not been corrected by the time a Form 8823 is filed by the authority. (minus 15 points for a period of three years after the time the authority filed Form 8823, unless the executive director determines that such principal's attempts to correct such noncompliance was prohibited by a court, local government or governmental agency, in which case, no negative points will be assessed to the applicant)

e. Any applicant that includes a principal that is or was a principal in a development that (i) did not build a development as represented in the application for credit (minus two times the number of points assigned to the item or items not built or minus 20 points for failing to provide a minimum building requirement, for a period of three years after the last Form 8609 is issued for the development, in addition to any other penalties the authority may seek under its agreements with the applicant), or (ii) has a reservation of credits terminated by the authority (minus 10 points a period of three years after the credits are returned to the authority).

f. Any applicant that includes a management company in its application that is rated unsatisfactory by the executive director or if the ownership of any applicant includes a principal that is or was a principal in a development that hired a management company to manage a tax credit development after such management company received a rating of unsatisfactory from the executive director during the extended use period of such development. (minus 25 points)

g. Evidence that a US Green Building Council LEED certified design professional participated in the design of the proposed development. (10 points)

h. Evidence that the proposed development's architect has completed the Fair Housing Accessibility First program offered by HUD or an equivalent organization and the certificate is attached with the architect's certification. (5 points)

i. Evidence that the proposed development's architect has attended the authority's Universal Design symposium and the certificate of attendance is attached with the architect's certification. (5 points)

6. Efficient use of resources.

a. The percentage by which the total of the amount of credits per low-income housing unit (the "per unit credit amount") of the proposed development is less than the standard per unit credit amounts established by the executive director for a given unit type, based upon the number of such unit types in the proposed development. (180 points multiplied by the percentage by which the total amount of the per unit credit amount of the proposed development is less than the applicable standard per unit credit amount established by the executive director, negative points will be assessed using the percentage by which the total amount of the per unit credit amount of the proposed development exceeds the applicable standard per unit credit amount established by the executive director.)

b. The percentage by which the cost per low-income housing unit (the "per unit cost"), adjusted by the authority for location, of the proposed development is

less than the standard per unit cost amounts established by the executive director for a given unit type, based upon the number of such unit types in the proposed development. (75 points multiplied by the percentage by which the total amount of the per unit cost of the proposed development is less than the applicable standard per unit cost amount established by the executive director.)

The executive director may use a standard per square foot credit amount and a standard per square foot cost amount in establishing the per unit credit amount and the per unit cost amount in subdivision 6 above. For the purpose of calculating the points to be assigned pursuant to such subdivision 6 above, all credit amounts shall include any credits previously allocated to the development.

#### 7. Bonus points.

a. Commitment by the applicant to impose income limits on the low-income housing units throughout the extended use period (as defined in the IRC) below those required by the IRC in order for the development to be a qualified low-income development. Applicants receiving points under this subdivision a may not receive points under subdivision b below. (The product of (i) 50 points multiplied by (ii) the percentage of housing units in the proposed development both rent restricted to and occupied by households at or below 50% of the area median gross income; plus 1 point for each percentage point of such housing units in the proposed development which are further restricted to rents at or below 30% of 40% of the area median gross income up to an additional 10 points.)

b. Commitment by the applicant to impose rent limits on the low-income housing units throughout the extended use period (as defined in the IRC) below those required by the IRC in order for the development to be a qualified low-income development. Applicants receiving points under this subdivision b may not receive points under subdivision a above. (The product of (i) 25 points (50 points for proposed developments in low-income jurisdictions) multiplied by (ii) the percentage of housing units in the proposed development rent restricted to households at or below 50% of the area median gross income; plus 1 point for each percentage point of such housing units in the proposed development which are further restricted to rents at or below 30% of 40% of the area median gross income up to an additional 10 points.)

c. Commitment by the applicant to maintain the low-income housing units in the development as a qualified low-income housing development beyond the 30-year extended use period (as defined in the IRC). Applicants receiving points under this subdivision c may not receive bonus points under subdivision d below. (40 points for a 10-year commitment beyond the 30-year extended use

period or 50 points for a 20-year commitment beyond the 30-year extended use period.)

d. Participation by a local housing authority or qualified nonprofit organization (substantially based or active in the community with at least a 10% ownership interest in the general partnership interest of the partnership) and a commitment by the applicant to sell the proposed development pursuant to an executed, recordable option or right of first refusal to such local housing authority or qualified nonprofit organization or to a wholly owned subsidiary of such organization or authority, at the end of the 15-year compliance period, as defined by IRC, for a price not to exceed the outstanding debt and exit taxes of the for-profit entity. The applicant must record such option or right of first refusal immediately after the low-income housing commitment described in 13VAC10-180-70 and give the qualified nonprofit veto power over any refinancing of the development. Applicants receiving points under this subdivision d may not receive bonus points under subdivision c above. (60 points; plus 5 points if the local housing authority or qualified nonprofit organization submits a homeownership plan satisfactory to the authority in which the local housing authority or qualified nonprofit organization commits to sell the units in the development to tenants.)

In calculating the points for subdivisions 7 a and b above, any units in the proposed development required by the locality to exceed 60% of the area median gross income will not be considered when calculating the percentage of low-income units of the proposed development with incomes below those required by the IRC in order for the development to be a qualified low-income development, provided that the locality submits evidence satisfactory to the authority of such requirement.

After points have been assigned to each application in the manner described above, the executive director shall compute the total number of points assigned to each such application. Notwithstanding any other provisions herein, any application that is assigned a total number of points less than a threshold amount of ~~300~~ 500 points (~~250 points for developments financed with tax exempt bonds~~) shall be rejected from further consideration hereunder and shall not be eligible for any reservation or allocation of credits.

The executive director may exclude and disregard any application which he determines is not submitted in good faith or which he determines would not be financially feasible.

Upon assignment of points to all of the applications, the executive director shall rank the applications based on the number of points so assigned. If any pools shall have been established, each application shall be assigned to a pool and, if any, to the appropriate tier within such pool and shall be ranked within such pool or tier, if any. The amount of credits

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made available to each pool will be determined by the executive director. Available credits will include unreserved per capita dollar amount credits from the current calendar year under §42(h)(3)(C)(i) of the IRC, any unreserved per capita credits from previous calendar years, and credits returned to the authority prior to the final ranking of the applications and may include up to 10% of next calendar year's per capita credits as shall be determined by the executive director. Those applications assigned more points shall be ranked higher than those applications assigned fewer points. However, if any set-asides established by the executive director cannot be satisfied after ranking the applications based on the number of points, the executive director may rank as many applications as necessary to meet the requirements of such set-aside (selecting the highest ranked application, or applications, meeting the requirements of the set-aside) over applications with more points.

In the event of a tie in the number of points assigned to two or more applications within the same pool, or, if none, within the Commonwealth, and in the event that the amount of credits available for reservation to such applications is determined by the executive director to be insufficient for the financial feasibility of all of the developments described therein, the authority shall, to the extent necessary to fully utilize the amount of credits available for reservation within such pool or, if none, within the Commonwealth, select one or more of the applications with the highest combination of points from subdivision 7 above, and each application so selected shall receive (in order based upon the number of such points, beginning with the application with the highest number of such points) a reservation of credits. If two or more of the tied applications receive the same number of points from subdivision 7 above and if the amount of credits available for reservation to such tied applications is determined by the executive director to be insufficient for the financial feasibility of all the developments described therein, the executive director shall select one or more of such applications by lot, and each application so selected by lot shall receive (in order of such selection by lot) a reservation of credits.

For each application which may receive a reservation of credits, the executive director shall determine the amount, as of the date of the deadline for submission of applications for reservation of credits, to be necessary for the financial feasibility of the development and its viability as a qualified low-income development throughout the credit period under the IRC. In making this determination, the executive director shall consider the sources and uses of the funds, the available federal, state and local subsidies committed to the development, the total financing planned for the development as well as the investment proceeds or receipts expected by the authority to be generated with respect to the development, and the percentage of the credit dollar amount used for development costs other than the costs of intermediaries. He

shall also examine the development's costs, including developer's fees and other amounts in the application, for reasonableness and, if he determines that such costs or other amounts are unreasonably high, he shall reduce them to amounts that he determines to be reasonable. The executive director shall review the applicant's projected rental income, operating expenses and debt service for the credit period. The executive director may establish such criteria and assumptions as he shall deem reasonable for the purpose of making such determination, including, without limitation, criteria as to the reasonableness of fees and profits and assumptions as to the amount of net syndication proceeds to be received (based upon such percentage of the credit dollar amount used for development costs, other than the costs of intermediaries, as the executive director shall determine to be reasonable for the proposed development), increases in the market value of the development, and increases in operating expenses, rental income and, in the case of applications without firm financing commitments (as defined hereinabove) at fixed interest rates, debt service on the proposed mortgage loan. The executive director may, if he deems it appropriate, consider the development to be a part of a larger development. In such a case, the executive director may consider, examine, review and establish any or all of the foregoing items as to the larger development in making such determination for the development.

At such time or times during each calendar year as the executive director shall designate, the executive director shall reserve credits to applications in descending order of ranking within each pool and tier, if applicable, until either substantially all credits therein are reserved or all qualified applications therein have received reservations. (For the purpose of the preceding sentence, if there is not more than a de minimis amount, as determined by the executive director, of credits remaining in a pool after reservations have been made, "substantially all" of the credits in such pool shall be deemed to have been reserved.) The executive director may rank the applications within pools at different times for different pools and may reserve credits, based on such rankings, one or more times with respect to each pool. The executive director may also establish more than one round of review and ranking of applications and reservation of credits based on such rankings, and he shall designate the amount of credits to be made available for reservation within each pool during each such round. The amount reserved to each such application shall be equal to the lesser of (i) the amount requested in the application or (ii) an amount determined by the executive director, as of the date of application, to be necessary for the financial feasibility of the development and its viability as a qualified low-income development throughout the credit period under the IRC; provided, however, that in no event shall the amount of credits so reserved exceed the maximum amount permissible under the IRC.

Not more than 20% of the credits in any pool may be reserved to developments intended to provide elderly housing, unless the feasible credit amount, as determined by the executive director, of the highest ranked elderly housing development in any pool exceeds 20% of the credits in such pool, then such elderly housing development shall be the only elderly housing development eligible for a reservation of credits from such pool. However, if credits remain available for reservation after all eligible nonelderly housing developments receive a reservation of credits, such remaining credits may be made available to additional elderly housing developments. The above limitation of credits available for elderly housing shall not include elderly housing developments with project-based subsidy providing rental assistance for at least 20% of the units that are submitted as rehabilitation developments or assisted living facilities licensed under Chapter 17 of Title 63.2 of the Code of Virginia.

If the amount of credits available in any pool is determined by the executive director to be insufficient for the financial feasibility of the proposed development to which such available credits are to be reserved, the executive director may move the proposed development and the credits available to another pool. If any credits remain in any pool after moving proposed developments and credits to another pool, the executive director may for developments that meet the requirements of §42(h)(1)(E) of the IRC only, reserve the remaining credits to any proposed development(s) scoring at or above the minimum point threshold established by this chapter without regard to the ranking of such application with additional credits from the Commonwealth's annual state housing credit ceiling for the following year in such an amount necessary for the financial feasibility of the proposed development, or developments. However, the reservation of credits from the Commonwealth's annual state housing credit ceiling for the following year shall be in the reasonable discretion of the executive director if he determines it to be in the best interest of the plan. In the event a reservation or an allocation of credits from the current year or a prior year is reduced, terminated or cancelled, the executive director may substitute such credits for any credits reserved from the following year's annual state housing credit ceiling.

In the event that during any round of application review and ranking the amount of credits reserved within any pools is less than the total amount of credits made available therein during such round, the executive director may either (i) leave such unreserved credits in such pools for reservation and allocation in any subsequent round or rounds or (ii) redistribute such unreserved credits to such other pool or pools as the executive director may designate or (iii) carry over such unreserved credits to the next succeeding calendar year for inclusion in the state housing credit ceiling (as defined in §42(h)(3)(C) of the IRC) for such year.

Notwithstanding anything contained herein, the total amount of credits that may be awarded in any credit year after credit year 2001 to any applicant or to any related applicants for one or more developments shall not exceed 15% of Virginia's per capita dollar amount of credits for such credit year (the "credit cap"). However, if the amount of credits to be reserved in any such credit year to all applications assigned a total number of points at or above the threshold amount set forth above shall be less than Virginia's dollar amount of credits available for such credit year, then the authority's board of commissioners may waive the credit cap to the extent it deems necessary to reserve credits in an amount at least equal to such dollar amount of credits. Applicants shall be deemed to be related if any principal in a proposed development or any person or entity related to the applicant or principal will be a principal in any other proposed development or developments. For purposes of this paragraph, a principal shall also include any person or entity who, in the determination of the executive director, has exercised or will exercise, directly or indirectly, substantial control over the applicant or has performed or will perform (or has assisted or will assist the applicant in the performance of), directly or indirectly, substantial responsibilities or functions customarily performed by applicants with respect to applications or developments. For the purpose of determining whether any person or entity is related to the applicant or principal, persons or entities shall be deemed to be related if the executive director determines that any substantial relationship existed, either directly between them or indirectly through a series of one or more substantial relationships (e.g., if party A has a substantial relationship with party B and if party B has a substantial relationship with party C, then A has a substantial relationship with both party B and party C), at any time within three years of the filing of the application for the credits. In determining in any credit year whether an applicant has a substantial relationship with another applicant with respect to any application for which credits were awarded in any prior credit year, the executive director shall determine whether the applicants were related as of the date of the filing of such prior credit year's application or within three years prior thereto and shall not consider any relationships or any changes in relationships subsequent to such date. Substantial relationships shall include, but not be limited to, the following relationships (in each of the following relationships, the persons or entities involved in the relationship are deemed to be related to each other): (i) the persons are in the same immediate family (including, without limitation, a spouse, children, parents, grandparents, grandchildren, brothers, sisters, uncles, aunts, nieces, and nephews) and are living in the same household; (ii) the entities have one or more common general partners or members (including related persons and entities), or the entities have one or more common owners that (by themselves or together with any other related persons and entities) have, in the aggregate, 5.0% or more ownership interest in each entity; (iii) the entities are under the common

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control (e.g., the same person or persons and any related persons serve as a majority of the voting members of the boards of such entities or as chief executive officers of such entities) of one or more persons or entities (including related persons and entities); (iv) the person is a general partner, member or employee in the entity or is an owner (by himself or together with any other related persons and entities) of 5.0% or more ownership interest in the entity; (v) the entity is a general partner or member in the other entity or is an owner (by itself or together with any other related persons and entities) of 5.0% or more ownership interest in the other entity; or (vi) the person or entity is otherwise controlled, in whole or in part, by the other person or entity. In determining compliance with the credit cap with respect to any application, the executive director may exclude any person or entity related to the applicant or to any principal in such applicant if the executive director determines that (i) such person or entity will not participate, directly or indirectly, in matters relating to the applicant or the ownership of the development to be assisted by the credits for which the application is submitted, (ii) such person or entity has no agreement or understanding relating to such application or the tax credits requested therein, and (iii) such person or entity will not receive a financial benefit from the tax credits requested in the application. A limited partner or other similar investor shall not be determined to be a principal and shall be excluded from the determination of related persons or entities unless the executive director shall determine that such limited partner or investor will, directly or indirectly, exercise control over the applicant or participate in matters relating to the ownership of the development substantially beyond the degree of control or participation that is usual and customary for limited partners or other similar investors with respect to developments assisted by the credits. If the award of multiple applications of any applicant or related applicants in any credit year shall cause the credit cap to be exceeded, such applicant or applicants shall, upon notice from the authority, jointly designate those applications for which credits are not to be reserved so that such limitation shall not be exceeded. Such notice shall specify the date by which such designation shall be made. In the absence of any such designation by the date specified in such notice, the executive director shall make such designation as he shall determine to best serve the interests of the program. Each applicant and each principal therein shall make such certifications, shall disclose such facts and shall submit such documents to the authority as the executive director may require to determine compliance with credit cap. If an applicant or any principal therein makes any misrepresentation to the authority concerning such applicant's or principal's relationship with any other person or entity, the executive director may reject any or all of such applicant's pending applications for reservation or allocation of credits, may terminate any or all reservations of credits to the applicant, and may prohibit such applicant, the principals therein and any persons and entities then or thereafter having a substantial relationship (in the determination of the

executive director as described above) with the applicant or any principal therein from submitting applications for credits for such period of time as the executive director shall determine.

Within a reasonable time after credits are reserved to any applicants' applications, the executive director shall notify each applicant for such reservations of credits either of the amount of credits reserved to such applicant's application (by issuing to such applicant a written binding commitment to allocate such reserved credits subject to such terms and conditions as may be imposed by the executive director therein, by the IRC and by this chapter) or, as applicable, that the applicant's application has been rejected or excluded or has otherwise not been reserved credits in accordance herewith. The written binding commitment shall prohibit any transfer, direct or indirect, of partnership interests (except those involving the admission of limited partners) prior to the placed-in-service date of the proposed development unless the transfer is consented to by the executive director. The written binding commitment shall further limit the developers' fees to the amounts established during the review of the applications for reservation of credits and such amounts shall not be increased unless consented to by the executive director. The executive director shall, as a condition to the binding commitment, require each applicant to obtain a market study, in form and substance satisfactory to the authority, that shows adequate demand for the housing units to be produced by each applicant's proposed development.

If credits are reserved to any applicants for developments which have also received an allocation of credits from prior years, the executive director may reserve additional credits from the current year equal to the amount of credits allocated to such developments from prior years, provided such previously allocated credits are returned to the authority. Any previously allocated credits returned to the authority under such circumstances shall be placed into the credit pools from which the current year's credits are reserved to such applicants.

The executive director shall make a written explanation available to the general public for any allocation of housing credit dollar amount which is not made in accordance with established priorities and selection criteria of the authority.

The authority's board shall review and consider the analysis and recommendation of the executive director for the reservation of credits to an applicant, and, if it concurs with such recommendation, it shall by resolution ratify the reservation by the executive director of the credits to the applicant, subject to such terms and conditions as it shall deem necessary or appropriate to assure compliance with the aforementioned binding commitment issued or to be issued to the applicant, the IRC and this chapter. If the board determines not to ratify a reservation of credits or to establish

any such terms and conditions, the executive director shall so notify the applicant.

Subsequent to such ratification of the reservation of credits, the executive director may, in his discretion and without ratification or approval by the board, increase the amount of such reservation by an amount not to exceed 10% of the initial reservation amount.

The executive director may require the applicant to make a good faith deposit or to execute such contractual agreements providing for monetary or other remedies as it may require, or both, to assure that the applicant will comply with all requirements under the IRC, this chapter and the binding commitment (including, without limitation, any requirement to conform to all of the representations, commitments and information contained in the application for which points were assigned pursuant to this section). Upon satisfaction of all such aforementioned requirements (including any post-allocation requirements), such deposit shall be refunded to the applicant or such contractual agreements shall terminate, or both, as applicable.

If, as of the date the application is approved by the executive director, the applicant is entitled to an allocation of the credits under the IRC, this chapter and the terms of any binding commitment that the authority would have otherwise issued to such applicant, the executive director may at that time allocate the credits to such qualified low-income buildings or development without first providing a reservation of such credits. This provision in no way limits the authority of the executive director to require a good faith deposit or contractual agreement, or both, as described in the preceding paragraph, nor to relieve the applicant from any other requirements hereunder for eligibility for an allocation of credits. Any such allocation shall be subject to ratification by the board in the same manner as provided above with respect to reservations.

The executive director may require that applicants to whom credits have been reserved shall submit from time to time or at such specified times as he shall require, written confirmation and documentation as to the status of the proposed development and its compliance with the application, the binding commitment and any contractual agreements between the applicant and the authority. If on the basis of such written confirmation and documentation as the executive director shall have received in response to such a request, or on the basis of such other available information, or both, the executive director determines any or all of the buildings in the development which were to become qualified low-income buildings will not do so within the time period required by the IRC or will not otherwise qualify for such credits under the IRC, this chapter or the binding commitment, then the executive director may terminate the reservation of such credits and draw on any good faith deposit. If, in lieu of or in addition to the foregoing

determination, the executive director determines that any contractual agreements between the applicant and the authority have been breached by the applicant, whether before or after allocation of the credits, he may seek to enforce any and all remedies to which the authority may then be entitled under such contractual agreements.

The executive director may establish such deadlines for determining the ability of the applicant to qualify for an allocation of credits as he shall deem necessary or desirable to allow the authority sufficient time, in the event of a reduction or termination of the applicant's reservation, to reserve such credits to other eligible applications and to allocate such credits pursuant thereto.

Any material changes to the development, as proposed in the application, occurring subsequent to the submission of the application for the credits therefor shall be subject to the prior written approval of the executive director. As a condition to any such approval, the executive director may, as necessary to comply with this chapter, the IRC, the binding commitment and any other contractual agreement between the authority and the applicant, reduce the amount of credits applied for or reserved or impose additional terms and conditions with respect thereto. If such changes are made without the prior written approval of the executive director, he may terminate or reduce the reservation of such credits, impose additional terms and conditions with respect thereto, seek to enforce any contractual remedies to which the authority may then be entitled, draw on any good faith deposit, or any combination of the foregoing.

In the event that any reservation of credits is terminated or reduced by the executive director under this section, he may reserve, allocate or carry over, as applicable, such credits in such manner as he shall determine consistent with the requirements of the IRC and this chapter.

Notwithstanding the provisions of this section, the executive director may make a reservation of credits to any applicant that proposes a nonelderly development intended to serve people with disabilities and (i) provides rent subsidies or equivalent assistance in order to ensure occupancy by extremely low-income persons; (ii) conforms to HUD regulations interpreting the accessibility requirements of §504 of the Rehabilitation Act; and (iii) will be actively marketed to people with disabilities in accordance with a plan submitted as part of the application for credits and approved by the executive director. Any such reservations made in any calendar year may be up to 3.0% of the Commonwealth's annual state housing credit ceiling for the applicable credit year. However, such reservation will be for credits from the Commonwealth's annual state housing credit ceiling from the following calendar year.

Notwithstanding the provisions of this section, the executive director may make a reservation of credits, to any applicant that proposes to acquire and rehabilitate a nonelderly

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development within Arlington County, Fairfax County, Alexandria City, Fairfax City or Falls Church City that the executive director determines (i) cannot be acquired within the schedule for the competitive scoring process described in this section and (ii) cannot be financed with tax-exempt bonds using the authority's normal underwriting criteria for its multifamily tax-exempt bond program. Any proposed development subject to an application submitted under this paragraph must meet the following criteria: (i) at least 20% of the units in the development must be low-income housing units for residents at 50% of the area median income or less, (ii) the development must be eligible for points under subdivision 3 b (1) (g) of this section or a combination of at least 20 points under subdivisions 3 b (1) (b) through 3 b (1) (j), excluding subdivision 3 b (1) (c), (iii) the executive director's review of the application must confirm that the portion of the developer's fee to be deferred is at least 5.0% of the total development costs, and (iv) participation by the local government in the form of low-interest loan/grant moneys from such locality's affordable housing funds. Any such reservations made in any calendar year may be up to 15% of the Commonwealth's annual state housing credit ceiling for the applicable credit year. However, such reservation will be for credits from the Commonwealth's annual state housing credit ceiling from the following calendar year. Applicants and the principals of such applicant applying for credits under this paragraph may not submit an application for credits for the same development under the competitive scoring process in this section.

## **13VAC10-180-100. Tax-exempt bonds.**

In the case of any buildings or development to be financed by certain tax-exempt bonds of the authority, or an issuer other than the authority, in such amount so as not to require under the IRC an allocation of credits hereunder, the owner of the buildings or development shall submit to the authority, prior to the issuance of the bonds, an application for allocation of credits and supporting information and documents as described in 13VAC10-180-70, and such other information and documents as the executive director may require (including a market study, in form and substance satisfactory to the authority, that shows adequate demand for the housing units to be produced by each applicant's proposed buildings or development). The executive director shall determine, in accordance with the IRC, whether such buildings or development satisfies the requirements for allocation of credits hereunder. For the purposes of such determination, buildings or a development shall be deemed to satisfy the requirements for allocation of credits hereunder if (i) the application submitted to the authority in connection therewith is assigned not fewer than the threshold number of points under the ranking system described in 13VAC10-180-60, ~~and~~ (ii) the executive director shall determine that the buildings or development shall receive an amount of credits necessary for the financial feasibility of the development and

its viability as a qualified low-income housing development throughout the credit period under the IRC, ~~and~~ as more fully described in 13VAC10-180-70, and (iii) premature retirement of any of the tax-exempt bonds or principal portion thereof issued to finance the buildings or development (including any tax-exempt bonds issued solely for the purpose of satisfying the requirement in §42(h)(4)(B) of the IRC) shall be neither required by the terms of the bonds nor anticipated by the applicant during the period commencing on the date of issuance of such bonds and ending on the date seven years thereafter. For the purpose of clause (iii) above, premature retirement shall be any total reduction in the principal amount of such bonds or portion thereof during such seven-year period in excess of 50% of the original principal amount of such bonds or portion thereof. The principal of any bonds that are defeased or for which funds (and any investments thereof) are otherwise determined by the authority to be available during such seven-year period for payment of principal thereof shall be deemed to be reduced by the principal amount so defeased or by the amount of such available funds during such seven-year period. Compliance with clause (iii) above shall be determined by the authority based upon the substance of the transactions and without regard to any artifice or device intended to evade the requirement prohibiting the premature retirement of bonds as described in clause (iii) above. Notwithstanding anything contained herein, the requirement in clause (iii) above shall not apply to tax-exempt bonds, not exceeding \$3,000,000 in original principal amount, issued for the rehabilitation of any development secured by a Rural Development 515 loan, provided such tax-exempt bonds are issued with the intent to preserve the Rural Development 515 loan.

The owner of the buildings or development shall, as required by the executive director, pay such fees as described in 13VAC10-180-50, and such good faith deposits as described in 13VAC10-180-70. Furthermore, the owner of the buildings or development shall satisfy all other requirements for an allocation as required by the executive director, including execution, delivery and recordation of an extended low-income housing commitment as more fully described in 13VAC10-180-70 and all requirements for compliance monitoring as described in 13VAC10-180-90.

VA.R. Doc. No. R08-968; Filed September 25, 2007, 11:38 a.m.

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## **TITLE 14. INSURANCE**

### **STATE CORPORATION COMMISSION, BUREAU OF INSURANCE**

#### **Proposed Regulation**

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| <p><b>REGISTRAR'S NOTICE:</b> The State Corporation Commission is exempt from the Administrative Process Act in accordance with §2.2-4002 A 2 of the Code of Virginia,</p> |
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which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

**Title of Regulation:** 14VAC5-270. Rules Governing Annual Audited Financial Reports (amending 14VAC5-270-10 through 14VAC5-270-180, adding 14VAC5-270-144, 14VAC5-270-146, 14VAC5-270-148, 14VAC5-270-174).

**Statutory Authority:** §§12.1-13 and 38.2-223 of the Code of Virginia.

**Public Hearing Information:** A public hearing will be scheduled upon request.

**Public comments:** Public comments may be submitted until 5 p.m. on October 29, 2007.

**Agency Contact:** Raquel Pino-Moreno, Principal Insurance Analyst, State Corporation Commission, 1300 E. Main Street, 6th Floor, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9499, FAX (804) 371-9511, or email raquel.pino-moreno@scc.virginia.gov.

**Summary:**

*The proposed amendments incorporate the revisions made by the National Association of Insurance Commissioners to its Annual Financial Reporting Model Regulation, which requires insurers and designated entities to comply with certain best business practices related to auditor independence, corporate governance, and internal controls over financial reporting. The proposed effective date is January 1, 2010. These revisions need to be promulgated two years in advance, however, because it will require affected insurers and designated entities to include two new reports with their current annual audited financial report filings. It will also require a change in the rotation period of the qualified independent certified public accountant (accountant) from the current seven-year rotation to a five-year rotation. Affected insurers and designated entities need time to review the new reporting requirements and to amend current agreements to allow for the five-year accountant rotation.*

AT RICHMOND, SEPTEMBER 26, 2007

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. INS-2007-00280

**Ex Parte:** In the matter of Adopting Revisions to the Rules Governing Annual Audited Financial Reports

ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia provides that the State Corporation Commission ("Commission") shall have

the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction, and § 38.2-223 of the Code of Virginia provides that the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of Title 38.2 of the Code of Virginia.

The rules and regulations issued by the Commission pursuant to § 38.2-223 of the Code of Virginia are set forth in Title 14 of the Virginia Administrative Code.

The Bureau of Insurance ("Bureau") has submitted to the Commission proposed revisions to the "Rules Governing Annual Audited Financial Reports" set forth in Chapter 270 of Title 14 of the Virginia Administrative Code, to be entitled "Rules Governing Annual Financial Reporting," which amend 14 VAC 5-270-10 through 14 VAC 5-270-150, 14 VAC 5-270-170 and 14 VAC 5-270-180, and new proposed rules are recommended at 14 VAC 5-270-144, 14 VAC 5-270-146, 14 VAC 5-270-148, and 14 VAC 5-270-174.

The proposed revisions to the rules require insurers to comply with certain best business practices related to auditor independence, corporate governance, and internal controls over financial reporting. It will also require a change in the rotation of the qualified independent certified public accountant from the current period of a seven year rotation to a five year rotation. The proposed revisions are necessary due to the adoption by the NAIC in June 2006 of the revisions to the Annual Financial Reporting Model Regulation (formerly known as the Model Regulation Requiring Annual Audited Financial Reports). The Bureau has recommended that there be a proposed effective date of January 1, 2010, in order to give affected insurers and designated entities sufficient time to review the new reporting requirements and to amend current agreements to allow for the five year accountant rotation.

The Commission is of the opinion that the proposed revisions to Chapter 270 of Title 14 of the Virginia Administrative Code submitted by the Bureau should be considered for adoption with an effective date of January 1, 2010.

IT IS THEREFORE ORDERED THAT:

(1) The proposed revised rules entitled "Rules Governing Annual Financial Reporting," which amend the rules at 14 VAC 5-270-10 through 14 VAC 5-270-150, 14 VAC 5-270-170, and 14 VAC 5-270-180 and add new proposed rules at 14 VAC 5-270-144, 14 VAC 5-270-146, 14 VAC 5-270-148, and 14 VAC 5-270-174, be attached hereto and made a part hereof.

(2) All interested persons who desire to comment in support of or in opposition to, or request a hearing to oppose the adoption of the proposed revised rules shall file such comments or hearing request on or before October 29, 2007, in writing with the Clerk of the Commission, Document

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Control Center, P.O. Box 2118, Richmond, Virginia 23218 and shall refer to Case No. INS-2007-00280.

(3) If no written request for a hearing on the proposed revised rules is filed on or before October 29, 2007, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposed revised rules, may adopt the proposed revised rules as submitted by the Bureau.

(4) AN ATTESTED COPY hereof, together with a copy of the proposed revised rules, shall be sent by the Clerk of the Commission to the Bureau in care of Deputy Commissioner Douglas C. Stolte, who forthwith shall give further notice of the proposed adoption of the revised rules by mailing a copy of this Order, together with the proposed revised rules, to all licensed insurers, home protection companies, burial societies, fraternal benefit societies, health service plans, health maintenance organizations, legal services plans, dental or optometric services plans and dental plan organizations authorized by the Commission pursuant to Title 38.2 of the Code of Virginia, and certain interested parties designated by the Bureau.

(5) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, together with the proposed revised rules, to be forwarded to the Virginia Registrar of the Regulations for appropriate publication in the Virginia Register of Regulations and shall make available this Order and the attached proposed revised rules on the Commission's website, <http://www.scc.virginia.gov/caseinfo.htm>.

(6) The Bureau shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of paragraph (4) above.

## CHAPTER 270

### RULES GOVERNING ANNUAL AUDITED FINANCIAL REPORTS REPORTING

#### 14VAC5-270-10. Purpose.

The purpose of this chapter is to improve the ~~Commission's monitoring~~ commission's surveillance of the financial condition of licensed companies by requiring (i) ~~an annual examination~~ audit of financial statements reporting the financial position and the results of operations of insurers by an Independent Certified Public Accountant of the financial statements reporting the financial position and the results of operations of insurers independent certified public accountant, (ii) Communicating Internal Control Related Matters Identified in an Audit, and (iii) Management's Report of Internal Control over Financial Reporting.

#### 14VAC5-270-20. Applicability.

This chapter (~~14VAC5-270-10 et seq.~~) shall apply to all life, accident and ~~health~~, sickness, and property and casualty

insurers licensed to transact the business of insurance in ~~Virginia~~ this Commonwealth under Chapter 10 (§38.2-1000 et seq.) of Title 38.2 of the Code of Virginia and all other ~~organizations~~ entities licensed to do business under any one or more of the following chapters of Title 38.2 of the Code of Virginia, subject to the limitations and/or exemptions as further stated in this chapter-:

1. Chapter 11 - Captive Insurers.
2. Chapter 12 - Reciprocal Insurance.
3. Chapter 25 - Mutual Assessment Property and Casualty Insurers.
4. Chapter 26 (Article 1) - Home Protection Companies.
- ~~5. Chapter 38 - Cooperative Nonprofit Life Benefit Companies.~~
- ~~6. Chapter 39 - Mutual Assessment Life, Accident and Sickness Insurers.~~
- ~~7. 5.~~ Chapter 40 - Burial Societies.
- ~~8 6.~~ Chapter 41 - Fraternal Benefit Societies.
- ~~9 7.~~ Chapter 42 - Health Services Plans.
- ~~10 8.~~ Chapter 43 - Health Maintenance Organizations.
- ~~11 9.~~ Chapter 44 - Legal Services Plans.
- ~~12 10.~~ Chapter 45 - Dental or Optometric Services Plans.
- ~~13 11.~~ Chapter 46 - Title Insurance.
12. Chapter 61 - Dental Plan Organizations.

#### 14VAC5-270-30. Scope.

This chapter (~~14VAC5-270-10 et seq.~~) shall apply to all ~~organizations~~ entities listed in 14VAC5-270-20, hereinafter referred to as "insurers." Insurers having direct premiums written of less than \$1 million in any calendar year and having less than 1,000 policyholders or certificate holders of ~~directly~~ direct written policies at the end of such calendar year are exempt from the requirements of this chapter for such year unless the commission deems that compliance with the reporting requirements of this chapter is necessary to establish the financial condition of an insurer. Insurers having assumed premiums of \$1 million or more pursuant to contracts and/or treaties of reinsurance will not be so exempt.

Foreign or alien insurers filing the Audited Financial Reports Report in another state, pursuant to that state's requirements for filing of Audited Financial Reports and where ~~such~~ the requirements have been found by the commission to be substantially similar to the requirements herein, are exempt from ~~this chapter~~ 14VAC5-270-50 through 14VAC5-270-140 if:

1. ~~Copies~~ A copy of the Audited Financial Report, the ~~Report on Significant Deficiencies in Internal Controls~~

Communicating Internal Control Related Matters Identified in an Audit, and the Accountant's Letter of Qualifications, which are filed with ~~such the~~ other state, are filed with the commission in accordance with the filing dates specified in 14VAC5-270-50, 14VAC5-270-120, and 14VAC5-270-130, respectively; (Canadian insurers may submit accountants' reports as filed with the Canadian Office of the Superintendent of Financial Institutions); ~~and,~~

2. A copy of any Notification of Adverse Financial Condition Report filed with ~~such the~~ other state is filed with the commission within the time specified in 14VAC5-270-110.

Foreign or alien insurers required to file Management's Report of Internal Control over Financial Reporting in another state are exempt from filing the report in this Commonwealth provided the other state has substantially similar reporting requirements and the report is filed with the commissioner of the other state within the time specified.

This provision shall not prohibit, preclude or in any way limit the commission's rights with respect to workpapers described in 14VAC5-270-140 ~~of this chapter~~ or its rights concerning the ordering and/or conducting and/or performing of examinations of insurers under Title 38.2 of the Code of Virginia.

#### **14VAC5-270-40. Definitions.**

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

"Accountant" ~~and or~~ "independent ~~Certified Public Accountant~~ ~~mean~~ certified public accountant" means an independent, certified public accountant or accounting firm in good standing with the American Institute of Certified Public Accountants ("AICPA") and in all states in which ~~such the~~ accountant or firm is licensed to practice; for Canadian and British companies, ~~they mean~~ it means a Canadian-chartered or British-chartered accountant.

"Affiliate" of a specific person or a person "affiliated" with a specific person means a person that directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the specific person.

"Audit Committee" means a committee (or equivalent body) established by the board of directors of an entity for the purpose of overseeing the accounting and financial reporting processes of an insurer or group of insurers, and audits of financial statements of the insurer or group of insurers. The Audit Committee of an entity that controls a group of insurers may be deemed to be the Audit Committee for one or more of these controlled insurers solely for the purposes of this chapter at the election of the controlling person. If an Audit Committee is not designated by the insurer, the insurer's entire board of directors shall constitute the Audit Committee.

"Audited Financial Report" means and includes those items specified in 14VAC5-270-60.

"Commission" means the State Corporation Commission when acting pursuant to or in accordance with Title 38.2 of the Code of Virginia.

"Due date" means (i) June 1 for all domestic insurers; (ii) June 30 for all foreign or alien companies domiciled or entered through a state in which similar law, regulation or administrative practice provides for a June 30 filing date; and (iii) for all other insurers, the earlier of June 30 or the date established by the insurer's state of domicile or entry for filing similar audited financial reports.

"Group of insurers" means those licensed insurers included in the reporting requirements of Article 5 (§38.2-1322 et seq.) of Chapter 13 of Title 38.2 of the Code of Virginia, or a set of insurers as identified by an entity's management, for the purpose of assessing the effectiveness of internal control over financial reporting.

"Indemnification" means an agreement of indemnity or a release from liability where the intent or effect is to shift or limit in any manner the potential liability of the person or firm for failure to adhere to applicable auditing or professional standards, whether or not resulting in part from knowing or other misrepresentations made by the insurer or its representatives.

"Internal control over financial reporting" means a process effected by an entity's board of directors, management and other personnel designed to provide reasonable assurance regarding the reliability of the financial statements and includes those policies and procedures that:

1. Pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of assets;
2. Provide reasonable assurance that transactions are recorded as necessary to permit preparation of the financial statements and that receipts and expenditures are being made only in accordance with authorizations of management and directors; and
3. Provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of assets that could have a material effect on the financial statements.

"NAIC" means the National Association of Insurance Commissioners.

"RBC" means risk-based capital.

"RBC Level" means a licensee's Company Action Level RBC, Regulatory Action Level RBC, Authorized Control Level RBC, or Mandatory Control Level RBC where:

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1. "Company Action Level RBC" means, with respect to any licensee, the product of 2.0 and its Authorized Control Level RBC;

2. "Regulatory Action Level RBC" means the product of 1.5 and its Authorized Control Level RBC;

3. "Authorized Control Level RBC" means the number determined under the risk-based capital formula in accordance with the RBC Instructions; and

4. "Mandatory Control Level RBC" means the product of 0.70 and the Authorized Control Level RBC.

"SEC" means the United States Securities and Exchange Commission.

"Section 404" means Section 404 of the Sarbanes-Oxley Act of 2002 (15 USC §7201 et seq.) and the SEC's rules and regulations promulgated thereunder.

"Section 404 report" means management's report on "internal control over financial reporting" as defined by the SEC and the related attestation report of the independent certified public accountant.

"SOX compliant entity" means an entity that either is required to be compliant with, or voluntarily is compliant with, all of the following provisions of the Sarbanes-Oxley Act of 2002 (15 USC §7201 et seq.): (i) the preapproval requirements of Section 201 (Section 10A(i) of the Securities Exchange Act of 1934 (15 USC §78a et seq.)); (ii) the Audit Committee independence requirements of Section 301 (Section 10A(m)(3) of the Securities Exchange Act of 1934 (15 USC §78a et seq.)); and (iii) the internal control over financial reporting requirements of Section 404 (Item 308 of SEC Regulation S-K).

"Workpapers" means the records kept by the accountant of the procedures followed, the tests performed, the information obtained, and the conclusions reached pertinent to the accountant's examination of the financial statements of an insurer. Workpapers, accordingly, may include work programs, analyses, memoranda, letters of confirmation and representation, abstracts of company documents, and schedules or commentaries prepared or obtained by the accountant in the course of the examination of the financial statements of an insurer and which support the accountant's opinion thereof.

## **14VAC5-270-50. Filing General requirements related to filing and extensions for filing of annual Audited Financial Reports and Audit Committee appointment.**

A. All insurers shall have an annual audit by an ~~Accountant~~ accountant and shall file an Audited Financial Report with the ~~Commission~~ commission on or before the applicable due date for the year ~~ended~~ ending the immediately preceding December 31 ~~immediately preceding~~.

The ~~Commission~~ commission may require an insurer to file an Audited Financial Report earlier than the due date with 90 days advance notice to the insurer.

B. An extension of the due date filing date may be granted by the ~~Commission~~ commission for periods of up to 30 days upon a showing by the insurer and its ~~Accountant~~ accountant of the reasons for requesting ~~such an~~ extension and upon determination by the ~~Commission~~ commission of good cause for an extension. The request for extension ~~must~~ shall be submitted in writing not less than 10 days prior to the due date in sufficient detail to permit the ~~Commission~~ commission to make an informed decision with respect to the requested extension.

C. If an extension is granted in accordance with the provisions of subsection B of this section, an extension of 30 days also is granted to the filing of Management's Reports of Internal Control over Financial Reporting.

D. An insurer required to file an annual Audited Financial Report pursuant to this chapter shall designate a group of individuals as constituting its Audit Committee. The Audit Committee of an entity that controls an insurer may be deemed to be the insurer's Audit Committee for purposes of this chapter at the election of the controlling person.

## **14VAC5-270-60. Contents of annual Audited Financial Report.**

The annual Audited Financial Report shall report the financial position of the insurer as of the end of the most recent calendar year and the results of its operations, cash ~~flows~~ flow, and changes in capital and surplus for the year then ended in conformity with statutory accounting practices prescribed, or otherwise permitted, by the insurer's state of domicile. The annual Audited Financial Report shall include the following:

1. Report of independent ~~Certified Public Accountant~~ certified public accountant.
2. Balance sheet reporting admitted assets, liabilities, capital, and surplus.
3. Statement of operations.
4. Statement of cash ~~flows~~ flow.
5. Statement of changes in capital and surplus.
6. Notes to financial statements. These notes shall be those required by the appropriate annual statement and NAIC accounting practices and procedures manual. The notes shall include a reconciliation of differences, if any, between the audited statutory financial statements and the annual statement filed pursuant to §§38.2-1300, 38.2-4126 or 38.2-4307 of the Code of Virginia with a written description of the nature of these differences.

7. The financial statements included in the annual Audited Financial Report shall be prepared in a form and using language and groupings substantially the same as the relevant sections of the annual statement the insurer filed with the commission, and the financial statements shall be comparative, presenting the amounts as of December 31 of the current year and the amounts as of the immediately preceding December 31. However, in the first year in which an insurer is required to file an Audited Financial Report, the comparative data may be omitted.

**14VAC5-270-70. Designation of ~~Independent Certified Public Accountant~~ independent certified public accountant.**

A. Each insurer required by this chapter to file an annual Audited Financial Report, ~~must~~ within 60 days after becoming subject to ~~such the~~ requirement, shall register with the commission in writing the name and address of the independent certified public accountant retained to conduct the annual audit set forth in this chapter.

B. As part of this registration, the insurer shall obtain a letter from the accountant and file a copy with the commission stating that the accountant is aware of the provisions of the insurance code and the rules and regulations of the insurance department of the state of domicile that relate to accounting and financial matters, and affirming that ~~he~~ the accountant will express ~~his~~ an opinion on the financial statements in ~~the~~ terms of their conformity to the statutory accounting practices prescribed or otherwise permitted by that department, specifying such exceptions as ~~he~~ the accountant may believe appropriate.

C. If the accountant who was the insurer's accountant for the immediately preceding filed Audited Financial Report is dismissed or resigns, the insurer shall notify the commission within five business days of this event. The insurer also shall furnish the commission with a separate letter within 10 business days of the above notification stating whether in the 24 months preceding ~~such the~~ event there were any disagreements with the former accountant on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, ~~which disagreements~~, if not resolved to the satisfaction of the former accountant, would have caused ~~him~~ the accountant to make reference to the subject matter of the disagreement in ~~his~~ the opinion. The disagreements required to be reported in response to this ~~section~~ subsection include those resolved to the former accountant's satisfaction and those not resolved to the former accountant's satisfaction. Disagreements contemplated by this ~~section~~ subsection are those that occur at the decision-making level, i.e., between personnel of the insurer responsible for presentation of its financial statements and personnel of the accounting firm responsible for rendering its report. The insurer also in writing shall request ~~such the~~ former accountant to furnish a letter addressed to the

insurer stating whether the accountant agrees with the statements contained in the insurer's letter and, if not, stating the reasons for disagreement; and the insurer shall furnish ~~such a~~ responsive letter from the former accountant to the commission together with its own letter.

**14VAC5-270-80. Qualifications of accountant.**

A. The commission shall not recognize a person or firm as a qualified accountant if that person or firm:

1. Is not in good standing with the AICPA and in all states in which the accountant is licensed to practice, or, for a Canadian or British company, that is not a chartered accountant; or
2. Has either directly or indirectly entered into an agreement of indemnity or release from liability, collectively referred to as indemnification, with respect to the audit of the insurer.

B. Except as otherwise provided in this chapter, the commission shall recognize an independent ~~Certified Public Accountant~~ certified public accountant as qualified as long as ~~he or she~~ the accountant conforms to the standards of ~~his or her~~ the profession, as contained in the AICPA Code of Professional Conduct ~~of the AICPA~~ and the Rules and Regulations, including the Standards of Practice, regulations of the Virginia Board of Accountancy (18VAC5-21) or similar code.

C. A qualified independent ~~Certified Public Accountant~~ certified public accountant may enter into an agreement with an insurer to have disputes relating to an audit resolved by mediation or arbitration. However, in the event of a delinquency proceeding commenced against the insurer under Chapter 15 (§38.2-1500 et seq.) of Title 38.2 of the Code of Virginia, the mediation or arbitration provisions shall operate at the option of the statutory successor.

D. ~~No partner or other person responsible for rendering a report~~ The lead (or coordinating) audit partner (having primary responsibility for the audit) may not act in that capacity for more than ~~seven~~ five consecutive years. ~~Following any period of service, such~~ The person shall be disqualified from acting in that or a similar capacity for the same company or its insurance subsidiaries or affiliates for a period of ~~two~~ five consecutive years. An insurer may make application to the commission for relief from the above rotation requirement on the basis of unusual circumstances. This application shall be made at least 30 days before the end of the calendar year. The commission may consider the following factors in determining if the relief should be granted:

1. Number of partners, expertise of the partners or the number of insurance clients in the currently registered firm;
2. Premium volume of the insurer; or

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3. Number of jurisdictions in which the insurer transacts business.

The insurer shall file, with its annual statement filing, the commission's letter granting relief from this subsection with the states in which it is licensed or doing business and with the NAIC. If the nondomestic state accepts electronic filing with the NAIC, the insurer shall file the letter granting relief in an electronic format acceptable to the NAIC.

E. The commission shall not recognize as a qualified accountant, ~~nor~~ or accept any annual Audited Financial Report prepared in whole or in part by; any person who:

1. Has been convicted of fraud, bribery, a violation of the Racketeer Influenced and Corrupt Organizations Act (~~48 USC §§1961-1968~~) (18 USC §1961 et seq.) or any dishonest conduct or practices under federal or state law;
2. Has violated the insurance laws of this Commonwealth with respect to any previous reports submitted under this chapter; or
3. Has demonstrated a pattern or practice of failing to detect or disclose material information in previous reports filed under the provisions of this chapter.

F. The commission may: (i) make a determination as to whether an accountant is qualified and may, based upon the facts considered, determine that such accountant is not qualified for purposes of expressing an opinion on the financial statements in the annual Audited Financial Report made pursuant to this chapter; and (ii) require the insurer to replace such accountant with another whose relationship with the insurer is qualified within the meaning of this chapter.

G. The commission shall not recognize as a qualified independent certified public accountant or accept an annual Audited Financial Report prepared in whole or in part by an accountant who provides to an insurer, contemporaneously with the audit, the following nonaudit services:

1. Bookkeeping or other services related to the accounting records or financial statements of the insurer;
2. Financial information systems design and implementation;
3. Appraisal or valuation services, fairness opinions or contribution-in-kind reports;
4. Actuarially oriented advisory services involving the determination of amounts recorded in the financial statements. The accountant may assist an insurer in understanding the methods, assumptions and inputs used in the determination of amounts recorded in the financial statement only if it is reasonable to conclude that the services provided will not be subject to audit procedures during an audit of the insurer's financial statements. An accountant's actuary may also issue an actuarial opinion or

certification (opinion) on an insurer's reserves if the following conditions have been met:

- a. Neither the accountant nor the accountant's actuary has performed any management functions or made any management decisions;
- b. The insurer has competent personnel (or engages a third-party actuary) to estimate the reserves for which management takes responsibility; and
- c. The accountant's actuary tests the reasonableness of the reserves after the insurer's management has determined the amount of the reserves;

5. Internal audit outsourcing services;

6. Management functions or human resources;

7. Broker or dealer, investment adviser, or investment banking services;

8. Legal services or expert services unrelated to the audit; or

9. Any other services that the commission determines, by regulation, are impermissible.

(In general, the principles of independence with respect to services provided by the accountant are largely predicated on three basic principles, violations of which would impair the accountant's independence. These principles are that the accountant cannot function in the role of management, cannot audit his own work, and cannot serve in an advocacy role for the insurer.)

H. Insurers having direct written and assumed premiums of less than \$100 million in any calendar year may request an exemption from subsection G of this section. The insurer shall file with the commission a written statement discussing the reasons why the insurer should be exempt from these provisions. An exemption may be granted if the commission finds, upon review of this statement, that compliance with this chapter would constitute a financial or organizational hardship upon the insurer.

I. An accountant who performs the audit may engage in other nonaudit services, including tax services, that are not described in or that do not conflict with subsection G of this section, only if the activity is approved in advance by the Audit Committee, in accordance with subsection J of this section.

J. All auditing services and nonaudit services provided to an insurer by the accountant of the insurer shall be preapproved by the Audit Committee. The preapproval requirement is waived with respect to nonaudit services if the insurer is a SOX compliant entity or a direct or indirect wholly-owned subsidiary of a SOX compliant entity or:

1. The aggregate amount of all nonaudit services provided to the insurer constitutes not more than 5.0% of the total

amount of fees paid by the insurer to its accountant during the fiscal year in which the nonaudit services are provided;

2. The services were not recognized by the insurer at the time of the engagement to be nonaudit services; and

3. The services are promptly brought to the attention of the Audit Committee and approved prior to the completion of the audit by the Audit Committee or by one or more members of the Audit Committee who are the members of the board of directors to whom authority to grant such approvals has been delegated by the Audit Committee.

K. The Audit Committee may delegate to one or more designated members of the Audit Committee the authority to grant the preapprovals required by subsection J of this section. The decisions of any member to whom this authority is delegated shall be presented to the full Audit Committee at each of its scheduled meetings.

L. The commission shall not recognize an accountant as qualified for a particular insurer if a member of the board, president, chief executive officer, controller, chief financial officer, chief accounting officer, or any person serving in an equivalent position for that insurer was employed by the accountant and participated in the audit of that insurer during the one-year period preceding the date that the most current statutory opinion is due. This subsection shall only apply to partners and senior managers involved in the audit. An insurer may make application to the commission for relief from the above requirement on the basis of unusual circumstances.

The insurer shall file, with its Annual Statement filing, the commission's letter granting relief from this subsection with the states in which it is licensed or doing business and the NAIC. If the nondomestic state accepts electronic filing with the NAIC, the insurer shall file the letter granting relief in an electronic format acceptable to the NAIC.

**14VAC5-270-90. Consolidated or combined audits.**

An insurer may make written application to the ~~Commission~~ commission for approval to include in its Audited Financial Report audited consolidated or combined financial statements in lieu of separate annual audited financial statements if the insurer is part of a group of insurance companies ~~which~~ that utilizes a pooling or 100% reinsurance agreement that affects the solvency and integrity of the insurer's reserves and ~~such~~ the insurer cedes all of its direct and assumed business to the pool. In such cases, a columnar consolidating or combining worksheet shall be filed with the report, as follows:

1. Amounts shown on the consolidated or combined Audited Financial Report shall be shown on the worksheet.
2. Amounts for each insurer subject to this section shall be stated separately.

3. Noninsurance operations may be shown on the worksheet on a combined or individual basis.

4. Explanations of consolidating and eliminating entries shall be included.

5. A reconciliation shall be included of any differences between the amounts shown in the individual insurer columns of the worksheet and comparable amounts shown on the Annual Statements of the insurers.

**14VAC5-270-100. Scope of ~~examination~~ audit and report of independent ~~Certified Public Accountant~~ certified public accountant.**

Financial statements furnished pursuant to 14VAC5-270-60 ~~hereof~~ shall be examined by an ~~Accountant~~ accountant. The ~~examination~~ audit of the insurer's financial statements shall be conducted in accordance with generally accepted auditing standards. In accordance with Auditing (AU) Section 319 of the AICPA Professional Standards, Consideration of Internal Control in a Financial Statement Audit, the accountant shall obtain an understanding of internal control sufficient to plan the audit. To the extent required by AU Section 319, for those insurers required to file a Management's Report of Internal Control over Financial Reporting pursuant to 14VAC5-270-148, the accountant should consider (as the term should consider is defined in Statements on Auditing Standards (SAS) No. 102 of the AICPA Professional Standards, Defining Professional Requirements in Statements on Auditing Standards) the most recently available report in planning and performing the audit of the statutory financial statements. Consideration ~~should also~~ shall be given to ~~such~~ other the procedures illustrated in the Financial Condition Examiner's Examiners Handbook promulgated by the ~~National Association of Insurance Commissioners~~ NAIC as the ~~Accountant~~ accountant deems necessary.

**14VAC5-270-110. Notification of adverse financial condition.**

A. The insurer required to furnish the annual Audited Financial Report shall require the ~~Accountant~~ accountant to report in writing within five business days to the board of directors or its ~~audit committee~~ Audit Committee any determination by the ~~Accountant~~ accountant that the insurer has materially misstated its financial condition as reported to the ~~Commission~~ commission as of the balance sheet date under examination or that the insurer does not meet its minimum statutory capital and surplus requirements as of that date pursuant to Virginia law. An insurer that has received a report pursuant to this ~~paragraph~~ subsection shall forward a copy of the report to the ~~Commission~~ commission within five business days of receipt of ~~such~~ the report and shall provide the ~~Accountant~~ accountant making the report with evidence of the report being furnished to the ~~Commission~~ commission. If the ~~Accountant~~ accountant fails to receive ~~such~~ the evidence within the required five business day period, the

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~~Accountant~~ accountant shall furnish to the ~~Commission~~ commission a copy of its report within the next five business days.

~~B. No Accountant~~ accountant shall be liable in any manner to any person for any statement made in connection with ~~the above paragraph~~ subsection A of this section if ~~such~~ the statement is made in good faith in compliance with ~~the above paragraph~~ subsection A of this section.

~~C. If the Accountant~~ accountant, subsequent to the date of the Audited Financial Report filed pursuant to this chapter, becomes aware of facts which might have affected ~~his~~ the report, the ~~Commission~~ commission notes the obligation of the ~~Accountant~~ accountant to take ~~such~~ action as prescribed in ~~Volume 1, AU Section 561 of the AICPA Professional Standards of the AICPA, Subsequent Discovery of Facts Existing at the Date of the Auditor's Report.~~

## **14VAC5-270-120. Report on significant deficiencies in internal controls Communicating internal control related matters identified in an audit.**

~~A. In addition to the annual audited financial statements~~ Audited Financial Report, each insurer shall furnish the ~~Commission~~ commission with a written ~~report~~ communication as to any unremediated material weaknesses in its internal controls over financial reporting identified during the audit. The communication shall be prepared by the Accountant describing significant deficiencies in the insurer's internal control structure noted by the Accountant during the audit. ~~Statement of Auditing Standards No. 60, Communication of Internal Control Structure Matters Noted in an Audit (AU Section 325 of the Professional Standards of the AICPA) requires an Accountant to communicate significant deficiencies (known as "reportable conditions") noted during a financial statement audit to the appropriate parties within an entity. No report should be issued if the Accountant does not identify significant deficiencies. If significant deficiencies are noted, the written report shall be filed annually by the insurer with the Commission~~ accountant within 60 days after the filing of the annual Audited Financial Statements. The insurer is required to provide a description of remedial actions taken or proposed to correct significant deficiencies, if such actions are not described in the ~~Accountant's report~~ Report, and shall contain a description of any unremediated material weakness (as the term material weakness is defined in SAS No. 112 of the AICPA Professional Standards, Communicating Internal Control Related Matters Identified in an Audit) as of the immediately preceding December 31 (so as to coincide with the Audited Financial Report discussed in 14VAC5-270-50 A) in the insurer's internal control over financial reporting identified by the accountant during the course of the audit of the financial statements. If no unremediated material weaknesses were identified, the communication should so state.

~~B. The insurer is required to provide a description of remedial actions taken or proposed to correct unremediated material weaknesses, if the actions are not described in the accountant's communication.~~

~~C. The insurer is expected to maintain information about significant deficiencies communicated by the independent certified public accountant. The information should be made available to the examiner conducting a financial condition examination for review and kept in a manner as to remain confidential.~~

## **14VAC5-270-130. Accountant's letter of qualifications.**

The ~~Accountant~~ accountant shall furnish the insurer in connection with, and for inclusion in, the filing of the annual Audited Financial Report, a letter stating:

1. That ~~he~~ the accountant is independent with respect to the insurer and conforms to the standards of his profession as contained in the AICPA's Code of Professional Conduct and pronouncements of its Financial Accounting Standards Board, and the Standards of Practice of the Virginia Board for Accountancy, or similar code.
2. The background and experience in general, and the experience in audits of insurers of the staff assigned to the engagement and whether each is an ~~Accountant~~ accountant. Nothing within this chapter shall be construed as prohibiting the ~~Accountant~~ accountant from utilizing ~~such~~ staff as ~~he deems~~ deemed appropriate where such use is consistent with the standards prescribed by generally accepted auditing standards.
3. That the ~~Accountant~~ accountant understands the annual Audited Financial Report, and that its opinion thereon will be filed in compliance with this chapter and that the ~~Commission~~ commission will be relying on this information in the monitoring and regulation of the financial position of insurers.
4. That the ~~Accountant~~ accountant consents to the requirements of 14VAC5-270-140 ~~of this chapter~~ and that the ~~Accountant~~ accountant consents and agrees to make available for review by the ~~Commission~~ commission, its designee or appointed agent, the workpapers, as defined in 14VAC5-270-40.
5. That the ~~Accountant~~ accountant is properly licensed by an appropriate state licensing authority and that he is a member in good standing in the AICPA.
6. That the ~~Accountant~~ accountant is in compliance with 14VAC5-270-80.

## **14VAC5-270-140. Availability and maintenance of CPA independent certified public accountant workpapers.**

Every insurer required to file the Audited Financial Report described in this chapter, shall require the ~~Accountant~~ accountant to make available for review by the ~~Commission's~~

commission's examiners, all workpapers prepared in the conduct of his examination the accountant's audit and any communications related to the audit between the Accountant accountant and the insurer, at the offices of the insurer, at the Commission commission or at any other reasonable place designated by the Commission commission. The insurer shall require that the Accountant accountant retain the workpapers and communications until the Commission commission has filed a Report on Examination covering the period of the audit, but no longer than seven years from the date of the audit report.

In the conduct of the aforementioned periodic review by the Commission's commission's examiners, it shall be agreed that photocopies of pertinent workpapers may be made and retained by the Commission commission. Such reviews Reviews by the Commission's commission's examiners shall be considered investigations and all workpapers and communications obtained during the course of such investigations shall be confidential.

**14VAC5-270-144. Requirements for Audit Committees.**

A. This section shall not apply to foreign or alien insurers licensed in Virginia or an insurer that is a SOX compliant entity or a direct or indirect wholly-owned subsidiary of a SOX compliant entity.

B. The Audit Committee shall be directly responsible for the appointment, compensation and oversight of the work of any accountant (including resolution of disagreements between management and the accountant regarding financial reporting) for the purpose of preparing or issuing the Audited Financial Report or related work pursuant to this chapter. Each accountant shall report directly to the Audit Committee.

C. Each member of the Audit Committee shall be a member of the board of directors of the insurer or a member of the board of directors of an entity elected pursuant to subsection F of this section.

D. In order to be considered independent for purposes of this section, a member of the Audit Committee may not, other than in the capacity as a member of the Audit Committee, the board of directors, or any other board committee, accept any consulting, advisory or other compensatory fee from the entity or be an affiliated person of the entity or subsidiary thereof. However, if Virginia law requires board participation by otherwise nonindependent members, that law shall prevail and such members may participate in the Audit Committee and be designated as independent for Audit Committee purposes, unless they are an officer or employee of the insurer or one of its affiliates.

E. If a member of the Audit Committee ceases to be independent for reasons outside the member's reasonable control, that member, with notice by the responsible entity to the commission, may remain an Audit Committee member of the responsible entity until the earlier of the next annual

meeting of the responsible entity or one year from the occurrence of the event that caused the member to be no longer independent.

F. To exercise the election of the controlling person to designate the Audit Committee for purposes of this chapter, the ultimate controlling person shall provide written notice to the commission of the affected insurers. Notification shall be made timely prior to the issuance of the statutory audit report and include a description of the basis for the election. The election can be changed through notice to the commission by the insurer, which shall include a description of the basis for the change. The election shall remain in effect for perpetuity, unless rescinded.

G. The Audit Committee shall require the accountant that conducts for an insurer any audit required by this chapter to timely report to the Audit Committee in accordance with the requirements of SAS No. 114 of the AICPA Professional Standards, The Auditor's Communication with those Charged with Governance, including:

1. All significant accounting policies and material permitted practices;
2. All material alternative treatments of financial information within statutory accounting principles that have been discussed with management officials of the insurer, ramifications of the use of the alternative disclosures and treatments, and the treatment preferred by the accountant; and
3. Other material written communications between the accountant and the management of the insurer, such as any management or schedule of unadjusted differences.

If an insurer is a member of an insurance holding company system, the reports required by this subsection may be provided to the Audit Committee on an aggregate basis for insurers in the holding company system, provided that any substantial differences among insurers in the system are identified to the Audit Committee.

H. The proportion of independent Audit Committee members shall meet or exceed the following criteria:

| Prior Calendar Year Direct Written and Assumed Premiums |   |   |
|---|---|---|
| \$0 - \$300 million                                     | Over \$300 million - \$500 million  | Over \$500 million  |
| No minimum requirements.<br>See Notes A and B.          | Majority (50% or more) of members shall be independent.<br>See Notes A and B. | Supermajority of members (75% or more) shall be independent.<br>See Note A. |

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Note A: The commission has authority afforded by state law to require the entity's board to enact improvements to the independence of the Audit Committee membership if the insurer is in a RBC level event, meets one or more of the standards of an insurer deemed to be in hazardous financial condition, or otherwise exhibits qualities of a troubled insurer.

Note B: All insurers with less than \$500 million in prior year direct written and assumed premiums are encouraged to structure their Audit Committees with at least a supermajority of independent Audit Committee members.

Note C: Prior calendar year direct written and assumed premiums shall be the combined total of direct premiums and assumed premiums from nonaffiliates for the reporting entities.

I. An insurer with direct written and assumed premiums, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, less than \$500 million may make application to the commission for a waiver from the requirements of this section based upon hardship. The insurer shall file, with its annual statement filing, the commission's letter granting relief from this section with the states in which it is licensed or doing business and the NAIC. If the nondomestic state accepts electronic filing with the NAIC, the insurer shall file the letter granting relief in an electronic format acceptable to the NAIC.

## **14VAC5-270-146. Conduct of insurer in connection with the preparation of required reports and documents.**

A. No director or officer of an insurer shall, directly or indirectly:

1. Make or cause to be made a materially false or misleading statement to an accountant in connection with any audit, review or communication required under this chapter; or
2. Omit to state, or cause another person to omit to state, any material fact necessary in order to make statements made, in light of the circumstances under which the statements were made, not misleading to an accountant in connection with any audit, review or communication required under this chapter.

B. No officer or director of an insurer, or any other person acting under the direction thereof, shall directly or indirectly take any action to coerce, manipulate, mislead or fraudulently influence any accountant engaged in the performance of an audit pursuant to this chapter if that person knew or should have known that the action, if successful, could result in rendering the insurer's financial statements materially misleading.

C. For purposes of subsection B of this section, actions that, "if successful, could result in rendering the insurer's financial

statements materially misleading" include, but are not limited to, actions taken at any time with respect to the professional engagement period to coerce, manipulate, mislead or fraudulently influence an accountant:

1. To issue or reissue a report on an insurer's financial statements that is not warranted in the circumstances (due to material violations of statutory accounting principles prescribed by the commission, generally accepted auditing standards, or other professional or regulatory standards);
2. Not to perform audit, review or other procedures required by generally accepted auditing standards or other professional standards;
3. Not to withdraw an issued report; or
4. Not to communicate matters to an insurer's Audit Committee.

## **14VAC5-270-148. Management's Report of Internal Control over Financial Reporting.**

A. An insurer required to file an Audited Financial Report pursuant to this chapter that has annual direct written and assumed premiums, excluding premiums reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of \$500 million or more shall prepare a report of the insurer's or group of insurers' internal control over financial reporting. The report shall be filed with the commission along with the Communicating Internal Control Related Matters Identified in an Audit pursuant to 14VAC5-270-120. Management's Report of Internal Control over Financial Reporting shall be as of the immediately preceding December 31.

B. Notwithstanding the premium threshold in subsection A of this section, the commission may require an insurer to file Management's Report of Internal Control over Financial Reporting if the insurer is in any RBC level event, or meets any one or more of the standards of an insurer deemed to be in hazardous financial condition pursuant to §§38.2-1038, 38.2-5505, 38.2-5506 and 38.2-5510 of the Code of Virginia.

C. An insurer or a group of insurers that is (i) directly subject to Section 404; (ii) part of a holding company system whose parent is directly subject to Section 404; (iii) not directly subject to Section 404 but is a SOX compliant entity; or (iv) a member of a holding company system whose parent is not directly subject to Section 404 but is a SOX compliant entity may file its or its parent's Section 404 Report and an addendum in satisfaction of this section's requirement provided that those internal controls of the insurer or group of insurers having a material impact on the preparation of the insurer's or group of insurer's audited statutory financial statements (those items included in 14VAC5-270-60) were included in the scope of the Section 404 Report. The addendum shall be a positive statement by management that there are no material processes with respect to the preparation

of the insurer's or group of insurers' audited statutory financial statements (those items included in 14VAC5-270-60) excluded from the Section 404 Report. If there are internal controls of the insurer or group of insurers that have a material impact on the preparation of the insurer's or group of insurer's audited statutory financial statements and those internal controls were not included in the scope of the Section 404 Report, the insurer or group of insurers may file (i) a Management's Report of Internal Control over Financial Reporting pursuant to this section, or (ii) the Section 404 Report and a Management's Report of Internal Control over Financial Reporting pursuant to this section for those internal controls that have a material impact on the preparation of the insurer's or group of insurers' audited statutory financial statements not covered by the Section 404 Report.

D. Management's Report of Internal Control over Financial Reporting shall include:

1. A statement that management is responsible for establishing and maintaining adequate internal control over financial reporting;
2. A statement that management has established internal control over financial reporting and an assertion, to the best of management's knowledge and belief, after diligent inquiry, as to whether its internal control over financial reporting is effective to provide reasonable assurance regarding the reliability of financial statements in accordance with statutory accounting principles;
3. A statement that briefly describes the approach or processes by which management evaluated the effectiveness of its internal control over financial reporting;
4. A statement that briefly describes the scope of work that is included and whether any internal controls were excluded;
5. Disclosure of any unremediated material weaknesses in the internal control over financial reporting identified by management as of the immediately preceding December 31. Management shall not conclude that the internal control over financial reporting is effective to provide reasonable assurance regarding the reliability of financial statements in accordance with statutory accounting principles if there is one or more unremediated material weaknesses in its internal control over financial reporting;
6. A statement regarding the inherent limitations of internal control systems; and
7. Signatures of the chief executive officer and the chief financial officer (or equivalent position or title).

E. Management shall document and make available upon financial condition examination the basis upon which its assertions, required in subsection D of this section, are made. Management may base its assertions, in part, upon its review,

monitoring, and testing of internal controls undertaken in the normal course of its activities.

1. Management shall have discretion as to the nature of the internal control framework used and the nature and extent of documentation in order to make its assertion in a cost effective manner and may include assembly of or reference to existing documentation.

2. Management's Report on Internal Control over Financial Reporting, required by subsection A of this section, and any documentation provided in support thereof during the course of a financial condition examination, shall be kept confidential by the commission.

#### **14VAC5-270-150. Exemptions.**

Upon written application of ~~any an~~ insurer, the ~~Commission~~ commission may grant an exemption from any provision and/or requirement of this chapter if the ~~Commission~~ commission finds, upon review of the application, that compliance with this chapter (~~14VAC5-270-10 et seq.~~) would constitute an undue financial or organizational hardship upon the insurer. An exemption may be granted at any time and from time to time for a specified period or periods. Upon written application of ~~any an~~ insurer, the ~~Commission~~ commission may, for a specified period or periods, permit an insurer to file annual Audited Financial Reports on some basis other than a calendar year basis.

#### **14VAC5-270-170. Canadian and British companies.**

A. ~~In the case of~~ For Canadian and British insurers, the annual Audited Financial Report shall be defined as the annual statement of total business on the form filed by ~~such~~ the companies with their domiciliary regulatory authority duly audited by an independent chartered accountant.

B. For ~~such~~ Canadian and British insurers, the letter ~~from the accountant~~ required in 14VAC5-270-70 shall state that the ~~Accountant~~ accountant is aware of the requirements relating to the annual Audited Financial Report filed with the ~~Commission~~ commission pursuant to this section and 14VAC5-270-50 and shall affirm that the opinion expressed is in conformity with ~~such~~ the requirements.

#### **14VAC5-270-174. Retention of independent certified public accountant on or after January 1, 2010, and other effective dates.**

A. Unless otherwise noted, the requirements of this chapter shall become effective for the reporting period ending December 31, 2010, and each year thereafter. An insurer or group of insurers not required to file a report because its total written premium is below the threshold that subsequently becomes subject to the reporting requirements shall have two years following the year the threshold is exceeded (but not earlier than December 31, 2010) to file a report. Likewise, an insurer acquired in a business combination shall have two

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calendar years following the date of acquisition or combination to comply with the reporting requirements.

B. The requirements of 14VAC5-270-80 D shall become effective for audits of the year beginning January 1, 2010, and thereafter.

C. The requirements of 14VAC5-270-144 shall become effective on January 1, 2010. An insurer or group of insurers that is not required to have independent Audit Committee members or only a majority of independent Audit Committee members (as opposed to a supermajority) because the total direct written and assumed premium is below the threshold and subsequently becomes subject to one of the independence requirements due to changes in premium shall have one year following the year the threshold is exceeded (but not earlier than January 1, 2010) to comply with the independence requirements. Likewise, an insurer that becomes subject to one of the independence requirements as a result of a business combination shall have one calendar year following the date of acquisition or combination to comply with the independence requirements.

## **14VAC5-270-180. Severability provision.**

If any ~~section or portion of a section provision~~ of this chapter (~~14VAC5-270-10 et seq.~~) or the applicability application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the requirement or the applicability chapter and the application of such the provision to other persons or circumstances shall not be affected thereby.

## DOCUMENTS INCORPORATED BY REFERENCE

AICPA Professional Standards, Volume 1, June 1, 2007, American Institute of Certified Public Accountants.

AICPA Professional Standards, Volume 2, June 1, 2007, American Institute of Certified Public Accountants.

V.A.R. Doc. No. R08-895; Filed September 26, 2007, 11:39 a.m.

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## **TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING**

### **BOARD FOR CONTRACTORS**

#### **Final Regulation**

**REGISTRAR'S NOTICE:** 8VAC50-30-240, 8VAC50-30-250, and 8VAC50-30-260, 18VAC50-30-210, and 18VAC50-30-230, although initially proposed as part of this regulatory action in Volume 23, Issue 13 of The Virginia Register of Regulations, were also proposed in a separate regulatory action, and were adopted and published in final form in Volume 23, Issue 12, effective April 2, 2007. Therefore, since

the aforementioned sections are already in effect, these sections have been omitted from this action.

**Title of Regulation:** **18VAC50-30. Individual License and Certification Regulations (amending 18VAC50-30-10, 18VAC50-30-40, 18VAC50-30-90, 18VAC50-30-100, 18VAC50-30-120, 18VAC50-30-130, 18VAC50-30-190, 18VAC50-30-200, 18VAC50-30-220).**

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

**Effective Date:** November 15, 2007.

**Agency Contact:** Eric Olson, Executive Director, Board for Contractors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-2785, FAX (804) 527-4401, TTY (804) 367-9753, or email [contractors@dpor.virginia.gov](mailto:contractors@dpor.virginia.gov).

#### **Summary:**

*The amendments establish a three-level certification program for water well systems providers. The amendments define entry requirements, list fees and set certificate maintenance procedures for this new program.*

**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.

#### **18VAC50-30-10. Definitions.**

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

"Apprentice" means a person who assists tradesmen while gaining knowledge of the trade through on-the-job training and related instruction in accordance with the Virginia Voluntary Apprenticeship Act (§40.1-117 et seq. of the Code of Virginia).

"Backflow prevention device work" means work performed by a backflow prevention device worker as defined in §54.1-1128 of the Code of Virginia.

"Building official/inspector" is an employee of the state, a local building department or other political subdivision who enforces the Virginia Uniform Statewide Building Code.

"Certified elevator mechanic" means an individual who is certified by the board who is engaged in erecting, constructing, installing, altering, servicing, repairing, testing or maintaining elevators, escalators, or related conveyances in accordance with the Uniform Statewide Building Code.

"Division" means a limited subcategory within any of the trades, as approved by the department.

"Electrical work" consists of, but is not limited to, the following: (i) planning and layout of details for installation or modifications of electrical apparatus and controls including

preparation of sketches showing location of wiring and equipment; (ii) measuring, cutting, bending, threading, assembling and installing electrical conduits; (iii) performing maintenance on electrical systems and apparatus; (iv) observation of installed systems or apparatus to detect hazards and need for adjustments, relocation or replacement; and (v) repairing faulty systems or apparatus.

"Electrician" means a tradesman who does electrical work including the construction, repair, maintenance, alteration or removal of electrical systems in accordance with the National Electrical Code and the Virginia Uniform Statewide Building Code.

"Formal vocational training" means courses in the trade administered at an accredited educational facility; or formal training, approved by the department, conducted by trade associations, businesses, the military, correspondence schools or other similar training organizations.

"Gas fitter" means an individual who does gas fitting-related work usually as a division within the HVAC or plumbing trades in accordance with the Virginia Uniform Statewide Building Code. This work includes the installation, repair, improvement or removal of liquefied petroleum or natural gas piping, tanks, and appliances annexed to real property.

"Helper" or "laborer" means a person who assists a licensed tradesman and who is not an apprentice as defined in this chapter.

"HVAC tradesman" means an individual whose work includes the installation, alteration, repair or maintenance of heating systems, ventilating systems, cooling systems, steam and hot water heating systems, boilers, process piping, backflow prevention devices, and mechanical refrigeration systems, including tanks incidental to the system.

"Incidental" means work that is necessary for that particular repair or installation.

"Journeyman" means a person who possesses the necessary ability, proficiency and qualifications to install, repair and maintain specific types of materials and equipment utilizing a working knowledge sufficient to comply with the pertinent provisions of the Virginia Uniform Statewide Building Code and according to plans and specifications.

"Liquefied petroleum gas fitter" means any individual who engages in, or offers to engage in, work for the general public for compensation in work that includes the installation, repair, improvement, alterations or removal of piping, liquefied petroleum gas tanks and appliances (excluding hot water heaters, boilers and central heating systems that require a heating, ventilation and air conditioning or plumbing certification) annexed to real property.

"Maintenance" means the reconstruction or renewal of any part of a backflow device for the purpose of maintaining its

proper operation. This does not include the actions of removing, replacing or installing, except for winterization.

"Master" means a person who possesses the necessary ability, proficiency and qualifications to plan and lay out the details for installation and supervise the work of installing, repairing and maintaining specific types of materials and equipment utilizing a working knowledge sufficient to comply with the pertinent provisions of the Virginia [ ~~Uniform~~ ] Statewide Building Code.

"Natural gas fitter provider" means any individual who engages in, or offers to engage in, work for the general public for compensation in the incidental repair, testing, or removal of natural gas piping or fitting annexed to real property, excluding new installation of gas piping for hot water heaters, boilers, central heating systems, or other natural gas equipment that requires heating, ventilation and air conditioning or plumbing certification.

"Periodic inspection" means to examine a cross connection control device in accordance with the requirements of the locality to be sure that the device is in place and functioning in accordance with the standards of the Virginia [ ~~Uniform~~ ] Statewide Building Code.

"Plumber" means an individual who does plumbing work in accordance with the Virginia [ ~~Uniform~~ ] Statewide Building Code.

"Plumbing work" means work that includes the installation, maintenance, extension, or alteration or removal of piping, fixtures, appliances, and appurtenances in connection with any of the following:

1. Backflow prevention devices;
2. Boilers;
3. Domestic sprinklers;
4. Hot water baseboard heating systems;
5. Hydronic heating systems;
6. Process piping;
7. Public/private water supply systems within or adjacent to any building, structure or conveyance;
8. Sanitary or storm drainage facilities;
9. Steam heating systems;
10. Storage tanks incidental to the installation of related systems;
11. Venting systems; or
12. Water heaters.

These plumbing tradesmen may also install, maintain, extend or alter the following:

1. Liquid waste systems;

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2. Sewerage systems;
3. Storm water systems; and
4. Water supply systems.

"Regulant" means an individual licensed as a tradesman, liquefied petroleum gas fitter, natural gas fitter provider or certified as a backflow prevention device worker or, elevator mechanic, or water well systems provider.

"Reinstatement" means having a license or certification card restored to effectiveness after the expiration date has passed.

"Renewal" means continuing the effectiveness of a license or certification card for another period of time.

"Repair" means the reconstruction or renewal of any part of a backflow prevention device for the purpose of returning to service a currently installed device. This does not include the removal or replacement of a defective device by the installation of a rebuilt or new device.

"Supervisor" means the licensed master or journeyman tradesman who has the responsibility to ensure that the installation is in accordance with the applicable provisions of the Virginia Uniform Statewide Building Code, one of whom must be on the job site at all times during installation.

"Testing organization" means an independent testing organization whose main function is to develop and administer examinations.

"Trade" means any of the following: electrical, gas fitting, HVAC (heating, ventilation and air conditioning), liquefied petroleum gas fitting, natural gas fitting, plumbing, and divisions within them.

"Water distribution systems" include fire sprinkler systems, highway/heavy, HVAC, lawn irrigation systems, plumbing, or water purveyor work.

## Part II

### Entry

#### **18VAC50-30-40. Evidence of ability and proficiency.**

A. Applicants for examination to be licensed as a journeyman shall furnish evidence that one of the following experience and education standards has been attained:

1. Four years of practical experience in the trade and 240 hours of formal vocational training in the trade. Experience in excess of four years may be substituted for formal vocational training at a ratio of one year of experience for 80 hours of formal training, but not to exceed 200 hours;
2. Four years of practical experience and 80 hours of vocational training for liquefied petroleum gas fitters and natural gas fitter providers except that no substitute experience will be allowed for liquefied petroleum gas and natural gas workers;

3. An associate degree or a certificate of completion from at least a two-year program in a tradesman-related field from an accredited community college or technical school as evidenced by a transcript from the educational institution and two years of practical experience in the trade for which licensure is desired;

4. A bachelor's degree received from an accredited college or university in an engineering curriculum related to the trade and one year of practical experience in the trade for which licensure is desired; or

5. On or after July 1, 1995, an applicant with 10 years of practical experience in the trade as verified by reference letters of experience from any of the following: building officials, building inspectors, current or former employers, contractors, engineers, architects or current or past clients attesting to the applicant's work in the trade, may be granted permission to sit for the journeyman's level examination without having to meet the educational requirements.

B. Applicants for examination to be licensed as a master shall furnish evidence that one of the following experience standards has been attained:

1. Evidence that they have one year of experience as a licensed journeyman; or

2. On or after July 1, 1995, an applicant with 10 years of practical experience in the trade, as verified by reference letters of experience from any of the following: building officials, building inspectors, current or former employers, contractors, engineers, architects or current or past clients, attesting to the applicant's work in the trade, may be granted permission to sit for the master's level examination without having to meet the educational requirements.

C. Individuals who have successfully passed the Class A contractors trade examination prior to January 1, 1991, administered by the Virginia Board for Contractors in a certified trade shall be deemed qualified as a master in that trade in accordance with this chapter.

D. Applicants for examination to be certified as a backflow prevention device worker shall furnish evidence that one of the following experience and education standards has been attained:

1. Four years of practical experience in water distribution systems and 40 hours of formal vocational training in a school approved by the board; or

2. Applicants with seven or more years of experience may qualify with 16 hours of formal vocational training in a school approved by the board.

The board accepts the American Society of Sanitary Engineers' (ASSE) standards for testing procedures. Other programs could be approved after board review. The board

requires all backflow training to include instruction in a wet lab.

E. An applicant for certification as an elevator mechanic shall:

1. Have three years of practical experience in the construction, maintenance and service/repair of elevators, escalators, or related conveyances; 144 hours of formal vocational training; and satisfactorily complete a written examination administered by the board. Experience in excess of four years may be substituted for formal vocational training at a ratio of one year of experience for 40 hours of formal training, but not to exceed 120 hours;
2. Have three years of practical experience in the construction, maintenance, and service/repair of elevators, escalators, or related conveyances and a certificate of completion of the elevator mechanic examination of a training program determined to be equivalent to the requirements established by the board; or
3. Successfully complete an elevator mechanic apprenticeship program that is approved by the Virginia Apprenticeship Council or registered with the Bureau of Apprenticeship and Training, U.S. Department of Labor, as evidenced by providing a certificate of completion or other official document, and satisfactorily complete a written examination administered by the board.

F. Pursuant to §54.1-1129 D of the Code of Virginia, an applicant for examination as a certified water well systems provider shall provide satisfactory proof to the board of at least:

1. One year of full-time practical experience in the drilling, installation, maintenance, or repair of water wells or water well systems under the supervision of a certified master water well systems provider to qualify for examination as a trainee water well systems provider; or
2. Three years of practical experience in the drilling, installation, maintenance, or repair of water wells or water well systems under the supervision of a certified master water well systems provider and 24 hours of formal vocational training in the trade to qualify for examination as a journeyman water well systems provider; or
3. Six years of practical experience in the drilling, installation, maintenance, or repair of water wells or water well systems under the supervision of a certified master water well systems provider and 48 hours of formal vocational training in the trade to qualify for examination as a master water well systems provider.

**18VAC50-30-90. Fees for licensure and certification.**

A. Each check or money order shall be made payable to the Treasurer of Virginia. All fees required by the board are nonrefundable and shall not be prorated. The date of receipt

by the department or its agent is the date that will be used to determine whether or not it is on time. Fees remain active for a period of one year from the date of receipt and all applications must be completed within that time frame.

B. Fees are as follows:

|  |             |
|--|-------------|
| Original tradesman license by examination  | \$90        |
| Original tradesman license without examination   | \$90        |
| Card exchange (exchange of locality-issued card for state-issued Virginia tradesman license) | \$40        |
| Liquefied petroleum gas fitter   | \$90        |
| Natural gas fitter provider  | \$90        |
| Backflow prevention device worker certification  | \$90        |
| Elevator mechanic certification  | \$90        |
| <u>Water well systems provider certification</u>   | <u>\$90</u> |

**18VAC50-30-100. Fees for examinations.**

The examination fee shall consist of the administration expenses of the department resulting from the board's examination procedures and contract charges. Exam service contracts shall be established through competitive negotiation, in compliance with the Virginia Public Procurement Act (§2.2-4300 et seq. of the Code of Virginia). The current examination shall not exceed a cost of \$100 for the journeyman exam, \$125 for the master exam for any of the trades, or \$100 for the backflow prevention device worker ~~or~~ elevator mechanic exam, or water well systems provider exams.

**18VAC50-30-120. Renewal.**

A. Licenses and certification cards issued under this chapter shall expire two years from the last day of the month in which they were issued as indicated on the license or ~~device worker~~ certification card.

B. Effective with all licenses issued or renewed after December 31, 2007, as a condition of renewal or reinstatement and pursuant to §54.1-1133 of the Code of Virginia, all individuals holding tradesman licenses with the trade designations of plumbing, electrical and heating ventilation and cooling shall be required to satisfactorily complete three hours of continuing education for each designation and individuals holding licenses as liquefied petroleum gas fitters and natural gas fitter providers, one hour of continuing education, relating to the applicable building code, from a provider approved by the board in accordance with the provisions of this chapter.

C. Certified elevator mechanics, as a condition of renewal or reinstatement and pursuant to §54.1-1143 of the Code of

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Virginia, shall be required to satisfactorily complete eight hours of continuing education relating to the provisions of the Virginia [ ~~Uniform~~ ] Statewide Building Code pertaining to elevators, escalators and related conveyances. This continuing education will be from a provider approved by the board in accordance with the provisions of this chapter.

~~D.~~ D. Certified water well systems providers, as a condition of renewal or reinstatement and pursuant to §54.1-1129 B of the Code of Virginia, shall be required to satisfactorily complete eight hours of continuing education in the specialty of technical aspects of water well construction, applicable statutory and regulatory provisions, and business practices related to water well construction from a provider approved by the board in accordance with the provisions of this chapter.

~~D.~~ E. Renewal fees are as follows:

|  |             |
|--|-------------|
| Tradesman license                                | \$40        |
| Liquefied petroleum gas fitter license           | \$40        |
| Natural gas fitter provider license              | \$40        |
| Backflow prevention device worker certification  | \$40        |
| Elevator mechanic certification                  | \$40        |
| <u>Water well systems provider certification</u> | <u>\$40</u> |

All fees are nonrefundable and shall not be prorated.

~~E.~~ F. The board will mail a renewal notice to the regulant outlining procedures for renewal. Failure to receive this notice, however, shall not relieve the regulant of the obligation to renew. If the regulant fails to receive the renewal notice, a photocopy of the tradesman license or backflow prevention device worker certification card may be submitted with the required fee as an application for renewal within 30 days of the expiration date.

~~F.~~ G. The date on which the renewal fee is received by the department or its agent will determine whether the regulant is eligible for renewal or required to apply for reinstatement.

~~G.~~ H. The board may deny renewal of a tradesman license or a backflow prevention device worker certification card for the same reasons as it may refuse initial issuance or to discipline a regulant. The regulant has a right to appeal any such action by the board under the Virginia Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia).

~~H.~~ I. Failure to timely pay any monetary penalty, reimbursement of cost, or other fee assessed by consent order or final order shall result in delaying or withholding services provided by the department such as, but not limited to, renewal, reinstatement, processing of a new application, or exam administration.

## **18VAC50-30-130. Reinstatement.**

A. Should the Department of Professional and Occupational Regulation fail to receive the renewal application or fees within 30 days of the expiration date, the regulant will be required to apply for reinstatement of the ~~tradesman license, backflow prevention device worker certification card, or elevator mechanic certification card.~~

B. Reinstatement fees are as follows:

|  |               |
|--|---------------|
| Tradesman license                                | \$130*        |
| Liquefied petroleum gas fitter license           | \$130*        |
| Natural gas fitter provider license              | \$130*        |
| Backflow prevention device worker certification  | \$130*        |
| Elevator mechanic certification                  | \$130*        |
| <u>Water well systems provider certification</u> | <u>\$130*</u> |

\*Includes renewal fee listed in 18VAC50-30-120.

All fees required by the board are nonrefundable and shall not be prorated.

C. Applicants for reinstatement shall meet the requirements of 18VAC50-30-30.

D. The date on which the reinstatement fee is received by the department or its agent will determine whether the license or certification card is reinstated or a new application is required.

E. In order to ensure that license or certification card holders are qualified to practice as tradesmen, liquefied petroleum gas fitters, natural gas fitter providers, backflow prevention device workers ~~or~~, elevator mechanics, or water well systems providers, no reinstatement will be permitted once one year from the expiration date has passed. After that date the applicant must apply for a new license or certification card and meet the then current entry requirements.

F. Any tradesman, liquefied petroleum gas fitter, or natural gas fitter provider activity conducted subsequent to the expiration of the license may constitute unlicensed activity and may be subject to prosecution under Title 54.1 of the Code of Virginia. Further, any person who holds himself out as a certified backflow prevention device worker, as defined in §54.1-1128 of the Code of Virginia, or as a certified elevator mechanic, as defined in §54.1-1140 of the Code of Virginia, or as a water well systems provider as defined in §54.1-1129.1 of the Code of Virginia, without the appropriate certification, may be subject to prosecution under Title 54.1 of the Code of Virginia. Any activity related to the operating integrity of an elevator, escalator, or related conveyance, conducted subsequent to the expiration of an elevator mechanic certification may constitute illegal activity and may

be subject to prosecution under Title 54.1 of the Code of Virginia.

G. The board may deny reinstatement of a license or certification card for the same reasons as it may refuse initial issuance or to discipline a regulant. The regulant has a right to appeal any such action by the board under the Virginia Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia).

H. Failure to timely pay any monetary penalty, reimbursement of cost, or other fee assessed by consent order or final order shall result in delaying or withholding services provided by the department, such as, but not limited to, renewal, reinstatement, processing of a new application, or exam administration.

**18VAC50-30-190. Prohibited acts.**

Any of the following are cause for disciplinary action:

1. Failure in any material way to comply with provisions of Chapter 1 (§54.1-100 et seq.) or Chapter 11 (§54.1-1100 et seq.) of Title 54.1 of the Code of Virginia or the regulations of the board;
2. Furnishing substantially inaccurate or incomplete information to the board in obtaining, renewing, reinstating, or maintaining a license or certification card;
3. Where the regulant has failed to report to the board, in writing, the suspension or revocation of a tradesman, liquefied petroleum gas fitter or natural gas fitter provider license, certificate or card, or backflow prevention device worker or water well systems provider certification card, by another state or a conviction in a court of competent jurisdiction of a building code violation;
4. Gross negligence in the practice of a tradesman, liquefied petroleum gas fitter, natural gas fitter provider, backflow prevention device worker ~~or~~ elevator mechanic, or water well systems provider;
5. Misconduct in the practice of a tradesman, liquefied petroleum gas fitter, natural gas fitter provider, backflow prevention device worker ~~or~~ elevator mechanic, or water well systems provider;
6. A finding of improper or dishonest conduct in the practice of a tradesman, liquefied petroleum gas fitter, natural gas fitter provider, backflow prevention device worker ~~or~~ elevator mechanic, or water well systems provider by a court of competent jurisdiction;
7. For licensed tradesmen, liquefied petroleum gas fitters or natural gas fitter providers performing jobs under \$1,000, or backflow prevention device workers ~~or~~ elevator mechanics, or water well systems providers performing jobs of any amount, abandonment, the intentional and unjustified failure to complete work contracted for, or the retention or misapplication of funds paid, for which work

is either not performed or performed only in part (unjustified cessation of work under the contract for a period of 30 days or more shall be considered evidence of abandonment);

8. Making any misrepresentation or making a false promise of a character likely to influence, persuade, or induce;
9. Aiding or abetting an unlicensed contractor to violate any provision of Chapter 1 or Chapter 11 of Title 54.1 of the Code of Virginia, or these regulations; or combining or conspiring with or acting as agent, partner, or associate for an unlicensed contractor; or allowing one's license or certification to be used by an unlicensed or uncertified individual;
10. Where the regulant has offered, given or promised anything of value or benefit to any federal, state, or local government employee for the purpose of influencing that employee to circumvent, in the performance of his duties, any federal, state, or local law, regulation, or ordinance governing the construction industry;
11. Where the regulant has been convicted or found guilty, after initial licensure or certification, regardless of adjudication, in any jurisdiction of any felony or of a misdemeanor involving lying, cheating or stealing, sexual offense, drug distribution, physical injury, or relating to the practice of the profession, there being no appeal pending therefrom or the time of appeal having elapsed. Any pleas of guilty or nolo contendere shall be considered a conviction for the purposes of this subdivision. 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;
12. Having failed to inform the board in writing, within 30 days, that the regulant has pleaded guilty or nolo contendere or was convicted and found guilty of any felony or a misdemeanor involving lying, cheating, stealing, sexual offense, drug distribution, physical injury, or relating to the practice of the profession;
13. Having been disciplined by any county, city, town, or any state or federal governing body for actions relating to the practice of any trade ~~or~~ backflow prevention device work, or water well systems provider work, which action shall be reviewed by the board before it takes any disciplinary action of its own;
14. Failure to comply with the Virginia [~~Uniform~~] Statewide Building Code, as amended; ~~and~~
15. Practicing in a classification or specialty service for which the regulant is not licensed or certified; and
16. Failure to obtain any document required by the Virginia Department of Health for the drilling, installation, maintenance, repair, construction, or removal of water

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wells, water well systems, water well pumps, or other water well equipment.

## Part VI

### Vocational Training and Continuing Education Providers

#### **18VAC50-30-200. Vocational training.**

A. Vocational training courses must be completed through accredited colleges, universities, junior and community colleges; adult distributive, marketing and formal vocational training as defined in this chapter; Virginia Apprenticeship Council programs; or proprietary schools approved by the Virginia Department of Education.

B. Backflow prevention device worker courses must be completed through schools approved by the board. The board accepts the American Society of Sanitary Engineers' (ASSE) standards for testing procedures. Other programs could be approved after board review. The board requires all backflow training to include instruction in a wet lab.

C. Elevator mechanic courses must be completed through schools approved by the board. The board accepts training programs approved by the National Elevator Industry Education Program (NEIEP). Other programs could be approved after board review.

D. Water well systems provider courses must be completed through schools or programs approved by the board.

#### **18VAC50-30-220. Continuing education courses.**

A. All courses offered by continuing education providers must be approved by the board and shall cover articles of the current edition of the building code for the applicable license specialty. For tradesmen with the electrical specialty, the National Electrical Code; for tradesmen with the plumbing specialty, the International Plumbing Code; for tradesmen with HVAC specialty, the International Mechanical Code; for gas fitters, liquefied petroleum gas fitters, and natural gas fitters, the International Fuel Gas Code. Courses offered by continuing education providers for elevator mechanics shall cover articles of the current edition of the building code and other applicable laws governing elevators, escalators, or related conveyances. Courses offered by continuing education providers for water well systems providers shall cover the specialty of technical aspects of water well construction, applicable statutory and regulatory provisions, and business practices related to water well construction.

B. Approved continuing education providers shall submit an application for course approval on a form provided by the board. The application shall include but is not limited to:

1. The name of the provider and the approved provider number;
2. The name of the course;
3. The date(s), time(s), and location(s) of the course;

4. Instructor information, including name, license number(s) if applicable, and a list of other appropriate trade designations;

5. Course and material fees;

6. Course syllabus.

C. Courses may be approved retroactively; however, no regulant will receive credit toward the continuing education requirements of renewal until such approval is received from the board.

**NOTICE:** The forms used in administering 18VAC50-30, Individual License and Certification 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 Regulations, 9960 Mayland Avenue, Suite 400, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

#### [ FORMS

Tradesman License Application, 2710LIC (rev. ~~8/05~~ 8/07).

Backflow Prevention Device Worker Certification Application, 2710BPD (rev. ~~8/05~~ 8/07).

Elevator Mechanic Certification Application, 2710ELE (eff. ~~8/05~~ rev. 8/07).

Individual Experience Form, 2710EXP (eff. ~~7/05~~ rev. 8/07).

Vocational Training Form, 2710VOTR (eff. ~~7/05~~ rev. 8/07).

Education Provider Registration/Course Approval Application, 27edreg (eff. 8/06).

Certified Water Well System Provider Application, 2710WSP (eff. 11/07). ]

VA.R. Doc. No. R06-54; Filed September 13, 2007, 1:28 p.m.

## **BOARD OF DENTISTRY**

### **Fast-Track Regulation**

**Title of Regulation:** **18VAC60-20. Regulations Governing the Practice of Dentistry and Dental Hygiene (amending 18VAC60-20-17).**

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

#### Public Hearing Information:

October 26, 2007 - 8:50 a.m. - Perimeter Center, 9960 Mayland Drive, 2nd Floor, Richmond, VA

**Public comments:** Public comments may be submitted until 5 p.m. on November 14, 2007, to Sandra Reen, Executive Director, Board of Dentistry, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463.

**Effective Date:** November 29, 2007.

Agency Contact: Elaine J. Yeatts, Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4688, FAX (804) 527-4434 or email elaine.yeatts@dhp.virginia.gov.

Basis: Section 54.1-2400 of the Code of Virginia provides the Board of Dentistry the authority to promulgate regulations to administer the regulatory system and specifically provides authority to delegate fact-finding proceedings to an agency subordinate.

Purpose: In §2.2-4019 of the Administrative Process Act (APA), provisions for an informal fact-finding proceeding establish the rights of parties to a disciplinary case including the right to "appear in person or by counsel or other qualified representative before the agency or its subordinates, or before a hearing officer for the informal presentation of factual data, argument, or proof in connection with any case." A "subordinate" is defined in the APA as "(i) one or more but less than a quorum of the members of a board constituting an agency, (ii) one or more of its staff members or employees, or (iii) any other person or persons designated by the agency to act in its behalf." The proposed regulations specify that health regulatory boards can conduct fact-finding proceedings by delegation to a subordinate, the types of cases that are not appropriate for delegation and the criteria for a subordinate.

The board will retain the authority to determine whether to delegate any proceedings, the type of disciplinary case that could be delegated and who would serve as its subordinate. While certain standard of care cases may continue to be heard by board members appointed to a special conference committee, other disciplinary matters could be delegated to a person qualified by knowledge and background to determine the facts in the case. The fast-track amendments will allow the decision to delegate to be made at the time there is a determination of probable cause. The ability of a board to delegate certain cases through a proceeding conducted by a subordinate will alleviate the disciplinary burden for board members, ensure resolution in a timelier manner and reserve board member time for hearing cases that involve serious offenses of patient harm.

Rationale for Using Fast-Track Process: The fast-track process is being used to promulgate the amendments because there is general agreement with the changes proposed. The action was unanimously supported by the members of the board, so it is not believed that it will be controversial.

Substance: The amendments will clarify that a decision to delegate a case to an agency subordinate is to be made simultaneously with the determination of probable cause. If the board members and/or staff do not recommend delegation to a subordinate, delegation could still be approved by the board president or his designee. The amendments will eliminate the list of cases that may not be delegated to clarify that all cases may be subject to delegation.

Issues: The advantage to the public will be a speedier resolution of disciplinary cases. A respondent would have the rights under the Administrative Process Act; a proceeding before a subordinate would follow the process for an informal conference and the recommendation of the subordinate would be confirmed or amended by the full board.

There are no disadvantages to the agency or the Commonwealth. If adjudication of cases could be handled with the use of a subordinate rather than a committee of the board, there may be some advantages in resolution of cases and a modest reduction in costs for informal fact-finding. Scheduling a single board member or an expert to sit as an agency subordinate will be easier than scheduling for two or more members, so it may be possible for cases to be heard more quickly.

#### Department of Planning and Budget's Economic Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Dentistry (Board) proposes to amend its Regulations Governing the Practice of Dentistry so that the Board, the Board's president or the president's designee can delegate, to an agency subordinate, the authority to hear disciplinary cases involving Board licensees.

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

Estimated Economic Impact. Current regulation allows the entire Board of Dentistry (Board) to delegate informal fact-finding proceedings (in disciplinary cases) to an agency subordinate once the Board determines that "probable cause exists that a practitioner may be subject to disciplinary action." This proposed regulatory change will also allow the President of the Board, or his designee, to delegate disciplinary fact finding hearings if the Board does not do so when the finding of probable cause is made. Under current regulation and under this proposed regulation, the recommendations of an agency subordinate would have to be confirmed by the full Board.

Although the Board has had the ability to delegate authority in disciplinary matters for some time, it has not done so in any cases thus far. The Department of Health Professions (DHP) expects that use of agency subordinates in disciplinary cases will likely increase once this regulatory change is promulgated. To the extent this regulatory change increases the number of cases delegated to agency subordinates, the Board's regulated entities as well as the general public are likely to benefit.

Qualified agency staff, or individual Board members, who would be used as agency subordinates are likely to have more flexible schedules which would allow them to convene fact finding proceedings more quickly than if the entire Board had to find time to meet. Because of this, rules that allow delegation to agency subordinates would likely result in disciplinary cases being resolved in a more timely manner.

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Individuals who have filed complaints against a licensee benefit from this regulatory change because these individuals will have their complaints resolved more quickly. The general public will likely, because of this regulatory change, have more expeditious access to information (disciplinary hearing outcomes) which might affect their health care decisions. Regulated entities will likely also benefit if disciplinary cases against them can be resolved more quickly. If they are innocent of any wrongdoing, quicker proceedings will allow them to clear their names more quickly. If, on the other hand, regulants have transgressed the rules that govern dentistry, fact finding by an agency subordinate will allow them to get, and therefore finish, their punishment more quickly.

DHP reports that costs associated with fact finding proceedings may slightly decrease because of the proposed regulation. Full board meetings, for instance, would be less likely to be extended to accommodate disciplinary proceeding that might more appropriately be handled by an agency subordinate. This will save the Board members time and will save the agency the costs associated with organizing the Board meeting for an extended time.

**Businesses and Entities Affected.** This proposed regulatory change will likely affect any Board regulants who are, or will be, the subject of disciplinary proceedings. Last year, the Board presided over 56 such proceedings. Other individuals who have an interest in the outcome of disciplinary proceedings will likely also be affected.

**Localities Particularly Affected.** No locality will be particularly affected by this proposed regulatory change.

**Projected Impact on Employment.** This proposed regulatory change will likely not affect employment in the Commonwealth.

**Effects on the Use and Value of Private Property.** This proposed regulation will likely have no substantive impact on the use or value of private property in the Commonwealth.

**Small Businesses: Costs and Other Effects.** Small businesses in the Commonwealth are unlikely to incur any extra expenses on account of this proposed regulatory change.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** Small businesses in the Commonwealth are unlikely to incur any extra expenses on account of this proposed regulatory change.

**Real Estate Development Cost.** This proposed regulation is unlikely to affect real estate development costs in the Commonwealth.

**Legal Mandate.** The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with §2.2-4007.04 of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 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, §2.2-4007.04 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 Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Dentistry concurs with the analysis of the Department of Planning and Budget for the proposed regulation, 18VAC60-20, Regulations Governing the Practice of Dentistry and Dental Hygiene, relating to delegation of informal fact-finding proceedings to an agency subordinate.

Summary:

*The amendments facilitate the delegation of disciplinary proceedings to an agency subordinate. The amendments will allow the decision about delegation to be made at the time board members or staff would review the investigative files to make a determination about whether probable cause exists to issue a notice for a disciplinary proceeding. If there is no recommendation for delegation at probable cause, the amendment will also allow the president of the board or his designee to delegate the case to a subordinate.*

**18VAC60-20-17. Criteria for delegation of informal fact-finding proceedings to an agency subordinate.**

A. Decision to delegate. In accordance with §54.1-2400 (10) of the Code of Virginia, the board may delegate an informal fact-finding proceeding to an agency subordinate ~~upon~~ at the time a determination is made that probable cause exists that a practitioner may be subject to a disciplinary action. If delegation to a subordinate is not recommended at the time of the probable cause determination, delegation may be approved by the president of the board or his designee.

~~B. Criteria for delegation. Cases that may not be delegated to an agency subordinate, except as may be approved by a committee of the board, include the following:~~

- ~~1. Intentional or negligent conduct that causes serious injury to a patient;~~
- ~~2. Impairment with an inability to practice with skill and safety;~~
- ~~3. Sexual misconduct;~~
- ~~4. Indiscriminate prescribing or dispensing;~~
- ~~5. Medication error in administration or dispensing; and~~
- ~~6. Unauthorized practice.~~

C. B. Criteria for an agency subordinate.

- 1. An agency subordinate authorized by the board to conduct an informal fact-finding proceeding may include current or past board members and professional staff or other persons deemed knowledgeable by virtue of their training and experience in administrative proceedings involving the regulation and discipline of health professionals.
- 2. The executive director shall maintain a list of appropriately qualified persons to whom an informal fact-finding proceeding may be delegated.
- 3. The board may delegate to the executive director the selection of the agency subordinate who is deemed appropriately qualified to conduct a proceeding based on the qualifications of the subordinate and the type of case being heard.

VA.R. Doc. No. R08-832; Filed September 26, 2007, 9:36 a.m.

**BOARD OF NURSING**

**Fast-Track Regulation**

Title of Regulation: **18VAC90-30. Regulations Governing the Licensure of Nurse Practitioners (adding 18VAC90-30-240).**

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

Public Hearing Information:

November 14, 2007 - 11:30 a.m. - Perimeter Center, 9960 Mayland Drive, 2nd Floor, Richmond, VA

Public comments: Public comments may be submitted until 5 p.m. on November 14, 2007.

Effective Date: November 29, 2007.

Agency Contact: Jay P. Douglas, R.N., Executive Director, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4515, FAX (804) 527-4455, or email jay.douglas@dhp.virginia.gov.

Basis: Section 54.1-2400 of the Code of Virginia establishes the general powers and duties of health regulatory boards

including the responsibility to promulgate regulations and to delegate informal fact-finding to an agency subordinate.

Purpose: One of the most important functions of the Department of Health Professions is the investigation and adjudication of disciplinary cases to ensure that the public is adequately protected if a health care professional violates a law or regulation. The adoption of these proposed rules gives another tool to these health regulatory boards seeking to bring closure to nurse practitioner cases in a timely manner by allowing cases to be delegated to an agency subordinate, who could be a single board member, former board member or staff person trained and qualified to conduct a fact-finding proceeding.

In §2.2-4019 of the Administrative Process Act (APA), provisions for an informal fact-finding proceeding establish the rights of parties to a disciplinary case including the right to "appear in person or by counsel or other qualified representative before the agency or its subordinates, or before a hearing officer for the informal presentation of factual data, argument, or proof in connection with any case." A "subordinate" is defined in the APA as "(i) one or more but less than a quorum of the members of a board constituting an agency, (ii) one or more of its staff members or employees, or (iii) any other person or persons designated by the agency to act in its behalf." The proposed regulations specify that health regulatory boards can conduct fact-finding proceedings by delegation to a subordinate, the types of cases that are not appropriate for delegation and the criteria for a subordinate.

The boards will retain the authority to determine whether to delegate any proceedings, the type of disciplinary case that could be delegated and who would serve as its subordinate. While more egregious standard of care cases may continue to be heard by board members appointed to a special conference committee, other disciplinary matters could be delegated to a person qualified by knowledge and background to determine the facts in the case and recommend a finding. Proposed regulations state the types of cases that may not be heard by a subordinate but leave the final decision of delegation to the chairman of the committee of the joint boards. The ability of a board to delegate certain cases through a proceeding conducted by a subordinate will alleviate the disciplinary burden for board members, ensure resolution in a timelier manner and reserve board member time for hearing more serious matters.

Rationale For Using Fast-Track Process: The boards have determined that a fast-track process is appropriate because there is no controversy with this action. The Board of Nursing has been routinely utilizing agency subordinates to hear disciplinary cases, so the process is well established. One of the subordinates employed by the board is a nurse practitioner and nurse educator who would be well-qualified for such cases, so it is generally agreed that regulatory

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authority to expedite the use of a subordinate would be beneficial to board members and the public alike.

Substance: Amendments to regulations for nurse practitioners establish the criteria for delegation, including the decision to delegate at the time of a probable cause determination, the types of cases that cannot be delegated except as may be approved by the chairman of the Committee of the Joint Boards, and the individuals who may be designated as agency subordinates.

Issues: The advantage to the public may be a speedier resolution of most disciplinary cases, but egregious cases involving patient harm could continue to be heard by a special conference committee.

There are no disadvantages to the agency or the Commonwealth. If adjudication of certain types of cases could be handled with the use of a subordinate rather than a committee of the board, there will be some advantages in resolution of cases and a modest reduction in costs for informal fact-finding. Scheduling a single board member or another trained individual to sit as an agency subordinate will be easier than scheduling for two or more members from two different boards, so it will be possible for cases to be heard more quickly. If the informal is conducted by three of the six members representing the Boards of Nursing and Medicine, then those members have a conflict in any subsequent hearing, so convening a formal hearing is extremely difficult. The use of a subordinate will facilitate hearings conducted for cases involving nurse practitioners.

## Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Committee of the Joint Boards of Nursing and Medicine (Committee) proposes to amend its Regulations Governing the Licensure of Nurse Practitioners so that the Committee can delegate, to an agency subordinate, the authority to hear disciplinary cases involving nurse practitioners.

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

Estimated Economic Impact. Under current regulation, the entire Committee of the Joint Boards of Nursing and Medicine (Committee) must meet to conduct informal fact finding proceedings (disciplinary hearings) when complaint is lodged against a nurse practitioner. This proposed regulatory change will allow the Committee to delegate informal fact-finding proceedings to a qualified agency subordinate once the Committee determines that "probable cause exists that a practitioner may be subject to disciplinary action." Under current regulation, and under this proposed regulation, the recommendations of an agency subordinate would have to be confirmed by the full Committee.

The Department of Health Professions (DHP) expects that the Committee will likely appoint agency subordinates for disciplinary cases which involve relatively minor conduct breaches. To the extent this regulatory change increases allows cases to be delegated to agency subordinates, the Committee's regulated entities as well as the general public are likely to benefit.

Qualified agency staff, or individual Committee members, who would be used as agency subordinates are likely to have more flexible schedules which would allow them to convene fact finding proceedings more quickly than if the entire Committee had to find time to meet. Because of this, rules that allow delegation to agency subordinates would likely result in disciplinary cases being resolved in a more timely manner. Individuals who have filed complaints against a licensee benefit from this regulatory change because these individuals will have their complaints resolved more quickly. The general public will likely, because of this regulatory change, have more expeditious access to information (disciplinary hearing outcomes) which might affect their health care decisions. Regulated entities will likely also benefit if disciplinary cases against them can be resolved more quickly. If they are innocent of any wrongdoing, quicker proceedings will allow them to clear their names more quickly. If, on the other hand, regulants have transgressed the rules that govern nurse practitioners, fact finding by an agency subordinate will allow them to get, and therefore finish, their punishment more quickly.

DHP reports that costs associated with fact finding proceedings may slightly decrease because of the proposed regulation. Full Committee meetings, for instance, would be less likely to be extended to accommodate disciplinary proceeding that might more appropriately be handled by an agency subordinate. This will save the Committee members time and will save the agency the costs associated with organizing the Committee meeting for an extended time.

Businesses and Entities Affected. This proposed regulatory change will likely affect any Committee regulants who are, or will be, the subject of disciplinary proceedings. Last year, the Committee presided over two such proceedings. Other individuals who have an interest in the outcome of disciplinary proceedings will likely also be affected.

Localities Particularly Affected. No locality will be particularly affected by this proposed regulatory change.

Projected Impact on Employment. This proposed regulatory change will likely not affect employment in the Commonwealth.

Effects on the Use and Value of Private Property. This proposed regulation will likely have no substantive impact on the use or value of private property in the Commonwealth.

Small Businesses: Costs and Other Effects. Small businesses in the Commonwealth are unlikely to incur any extra expenses on account of this proposed regulatory change.

Small Businesses: Alternative Method that Minimizes Adverse Impact. Small businesses in the Commonwealth are unlikely to incur any extra expenses on account of this proposed regulatory change.

Real Estate Development Cost. This proposed regulation is unlikely to affect real estate development costs in the Commonwealth.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with §2.2-4007.04 of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 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, §2.2-4007.04 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 Boards of Nursing and Medicine concur with the analysis of the Department of Planning and Budget for the proposed regulation, 18VAC90-30, Regulations Governing the Licensure of Nurse Practitioners, relating to delegation of informal fact-finding proceedings to an agency subordinate.

Summary:

*The amendments establish the criteria for delegation, including the decision to delegate at the time of a probable cause determination, the types of cases that may be delegated, and the individuals who may be designated as agency subordinates.*

**18VAC90-30-240. Delegation of proceedings.**

A. Decision to delegate. In accordance with §54.1-2400 (10) of the Code of Virginia, the Committee of the Joint Boards of Nursing and Medicine (committee) may delegate an informal fact-finding proceeding to an agency subordinate upon determination that probable cause exists that a nurse practitioner may be subject to a disciplinary action.

B. Criteria for delegation. Cases that involve intentional or negligent conduct that caused serious injury or harm to a patient may not be delegated to an agency subordinate, except as may be approved by the chair of the committee.

C. Criteria for an agency subordinate.

1. An agency subordinate authorized by the committee to conduct an informal fact-finding proceeding may include current or past board members and professional staff or other persons deemed knowledgeable by virtue of their training and experience in administrative proceedings involving the regulation and discipline of health professionals.

2. The Executive Director of the Board of Nursing shall maintain a list of appropriately qualified persons to whom an informal fact-finding proceeding may be delegated.

3. The committee may delegate to the executive director the selection of the agency subordinate who is deemed appropriately qualified to conduct a proceeding based on the qualifications of the subordinate and the type of case being heard.

VA.R. Doc. No. R08-829; Filed September 26, 2007, 9:35 a.m.

**Fast-Track Regulation**

Title of Regulation: **18VAC90-60. Regulations Governing the Registration of Medication Aides (amending 18VAC90-60-100).**

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

Public Hearing Information:

November 14, 2007 - 11:30 a.m. - Perimeter Center, 9960 Mayland Drive, 2nd Floor, Richmond, VA

Public comments: Public comments may be submitted until 5 p.m. on November 14, 2007.

Effective Date: November 29, 2007.

Agency Contact: Jay P. Douglas, R.N., Executive Director, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4515, FAX (804) 527-4455, or email jay.douglas@dhp.virginia.gov.

Basis: Section 54.1-2400 of the Code of Virginia establishes the general powers and duties of health regulatory boards

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including the responsibility to promulgate regulations, establish renewal schedules, and levy fees.

Purpose: Proposed amendments clarify the process for reinstatement of a lapsed registration for a medication aide. Subsection C of 18VAC90-60-100 provides that an individual who has allowed registration to lapse may renew within one renewal cycle by payment of the renewal fee and the late fee and attestation of completing the required continuing education. The amendment would make the process consistent by providing that a registration lapsed for more than one renewal cycle (one year) must reinstate and must provide evidence of completion of continuing education equal to eight hours of training in medication administration. Without amendments to the regulations, there would be a gap between the period in which the aide could renew with payment of a late fee (one year) and the period in which he could reinstate (after two years). It is a necessary correction for consistency with the change in the renewal cycle passed by the board in the final stage. Its adoption will ensure that medication aides are able to reinstate and resume employment in assisted living facilities and that they will have the continuing training necessary to safely administer medications.

Rationale For Using Fast-Track Process: The board has determined that a fast-track process is appropriate because there is no controversy with this action. It will eliminate an inconsistency that was created by a change in the renewal cycle adopted during the promulgation of final regulations.

Substance: Amendments to reinstatement of registration correctly provide that after a registration has been lapsed for more than one year, an individual must reinstate and must provide evidence of at least eight hours of continuing education, rather than the 16 hours as currently stated.

Issues: The advantage to the public of the amendment may be that it will facilitate the ability of an individual who has left employment as a medication aide in returning to that position with reinstatement of his registration requiring only eight hours of continuing education.

There are no disadvantages to the agency or the Commonwealth. It is anticipated that the amendments can be effective before any medication aide has had a registration lapsed for more than one year, so the inconsistency in the regulation will not affect any potential reinstatement process.

## Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Nursing (Board) proposes to amend its Regulations Governing the Registration of Medication Aides to reduce, from two years to one, the time that medication aides have to reinstate their registration after it lapses. The Board also proposes to change the language regarding continuing education requirements in the section of this regulation that

governs reinstatement of registration. Individuals who are reinstating their licenses will need to provide proof of completion for not more than eight hours of continuing education since their last renewal.

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

Estimated Economic Impact. The Board of Nursing recently finished promulgating new regulations to govern the registration of medication aides (these regulations became effective on July 1, 2007). When these regulations were first proposed, they included a biennial renewal cycle and included provision for anticipated continuing education requirements over the two year period of registration. During the final stage of executive branch review for these regulations, they were amended to allow for annual, rather than biennial, renewal. Renewal fees were correspondingly cut in half (from \$50 to \$25) and continuing education requirements were restated so that not more than eight hours of qualifying education per year was required (rather than not more than 16 hours per biennium). These changes were made because medication aide work is a lower paying, entry level, job which individuals tend to move away from doing fairly quickly. A shorter renewal cycle with correspondingly lower fees would tend to benefit regulants who don't end up working as medication aides for several years. The language in the reinstatement section of the regulations was overlooked, however, when the language was being amended to conform to a yearly schedule.

The Board now proposes to amend the reinstatement section of these regulations so that regulants have one year, rather than two, to reinstate their registration if they neglect to renew at the proper time. This change will realign the regulations so that, identically to the last proposed stage, regulants will have one additional renewal cycle to reinstate their registration. At the same time, the Board proposes to restate continuing education requirements in this section so that individuals reinstating their registration will have to complete not more than eight hours of education per year rather than not more than 16 hours every two years.

This registration program is very new and no medication aides have been registered yet. No individuals will need to renew, much less reinstate, their registration in the near future. These proposed regulatory changes will likely have no adverse economic impact on the regulated community.

Businesses and Entities Affected. These proposed regulatory changes will likely affect any individuals who will be registered as medication aides in the future. Since the Department of Health Professions (DHP) has just begun the process of approving programs to train medication aides, they do not have information on the anticipated demand for this type of registration.

Localities Particularly Affected. No locality will be particularly affected by this proposed regulatory change.

Projected Impact on Employment. This proposed regulatory change will likely not affect employment in the Commonwealth.

Effects on the Use and Value of Private Property. This proposed regulation will likely have no substantive impact on the use or value of private property in the Commonwealth.

Small Businesses: Costs and Other Effects. Small businesses in the Commonwealth are unlikely to incur any extra expenses on account of this proposed regulatory change.

Small Businesses: Alternative Method that Minimizes Adverse Impact. Small businesses in the Commonwealth are unlikely to incur any extra expenses on account of this proposed regulatory change.

Real Estate Development Cost. This proposed regulation is unlikely to affect real estate development costs in the Commonwealth.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with §2.2-4007.04 of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 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, §2.2-4007.04 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 Board of Nursing concurs with the analysis of the Department of Planning and Budget on the proposed fast-track amendments for 18VAC90-60, Regulations Governing the Registration of Medication Aides.

Summary:

*The amendment clarifies that reinstatement of a lapsed registration for a medication aide is necessary after one year rather than after two years and that the equivalent of one year of continuing education is required (eight hours), rather than the equivalent of two years (16 hours).*

## **18VAC90-60-100. Renewal or reinstatement of registration.**

### **A. Renewal of registration.**

1. Registered medication aides shall renew by the last day of their birth month each year.
2. The medication aide shall complete the application and submit it with the required fee and an attestation that he has completed continuing education as required by subsection B of this section.
3. Failure to receive the application for renewal shall not relieve the medication aide of the responsibility for renewing his registration by the expiration date.
4. The registration shall automatically lapse if the medication aide fails to renew by the expiration date.
5. Any person administering medications in an assisted living facility during the time a registration has lapsed shall be considered an illegal practitioner and shall be subject to prosecution under the provisions of §54.1-3008 of the Code of Virginia.

### **B. Continuing education required for renewal.**

1. In addition to hours of continuing education in direct client care required for employment in an assisted living facility, a medication aide shall have four hours each year of population-specific training in medication administration in the assisted living facility in which the aide is employed or a refresher course in medication administration offered by an approved program.
2. A medication aide shall maintain documentation of continuing education for a period of four years following the renewal period for which the records apply.
3. The board shall periodically conduct a random audit of at least 1.0% of its registrants to determine compliance. A medication aide selected for audit shall provide documentation as evidence of compliance within 30 days of receiving notification of the audit.
4. The board may grant an extension for compliance with continuing education requirements for up to one year, for good cause shown, upon a written request from the registrant prior to the renewal deadline.

### **C. Reinstatement of ~~certification~~ registration.**

1. An individual whose registration has lapsed for less than one renewal cycle may renew by payment of the renewal fee and late fee and attestation that he has completed all

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required continuing education for the period since his last renewal.

2. An individual whose registration has lapsed for more than ~~two years~~ one year shall:

- a. Apply for reinstatement of registration by submission of a completed application and fee;
- b. Provide evidence of completion of all required continuing education for the period since his last renewal, not to exceed ~~16~~ eight hours of training in medication administration;
- c. Retake the written and practical competency evaluation as required by the board; and
- d. Attest that there are no grounds for denial of registration as specified in §54.1-3007 of the Code of Virginia.

VA.R. Doc. No. R08-848; Filed September 26, 2007, 9:34 a.m.

## BOARD OF PHARMACY

### Final Regulation

Title of Regulation: **18VAC110-40. Regulations Governing Collaborative Practice Agreements (amending 18VAC110-40-10 through 18VAC110-40-50).**

Statutory Authority: §§54.1-2400, 54.1-3300, and 54.1-3300.1 of the Code of Virginia.

Effective Date: November 14, 2007.

Agency Contact: Elizabeth Scott Russell, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone 804-367-4456, FAX 804-527-4472, or email elizabeth.russell@dhp.virginia.gov.

Summary:

*The amendments clarify requirements for collaborative practice agreements between pharmacists and doctors of medicine, osteopathy, or podiatry.*

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.

### 18VAC110-40-10. Definitions.

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

"Agreement" means a collaborative practice agreement by which practitioners of medicine, osteopathy or podiatry and pharmacists enter into voluntary, written agreements to improve outcomes for their mutual patients using drug

therapies, laboratory tests, and medical devices, pursuant to the provisions of §54.1-3300.1 of the Code of Virginia.

"Committee" means an Informal Conference Committee, comprised of two members of the Board of Pharmacy and two members of the Board of Medicine.

"Pharmacist" means a pharmacist who holds an active license to practice pharmacy from the Virginia Board of Pharmacy ~~and who is a signatory to a collaborative practice agreement.~~

"Practitioner" means, notwithstanding the definition in §54.1-3401 of the Code of Virginia, a doctor of medicine, osteopathy, or podiatry who writes the order and is directly and ultimately responsible for the care of a patient being treated under an agreement and who holds an active license to practice from the Virginia Board of Medicine.

### 18VAC110-40-20. Signed authorization for an agreement.

A. The signatories to an agreement shall be a practitioner of medicine, osteopathy, or podiatry involved directly in patient care and a pharmacist involved directly in patient care. The practitioner may designate alternate practitioners, and the pharmacist may designate alternate pharmacists, provided the alternates are ~~also signatories to the agreement and are~~ involved directly in patient care at a location where patients ~~regularly~~ receive services.

B. An agreement shall only be implemented for an individual patient pursuant to an order from the practitioner for that patient ~~and only after written.~~ Documented informed consent from the patient ~~has been~~ shall be obtained by the practitioner who authorizes the patient to participate in the agreement or by the pharmacist who is also a party to the agreement. ~~A copy of the informed written consent from the patient shall be provided to the pharmacist.~~

1. The patient may decline to participate or withdraw from participation at any time.

2. Prior to giving consent to participate, the patient shall be informed by the practitioner or the pharmacist of the cooperative procedures that will be used pursuant to an agreement, and such discussion shall be documented in the patient record. ~~The procedures to be followed pursuant to an agreement shall be clearly stated on the informed consent form.~~

3. As part of the informed consent, the practitioner and the pharmacist shall provide written disclosure to the patient of any contractual arrangement with any other party or any financial incentive that may impact one of the party's decisions to participate in the agreement.

### 18VAC110-40-30. Approval of protocols outside the standard of care.

A. If a practitioner and a pharmacist intend to manage or treat a condition or disease state for which there is not a

protocol that is clinically accepted as the standard of care, the practitioner and pharmacist shall ~~submit a proposed protocol~~ apply for approval. The committee shall, in accordance with ~~§9-6-14-11~~ §2.2-4019 of the Code of Virginia, receive and review the proposed treatment protocol and recommend approval or disapproval to the boards.

~~B. For a proposed treatment protocol in which practitioner oversight increases from that which is the accepted standard of care, approval by the committee is not required. Application and approval are not needed for treatment of conditions for which there is an accepted standard of care, but for which the practitioner wants to increase the monitoring and oversight of the condition over what the protocol recommends.~~

C. In order to ~~request a protocol review by the committee~~ apply for approval of a protocol outside the standard of care, the practitioner and the pharmacist shall submit:

1. An application and required fee of \$750;
2. A copy of the proposed protocol; and
- ~~2~~ 3. Supporting documentation that the protocol ~~follows an acceptable standard of care~~ is safe and effective for the particular condition or disease state for which the practitioner and the pharmacist intend to manage or treat through an agreement.

**18VAC110-40-40. Content of an agreement and treatment protocol.**

A. An agreement shall contain treatment protocols that are clinically accepted as the standard of care within the medical and pharmaceutical professions.

B. The treatment protocol shall describe the disease state or condition, drugs or drug categories, drug therapies, laboratory tests, medical devices, and substitutions authorized by the practitioner.

C. The treatment protocol shall contain a statement by the practitioner that describes the activities the pharmacist is authorized to engage in, including:

1. The procedures, decision criteria, or plan the pharmacist shall follow when providing drug therapy management;
2. The procedures the pharmacist shall follow for documentation; and
3. The procedures the pharmacist shall follow for reporting activities and results to the practitioner.

~~D. An agreement shall be valid for a period not to exceed two years.~~ The signatories shall implement a procedure for periodically reviewing and, if necessary, revising the procedures and protocols of a collaborative agreement ~~at least every two years.~~

E. If either the practitioner or the pharmacist who is a party to the agreement has a change of location or change of ownership, that person shall notify the other party and all patients who are participants in the collaborative agreement.

**18VAC110-40-50. Record retention.**

A. Signatories to an agreement shall keep a copy of the agreement on file at their primary places of practice.

B. An order for a specific patient from the prescribing practitioner authorizing the implementation of drug therapy management pursuant to the agreement shall be noted in the patient's medical record and kept on file by the pharmacist.

~~C. A copy of the~~ The patient's documented informed ~~written~~ consent ~~from the patient~~ shall be ~~maintained in the patient's medical~~ retained by the practitioner in the patient record and kept on file along with the practitioner's order by the pharmacist in a readily retrievable manner.

VA.R. Doc. No. R06-198; Filed September 26, 2007, 9:32 a.m.

**DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION**

**Fast-Track Regulation**

Title of Regulation: **18VAC120-40. Virginia Professional Boxing and Wrestling Events Regulations (repealing 18VAC120-40-60).**

Statutory Authority: §54.1-831 of the Code of Virginia and 15 USC §6301 et seq.

Public Hearing Information: No public hearings are scheduled.

Public comments: Public comments may be submitted until December 14, 2007.

Effective Date: December 29, 2007.

Agency Contact: Karen W. O'Neal, Deputy Director for Regulatory Programs, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8537, FAX (804) 527-4299, TTY (804) 367-9753, or email karen.oneal@dpor.virginia.gov.

Basis: Section 54.1-831 of the Code of Virginia authorizes the department to promulgate Professional Boxing and Wrestling Event Regulations.

Purpose: The purpose of the proposal is to repeal the section authorizing the Professional Boxing and Wrestling Task Force (18VAC120-40-60) due to the creation of the Professional Boxing, Wrestling and Martial Arts Advisory Board in statute effective 07/01/07.

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Substance: The action repeals the section authorizing the Professional Boxing and Wrestling Task Force (18VAC120-40-60).

Issues: There are no advantages or disadvantages to the public, the agency, or the Commonwealth. The same advisory body that provided industry advice to the department in accordance with the regulations is now included in the Code of Virginia.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Department of Professional and Occupational Regulation (Department) proposes to amend the regulation to eliminate the Professional Boxing and Wrestling Task Force.

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

Estimated Economic Impact. The current regulation 18VAC120-40-60 authorizes the Professional Boxing and Wrestling Task Force. The proposed amendment will repeal this regulation, thereby eliminating the Task Force. The reason for the change is the statutory creation of the Professional Boxing, Wrestling and Martial Arts Advisory Board (Board) effective 07/01/07 (2007 Acts of Assembly, Ch.853). Like the Board, the Task Force is appointed by the Department director and members serve the director as advisors on any matters relating to professional boxing and wrestling events in the Commonwealth. The Task Force is composed of five members: one representative of the sport of boxing, one representative of the sport of wrestling, one representative of the sport of boxing or wrestling and two citizen members. The Board is composed of seven members: one representative of the sport of boxing, one representative of the sport of wrestling, one representative of the sport of nontraditional mixed martial arts, one representative of either the sport of boxing, wrestling or nontraditional mixed martial arts, one member who is a martial arts instructor who has obtained the rank of black belt or higher, and two citizen members. Other than the increased structure that the legislation gives the Board (e.g., the Board will elect a chairman and vice chairman from among its members, the Board will meet monthly to conduct its business or upon the call of the Director or chair, etc.), the only significant difference between the Task Force and the Board is in their composition.

The benefit of the elimination of the Task Force is avoiding the duplication of tasks: the Board serves the same purpose as the Task Force. The cost is that with the addition of the martial arts representation, the wrestling and boxing communities will have less of a voice on the Board than they do on the Task Force. This could impact the wrestling and boxing communities. However, because the Task Force already has one member who is a representative of the sport

of martial arts (because martial arts falls under the category of boxing) and because discussions with the wrestling community indicate that the elimination of the Task Force will not have an impact, the benefit of this amendment should outweigh the cost.

Businesses and Entities Affected. The proposed changes will affect the 100 boxers, 496 wrestlers, 27 promoters, 119 trainers, seconds, and cutmen, and 14 managers in the Commonwealth of Virginia as of July 1, 2007.

Localities Particularly Affected. The proposed change does not disproportionately affect any specific localities in the Commonwealth.

Projected Impact on Employment. The proposed change is not anticipated to have any impact on employment.

Effects on the Use and Value of Private Property. The proposed change is not anticipated to have any effect on the use and value of private property.

Small Businesses: Costs and Other Effects. The proposed change is not anticipated to add cost or otherwise affect small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposal does not add cost or otherwise affect small businesses.

Real Estate Development Costs. The proposed amendments do not create additional costs related to the development of real estate for commercial or residential purposes.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with §2.2-4007.04 of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 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, §2.2-4007.04 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 department concurs with the economic impact analysis performed by the Department of Planning and Budget.

Summary:

*18VAC120-40-60, Professional Boxing and Wrestling Task Force, will be deleted due to the addition of the Professional Boxing, Wrestling and Martial Arts Advisory Board in statute effective July 1, 2007.*

**18VAC120-40-60. Professional boxing and wrestling task force. (Repealed.)**

~~A. The director may appoint a professional boxing and wrestling task force, consisting of five members, which shall advise the director on any matters relating to professional boxing and wrestling events in the Commonwealth.~~

~~B. The task force shall be composed of one representative of the sport of boxing, one representative of the sport of wrestling and one representative of either the sport of boxing or wrestling, and two citizen members as defined in §§54.1-107 and 54.1-200 of the Code of Virginia. All members shall be residents of the Commonwealth.~~

~~C. Each task force member shall serve a four year term, except that of the initial appointments, one shall be for two years and one shall be for three years. No member shall serve more than two consecutive four year terms.~~

VA.R. Doc. No. R08-827; Filed September 18, 2007, 3:15 p.m.

**BOARD OF VETERINARY MEDICINE**

**Fast-Track Regulation**

**Title of Regulation: 18VAC150-20. Regulations Governing the Practice of Veterinary Medicine (amending 18VAC150-20-30, 18VAC150-20-100, 18VAC150-20-140; adding 18VAC150-20-220, 18VAC150-20-230, 18VAC150-20-240).**

Statutory Authority: §§54.1-2400 and 54.1-3813 of the Code of Virginia.

Public Hearing Information:

October 17, 2007 - 1 p.m. - Perimeter Center, 9960 Mayland Drive, 2nd Floor, Richmond, VA

Public comments: Public comments may be submitted until 5 p.m. on November 14, 2007, to Elizabeth Young, Executive Director, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233.

Effective Date: November 29, 2007.

Agency Contact: Elaine Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4688, FAX (804) 527-4434, or email elaine.yeatts@dhp.virginia.gov.

Basis: Section 54.1-2400 of the Code of Virginia establishes the general powers and duties of the Board of Veterinary Medicine including the authority to establish qualifications for registration, levy fees and promulgate regulations.

Section 54.1-3813 of the Code of Virginia establishes the requirement for registration of equine dental technicians, their scope of practice and the mandate for the board to promulgate regulations.

Purpose: The new regulations are mandated by Chapter 754 of the 2007 Acts of the Assembly. The goal of the regulation is to set out the minimal requirements for a person to become registered, including attestation from two veterinarians licensed in Virginia that they have observed the applicant and can attest to his skills and ability to practice as an equine dental technician. Since there are no approved schools or training programs for equine dental technicians and no examination of minimal competency, the acquisition of knowledge, skills and abilities will be obtained on the job. It is important to the health and safety of horses who will receive equine care that veterinarians whose practice is at least 50% equine will attest to the competency of the persons registered as equine dental technicians. Since the equine community within veterinary practice is primarily concerned about the well-being of the horses they care for, it is expected that recommendations for registration will provide such assurance of competency.

Rationale For Using Fast-Track Process: The board has adopted this proposal by a fast-track action for two reasons: (i) the language has been worked out with the proponents of the legislation in the equine dental community, the Virginia Veterinary Medical Association and members of the boards, so it should not have objection; and (ii) the law provides that no one can plane or level equine teeth unless they are a registered equine dental technician or a licensed veterinarian. There was no statutory authority to adopt emergency regulations, so the board is attempting to fast-track the promulgation of these regulations to allow persons to become registered as soon as possible.

Substance: Proposed amendments establish the qualifications for registration as an equine dental technician, including recommendations from at least two veterinarians licensed in Virginia who attest that at least 50% of their practice is equine, that they have observed the applicant and can attest to his competency to be registered; and one of the following: (i) current certification from the International Association of Equine Dentistry; (ii) completion of a board-approved certification program or training program; (iii) completion of a veterinary technician program that includes equine dentistry

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in the curriculum; or (iv) evidence of equine dental practice for at least five years and proof of 16 hours of continuing education in equine dentistry completed within the five years immediately preceding application for registration.

The regulations also set continuing education requirements for renewal of registration, establish fees for applications and renewals, and set out the standards of practice for equine dental technicians including the maintenance of patient records.

Issues: The primary advantage to the public is greater oversight and protection for the welfare of horses being treated by persons who do not hold a veterinary license. The disadvantage of the law (regulations can only implement the law) to the public may be the restriction on equine dental practice to only those who are registered as technicians or are licensed veterinarians. Blacksmiths and farriers who have traditionally planed or leveled equine teeth with hand tools will not be able to continue that practice unless they obtain registration from the board.

There are no advantages to the agency and the Commonwealth. The board had attempted to resolve the issue by adoption of a guidance document.

The remaining issue that has been raised by the equine dental technicians is the requirement for administration of sedation of a horse by a veterinarian when the planing or leveling of teeth is performed with the use of motorized tools or for the extraction of wolf teeth. The equine community objected to requiring the sedation be performed by a licensed veterinarian who is present and responsible for the animal while sedated. However, it was pointed out that the sedation requirement is explicitly stated in §54.1-3813 C of the Code of Virginia, so the regulations are written to require that such equine practice be in accordance with that section of the Code of Virginia. Regulations of the board cannot authorize an act that is prohibited by the law – namely sedation of a horse by its owner in order for an equine dental technician to plane or level teeth with motorized tools or to extract wolf teeth.

## Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 754 of the 2007 Acts of the Assembly, the Board of Veterinary Medicine (Board) proposes to add rules for registration of equine dental technicians to its Regulations Governing the Practice of Veterinary Medicine. At the same time, the Board proposes to delete obsolete fees from these regulations.

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

Estimated Economic Impact. During its 2007 session, the General Assembly passed legislation which made it illegal for anyone to plane or level a horse's teeth without being

registered as an equine dental technician (or being licensed as a veterinarian). This legislation also set forth criteria that the Board must use when registering equine dental technicians and directed the Board to set up regulations to 1) carry out the provisions of the legislation, 2) set fees for registration applications and renewals and 3) set requirements for evidence of continued competence (for registration renewal). Per statute, individuals who want to register as equine dental technicians will have to have:

- Written recommendation from two licensed veterinarians "with practice bases that are at least 50% equine" and
- Either 1) current certification from the International Association of Equine Dentistry (IAED) 2) evidence of completion of a Board approved certification or training program or 3) evidence of at least five years of practice as an equine dental technician as well as "proof of continued competency satisfactory to the Board."

The Board is proposing to amend its regulations to meet legislative requirements. In addition to adding language to these regulations that is non-discretionary (for example: language that is directly copied from the statute), the Board proposes to require, as proof of continuing competency for individuals seeking registration after five years of work experience, 16 hours of relevant continuing education completed sometime during the five years before application for registration is made. The Board also proposes to require, before registration can be renewed each year, proof of 16 hours of continuing education completed within the three years before the application for renewal is made. Individuals who are seeking a new registration will be subject to a \$100 registration fee; each year these individuals will have to pay a \$50 renewal fee. Individuals who fail to renew their registration in a timely manner will be subject to a \$20 late renewal fee or a \$120 reinstatement fee (depending on whether the individual renews within 30 days of the January 1 renewal deadline). Additionally, and at its discretion, the Board proposes to require that initial applicants for registration provide recommendations from two veterinarians licensed in Virginia.

There will likely be costs and benefits associated with this registration program that fall broadly into two categories: 1) general costs and benefits that are likely associated with all state mandated monopolies and 2) costs and benefits that apply specifically to this registration program because of the current set up of private certification programs and dispersion of educational opportunities in this field right now.

Some costs will likely accrue because, generally, any state-mandated licensure/registration/certification program can be expected to serve as a barrier-to-entry for individuals who wish to work in the field being licensed/registered/certified. This barrier will be large if the requirements for licensure/registration/certification are large (for instance, if many years of education and experience are required before

full licensure). Alternately, this barrier will be small if the requirements for licensure/registration/certification are minimal (for instance, if the state only requires a competency test for certification). Barriers to entry tend to restrict the supply of individuals engaged in the work that will be licensed/registered/certified. Applying this general effect to the registration of equine dental technicians, if there is not a corresponding decrease in demand as supply drops, the cost of equine dental services will likely rise and horse owners will likely have to pay more to have their horse's teeth cared for. Individuals who would like to work in this field but who are kept from doing so because of the cost/bother of state imposed entry restrictions will also incur costs associated with not being able to do the job they would ideally want to. These costs may be monetary if they end up earning a lower wage, at the job that is their next best option, than they would earn planning and leveling horse teeth. If there is no wage differential between the two jobs, the costs will be less explicit: these individuals may have a lower level of job satisfaction, for instance.

In general, individuals who are able to get state licensure/registration/certification for their field benefit the most. These individuals generally garner some prestige because of the exclusionary nature of licensure/registration programs and will likely be able to command higher wages because they will likely face less competition. To the extent that state-imposed requirements for licensure/registration/certification forestall incompetent practice, consumers of the licensed (etc.) services will accrue benefits that will partially, or even completely, offset the costs they incur.

There are also costs associated specifically with the requirements of this registration program for equine dental technicians. The legislature is allowing three paths to registration: individuals must have either 1) current certification from the IAED 2) evidence of completion of a Board approved certification or training program or 3) evidence of at least five years of practice as an equine dental technician as well as "proof of continued competency satisfactory to the Board.

The certification requirements of the IAED are based on demonstrated ability and experience. As of July 1, 2007 it is illegal in Virginia for a non-veterinarian to engage in equine dental work without being registered as an equine dental technician. So individuals who might want to seek certification from the IAED cannot get certification without working on horse teeth, but they cannot legally work on horse teeth without first gaining the certification (or meeting other requirements of one of the other paths to licensure).

Individuals seeking registration may also, according to statute, complete a Board approved training program. The Department of Health Professions (DHP) reports, however, that there are currently no programs in the Commonwealth

that would be eligible for Board approval. DHP reports that there is an eligible program in Idaho but that has not been approved yet. Taking this route to registration at this time would likely be very expensive and disruptive to the life of an individual seeking registration. These costs may fall if a Board approved training program is started in or near the Commonwealth; given the small number of individuals that were doing this work before registration was mandated, however, there may not be enough demand to make such a program economically viable.

It appears, given the issues with two of these three paths, anyone who did not already have either certification from the IAED or five years of experience working on horse teeth before July 1, 2007 will have great difficulty meeting the requirements of registration. This will likely severely restrict the supply of individuals who are legally able to practice in this field and, so, may cause a sharp increase in the cost of these services going into the future. If there is enough demand for formal training in this field that a training school starts and survives; the owners of, and workers for, that training school will have benefited from this registration program.

The Board's added restriction that veterinarians who recommend equine dental technicians be licensed in Virginia will likely serve as an additional barrier to entry for individuals who live in other states and work in this field.

Weighing both categories of costs and benefits, it is likely that the costs that will accrue to citizens of the Commonwealth because of this registration program outweigh the benefits.

**Businesses and Entities Affected.** These regulations, and their mandating legislation, will affect all individuals who now plane and level horse's teeth or who might want to plane and level horse's teeth at some point in the future. DHP reports that there were fewer than 25 individuals engaged in this type of work in the Commonwealth before registration was mandated.

**Localities Particularly Affected.** Localities that have large numbers of horses will be particularly affected by this proposed regulation.

**Projected Impact on Employment.** Employment opportunities in the equine dental field will likely be less under this registration program.

**Effects on the Use and Value of Private Property.** DHP reports that individuals who currently plane and level horse teeth are all independent contractors (sole proprietors). The value of businesses owned by individuals who can not, immediately, meet requirements for registration will likely fall to \$0. The value of businesses owned by individuals who will meet requirements for registration will likely increase as the number of such businesses decreases.

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**Small Businesses: Costs and Other Effects.** DHP reports that all (less than 25) individuals working in this field likely qualify as small businesses. These individuals will have to pay registration fees as well as the costs associated with meeting registration requirements. In particular, individuals who have planed and leveled horse teeth for less than five years before July 1, 2007 will likely incur extremely large expenses if they choose to pursue registration.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** The costs of this registration program might be mitigated if the legislature reconsiders the paths to licensure that they have mandated. The Board might also want to consider ways to more freely allow registration of individuals from other states by allowing veterinarians licensed outside of Virginia to submit recommendations.

**Real Estate Development Costs.** These proposed regulations will likely have no impact on real estate development costs in the Commonwealth.

**Legal Mandate.** The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with §2.2-4007.04 of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 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, §2.2-4007.04 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 Board of Veterinary Medicine concurs with the analysis of the Department of Planning and Budget for amendments to 18VAC150-20 relating to registration and regulation of equine dental technicians.

Summary:

*Chapter 754 of the 2007 Acts of Assembly requires the Board of Veterinary Medicine to promulgate regulations for the registration of equine dental technicians. The amendments establish the qualifications for registration as an equine dental technician, set continuing education requirements for renewal of registration, establish fees for applications and renewals, and set out the standards of practice for equine dental technicians including the maintenance of patient records.*

## **18VAC150-20-30. Posting of licenses; accuracy of address.**

A. All licenses, registrations and permits issued by the board shall be posted in a place conspicuous to the public at the establishment where veterinary services are being provided or available for inspection at the location where an equine dental technician is working.

B. It shall be the duty and responsibility of each licensee, registrant and holder of a registration permit to operate a veterinary establishment to keep the board apprised at all times of his current address. All notices required by law or by this chapter to be mailed to any veterinarian, certified veterinary technician, registered equine dental technician or holder of a permit to operate a veterinary establishment, shall be validly given when mailed to the address furnished to the board pursuant to this regulation. All address changes shall be furnished to the board within 30 days of such change.

## **18VAC150-20-100. Fees.**

~~A. The following fees shall be in effect from October 15, 2005, to October 15, 2006:~~

|  |       |
|--|-------|
| <del>Veterinary initial license</del>                                    | \$135 |
| <del>Veterinary license renewal (active)</del>                           | \$100 |
| <del>Veterinary license renewal (inactive)</del>                         | \$50  |
| <del>Veterinary reinstatement of expired license</del>                   | \$175 |
| <del>Veterinary license late renewal</del>                               | \$35  |
| <del>Veterinarian reinstatement after disciplinary action</del>          | \$300 |
| <del>Veterinary technician initial license or renewal</del>              | \$25  |
| <del>Veterinary technician license renewal (inactive)</del>              | \$15  |
| <del>Veterinary technician license late renewal</del>                    | \$10  |
| <del>Veterinary technician reinstatement of expired license</del>        | \$50  |
| <del>Veterinary technician reinstatement after disciplinary action</del> | \$75  |
| <del>Initial veterinary establishment permit registration</del>          | \$200 |
| <del>Veterinary establishment renewal</del>                              | \$120 |

|   |                  |  |      |
|---|------------------|--|------|
| <del>Veterinary establishment late renewal</del>                        | <del>\$40</del>  | Duplicate license                              | \$10 |
| <del>Veterinary establishment reinstatement</del>                       | <del>\$100</del> | Duplicate wall certificate                     | \$25 |
| <del>Veterinary establishment reinspection</del>                        | <del>\$200</del> | Returned check                                 | \$35 |
| <del>Veterinary establishment -- change of location</del>               | <del>\$200</del> | Licensure verification to another jurisdiction | \$15 |
| <del>Veterinary establishment -- change of veterinarian in charge</del> | <del>\$30</del>  |  |      |
| Duplicate license   | \$40             |  |      |
| Duplicate wall certificate  | \$25             |  |      |
| Returned check  | \$35             |  |      |
| Licensure verification to another jurisdiction                          | \$15             |  |      |

Part II

Licensure For Veterinarians And Veterinary Technicians

**18VAC150-20-140. Unprofessional conduct.**

Unprofessional conduct as referenced in §54.1-3807(5) of the Code of Virginia shall include the following:

1. Representing conflicting interests except by express consent of all concerned given after a full disclosure of the facts. Acceptance of a fee from both the buyer and the seller is prima facie evidence of a conflict of interest.
2. Practicing veterinary medicine or equine dentistry where an unlicensed person has the authority to control the professional judgment of the licensed veterinarian or the equine dental technician.
3. Issuing a certificate of health unless he shall know of his own knowledge by actual inspection and appropriate tests of the animals that the animals meet the requirements for the issuance of such certificate on the day issued.
4. Revealing confidences gained in the course of providing veterinary services to a client, unless required by law or necessary to protect the health, safety or welfare of other persons or animals.
5. Advertising in a manner which is false, deceptive, or misleading or which makes subjective claims of superiority.
6. Violating any state law, federal law, or board regulation pertaining to the practice of veterinary medicine or equine dentistry.
7. Practicing veterinary medicine or as an equine dental technician in such a manner as to endanger the health and welfare of his patients or the public, or being unable to practice veterinary medicine or as an equine dental technician with reasonable skill and safety.
8. Performing surgery on animals in an unregistered veterinary establishment or not in accordance with the establishment permit or with accepted standards of practice.
9. Refusing the board or its agent the right to inspect an establishment at reasonable hours.
10. Allowing unlicensed persons to perform acts restricted to the practice of veterinary medicine ~~or~~ a veterinary technology or an equine dental technician including any invasive procedure on a patient.

~~B. The following fees shall be in effect on October 15, 2006, and thereafter:~~

|   |              |
|---|--------------|
| Veterinary initial license or renewal (active)                | \$135        |
| Veterinary license renewal (inactive)                         | \$65         |
| Veterinary reinstatement of expired license                   | \$175        |
| Veterinary license late renewal                               | \$45         |
| Veterinarian reinstatement after disciplinary action          | \$300        |
| Veterinary technician initial license or renewal              | \$30         |
| Veterinary technician license renewal (inactive)              | \$15         |
| Veterinary technician license late renewal                    | \$15         |
| Veterinary technician reinstatement of expired license        | \$50         |
| Veterinary technician reinstatement after disciplinary action | \$75         |
| Initial veterinary establishment permit registration          | \$200        |
| <u>Equine dental technician initial registration</u>          | <u>\$100</u> |
| <u>Equine dental technician registration renewal</u>          | <u>\$50</u>  |
| <u>Equine dental technician late renewal</u>                  | <u>\$20</u>  |
| <u>Equine dental technician reinstatement</u>                 | <u>\$120</u> |
| Veterinary establishment renewal                              | \$140        |
| Veterinary establishment late renewal                         | \$45         |
| Veterinary establishment reinstatement                        | \$100        |
| Veterinary establishment reinspection                         | \$200        |
| Veterinary establishment -- change of location                | \$200        |
| Veterinary establishment -- change of veterinarian-in-charge  | \$30         |

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11. Failing to provide immediate and direct supervision to a licensed veterinary technician in his employ.
12. Refusing to release a copy of a valid prescription upon request from a client.

## Part VI

### Equine Dental Technicians

#### **18VAC150-20-220. Requirements for registration as an equine dental technician.**

A. A person applying for registration as an equine dental technician shall provide a recommendation from at least two veterinarians licensed in Virginia who attest that at least 50% of their practice is equine, and that they have observed the applicant within the past five years immediately preceding the attestation and can attest to his competency to be registered as an equine dental technician.

B. The qualifications for registration shall include documentation of one of the following:

1. Current certification from the International Association of Equine Dentistry;
2. Completion of a board-approved certification program or training program;
3. Completion of a veterinary technician program that includes equine dentistry in the curriculum; or
4. Evidence of equine dental practice for at least five years and proof of 16 hours of continuing education in equine dentistry completed within the five years immediately preceding application for registration.

C. In order to maintain an equine dental technician registration, a person shall renew such registration by January 1 of each year by payment of the renewal fee specified in 18VAC150-20-100 and attestation of obtaining 16 hours of continuing education relating to equine dentistry within the past three years.

1. Equine dental technicians shall be required to maintain original documents verifying the date and subject of the continuing education program or course, the number of continuing education hours, and certification of completion from a sponsor. Original documents shall be maintained for a period of two years following renewal. The board shall periodically conduct a random audit to determine compliance. Practitioners selected for the audit shall provide all supporting documentation within 10 days of receiving notification of the audit.

2. Registration may be renewed up to 30 days after the expiration date, provided a late fee as prescribed in 18VAC150-20-100 is paid in addition to the required renewal fee.

3. Reinstatement of registration expired for more than 30 days shall be at the discretion of the board. To reinstate a registration, the applicant shall pay the reinstatement fee as prescribed in 18VAC150-20-100 and submit evidence of completion of continuing education hours equal to the number of years in which the registration has been expired, for a maximum of two years. The board may require additional documentation of clinical competency and professional activities.

#### **18VAC150-20-230. Application requirements for registration as an equine dental technician.**

In addition to the evidence of qualification required in 18VAC150-20-220, an applicant for registration shall provide:

1. Submission of a completed application and the applicable fee as specified in 18VAC150-20-100; and
2. Submission of satisfactory evidence of good moral character as specified in an application provided by the board.

#### **18VAC150-20-240. Standards of practice for equine dental technicians.**

A. The practice of an equine dental technician may include the performance of routine dental maintenance with nonmotorized hand tools but shall not include cutting or chipping teeth or extraction of rooted teeth.

B. The planing or leveling of equine teeth using motorized tools or the extraction of wolf teeth premolars shall be performed in accordance with §54.1-3813 C 2 of the Code of Virginia.

C. A record of each individual patient treated shall be maintained by the equine dental technician and shall include all relevant procedures performed. Client records shall be kept for a period of three years following the last visit and shall be available for inspection.

**NOTICE:** The forms used in administering 18VAC150-20, Regulations Governing the Practice of Veterinary Medicine, are not being published; however, the name of each form is listed below. The forms are available for public inspection at the Department of Health Professions, 9960 Mayland Drive, Suite 300, Street, Richmond, Virginia, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

#### FORMS

Licensure Procedure for Veterinarians (rev. ~~4/02~~ 8/07).

Application for a License to Practice Veterinary Medicine (rev. ~~7/03~~ 8/07).

Instructions to the Veterinary Technician Licensure Applicant (rev. ~~4/05~~ 8/07).

Application for a License to Practice Veterinary Technology (rev. 7/03 8/07).

Applicant Instructions for New, Upgrading to Full Service, or Change of Location Inspections (eff. 10/02 rev. 8/07).

Application for Veterinary Establishment Permit (rev. 7/02 8/07).

Application for Reinstatement (rev. 10/02 8/07).

Renewal Notice and Application - 0301 (rev. 7/02).

Renewal Notice and Application - 0302 (rev. 7/02).

Licensure Verification - Veterinarian (rev. 07/04 8/07).

Licensure Verification - Veterinary Technician (rev. 11/02 9/07).

Application for Registration for Volunteer Practice (eff. 12/02 rev. 8/07).

Sponsor Certification for Volunteer Registration (eff. 1/03 rev. 8/07).

Application for Registration to Practice as an Equine Dental Technician (eff. 11/07).

Recommendation for Registration as a Equine Dental Technician (eff. 11/07).

VA.R. Doc. No. R08-797; Filed September 26, 2007, 9:33 a.m.

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**TITLE 24. TRANSPORTATION AND MOTOR VEHICLES**

**MOTOR VEHICLE DEALER BOARD**

**Final Regulation**

Title of Regulation: **24VAC22-20. Motor Vehicle Dealer Fees (amending 24VAC22-20-10, 24VAC22-20-20).**

Statutory Authority: §§46.2-1503.4, 46.2-1506, 46.2-1519 and 46.2-1546 of the Code of Virginia.

Effective Date: December 1, 2007.

Agency Contact: Bruce Gould, Executive Director, Motor Vehicle Dealer Board, 2201 W. Broad St., Ste.104, Richmond, VA, 23220, telephone 804-367-1100, FAX 804-367-1053, or email bruce.gould@mvdv.virginia.gov.

Summary:

*The amendments revise definitions for consistency with the Code of Virginia; increase the motor vehicle dealer salesperson license fee and dealer license plate fees; and establish fees for certificate of qualification.*

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

**24VAC22-20-10. Definitions.**

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

"Dealer license plates" means license plates bearing a distinctive number, and the name of the Commonwealth, which may be abbreviated, together with the word "dealer" or a distinguishing symbol, indicating that the plate is issued to a manufacturer, distributor, or dealer, and further distinguishes franchised or independent dealers.

"Motor vehicle dealer" or "dealer" means any person who:

1. For commission, money, or other thing of value, buys, sells, exchanges, either outright or on conditional sale, bailment lease, chattel mortgage, or otherwise or arranges or offers or attempts to solicit or negotiate on behalf of others a sale, purchase, or exchange of an interest in new motor vehicles, new and used motor vehicles, or used motor vehicles alone, whether or not the motor vehicles are owned by him; or the same as provided in §46.2-1500 of the Code of Virginia;
2. Is wholly or partly engaged in the business of selling new motor vehicles, new and used motor vehicles, or used motor vehicles only, whether or not the motor vehicles are owned by him; or
3. Offers to sell, sells, displays, or permits the display for sale of, five or more motor vehicles within any 12 consecutive months.

The term "motor vehicle dealer" does not include:

1. Receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under judgment or order of any court or their employees when engaged in the specific performance of their duties as employees.
2. Public officers, their deputies, assistants, or employees, while performing their official duties.
3. Persons other than business entities primarily engaged in the leasing or renting of motor vehicles to others when selling or offering such vehicles for sale at retail, disposing of motor vehicles acquired for their own use and actually so used, when the vehicles have been so acquired and used in good faith and not for the purpose of avoiding the provisions of ~~this chapter~~ Chapter 15 (§46.2-1500 et seq.) of Title 46.2 of the Code of Virginia.
4. Persons dealing solely in the sale and distribution of ~~fire-fighting equipment, ambulances, and~~ funeral vehicles, including motor vehicles adapted therefor; however, this exemption shall not exempt any person from the provisions

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of §§46.2-1519, 46.2-1520 and 46.2-1548 of the Code of Virginia.

5. Any financial institution chartered or authorized to do business under the laws of the Commonwealth or the United States which may have received title to a motor vehicle in the normal course of its business by reason of a foreclosure, other taking, repossession, or voluntary reconveyance to that institution occurring as a result of any loan secured by a lien on the vehicle.

6. An employee of an organization arranging for the purchase or lease by the organization of vehicles for use in the organization's business.

7. Any person licensed to sell real estate who sells a mobile home or similar vehicle in conjunction with the sale of the parcel of land on which the mobile home or similar vehicle is located.

8. Any person who permits the operation of a motor vehicle show or permits the display of motor vehicles for sale by any motor vehicle dealer licensed under Chapter 15 (§46.2-1500 et seq.) of Title 46.2 of the Code of Virginia.

9. An insurance company authorized to do business in the Commonwealth that sells or disposes of vehicles under a contract with its insured in the regular course of business.

10. Any publication, broadcast, or other communications media when engaged in the business of advertising, but not otherwise arranging for the sale of vehicles owned by others.

11. Any person dealing solely in the sale or lease of vehicles designed exclusively for off-road use.

12. Any credit union authorized to do business in Virginia, provided the credit union does not receive a commission, money, or other thing of value directly from a motor vehicle dealer.

13. Any person licensed as a manufactured home dealer, broker, manufacturer, or salesperson under Chapter 4.2 (§36-85.16 et seq.) of Title 36 of the Code of Virginia.

14. The Virginia Department of Social Services or local departments of social services.

"Motor vehicle salesperson" means (i) any person who is licensed and employed as a salesperson hired as an employee by a motor vehicle dealer to sell or exchange motor vehicles. It shall also mean and who receives or expects to receive a commission, fee or any other consideration from the dealer; (ii) any person who supervises salespersons employed by a motor vehicle dealer, whether compensated by salary or by commission; (iii) any person, compensated by salary or commission by a motor vehicle dealer, who negotiates with or induces a customer to enter into a security agreement on behalf of a dealer; or (iv) any person who is licensed as a

motor vehicle dealer and who sells or exchanges motor vehicles.

"Supplemental license" means a license issued by the Motor Vehicle Dealer Board for a licensed motor vehicle dealer to display for sale or sell vehicles at locations other than his established place of business, subject to compliance with local ordinances and requirements.

## **24VAC22-20-20. Fees.**

A. License fees. All license fees, except initial license fees, are nonrefundable. Annual fees for licenses are as follows:

|   |                             |
|---|-----------------------------|
| Motor Vehicle Dealer License                      | \$200                       |
| Permanent Supplemental License                    | \$40                        |
| Temporary Supplemental License (Valid for 7 days) | \$40 (per 7-day license)    |
| Motor Vehicle Dealer Salesperson License          | <del>\$20</del> <u>\$25</u> |

B. Application for certificate of qualification fees. Application fees for certificates of qualification are nonrefundable. The fees, which are due prior to taking the certificate of qualification examination, are as follows:

|  |             |
|--|-------------|
| <u>Dealer-Operator Certificate of Qualification:</u>                           | <u>\$50</u> |
| <u>Salesperson Certificate of Qualification:</u>                               | <u>\$50</u> |
| <u>Combined Dealer-Operator and Salesperson Certificates of Qualification:</u> | <u>\$50</u> |

~~B.~~ C. Dealer license plate fees. Fees for dealer license plates are nonrefundable. Annual fees for dealer license plates are as follows:

|                             |                                  |
|-----------------------------|----------------------------------|
| First two plates            | <del>\$20</del> <u>\$30</u> each |
| Third and subsequent plates | <del>\$15</del> <u>\$26</u>      |

All renewal fees are due to the Motor Vehicle Dealer Board on the last day of the expiration month and shall be considered filed on time if postmarked prior to the expiration date.

VA.R. Doc. No. R07-13; Filed September 24, 2007, 2:19 p.m.

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# GENERAL NOTICES/ERRATA

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## DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

### Notice of Periodic Review

The Department of Agriculture and Consumer Services invites comment from the public on certain of its existing regulations listed below, as part of a review of its regulations being conducted under Executive Order 36 (2006), Development and Review of Regulations Proposed by State Agencies. Comments should be addressed to the person identified below as the contact person for the regulation. The deadline for receipt of comments is Monday, November 5, 2007.

2VAC5-30, Rules and Regulations Governing Pertaining to Reporting Requirements for Contagious and Infectious Diseases of Livestock and Poultry in Virginia – Contact Colleen Calderwood

2VAC5-50, Rules and Regulations Governing the Prevention, Control and Eradication of Brucellosis of Cattle in Virginia – Contact Colleen Calderwood

2VAC5-90, Control and Eradication of Pullorum Disease and Fowl Typhoid in Poultry Flocks and Hatcheries and Products Thereof in Virginia – Contact Colleen Calderwood

2VAC5-100, Rules and Regulations Governing the Qualifications for Humane Investigators – Contact Colleen Calderwood

2VAC5-150, Rules and Regulations Governing the Transportation of Companion Animals – Contact Colleen Calderwood

2VAC5-180, Rules and Regulations Governing Pseudorabies in Virginia – Contact Colleen Calderwood

2VAC5-400, Rules and Regulations for the Enforcement of the Virginia Fertilizer Law – Contact Robert E. Bailey

2VAC5-501, Regulations Governing the Cooling, Storing, Sampling and Transporting of Milk – Contact John A. Beers

2VAC5-510, Rules and Regulations Governing the Production, Processing, and Sale of Ice Cream, Frozen Desserts, and Similar Products – Contact John A. Beers

2VAC5-531, Regulations Governing Milk for Manufacturing Purposes – Contact John A. Beers

2VAC5-590, Rules and Regulations Pertaining to Tolerances and Prohibitions Applicable to Ground Beef – Contact Ryan Davis

2VAC20-10, Public Participation Guidelines – Contact W. Wayne Surles

2VAC20-20, Rules and Regulations for Enforcement of the Virginia Pesticide Law – Contact W. Wayne Surles

2VAC20-40, Rules and Regulations Governing Licensing of Pesticide Businesses By the Department of Agriculture and Consumer Services Operating Under Authority of the Virginia Pesticide Control Act – Contact W. Wayne Surles

### AGENCY CONTACTS

Robert E. Bailey, Program Manager, Department of Agriculture and Consumer Services, 102 Governor Street, Richmond, VA 23219, telephone (804) 786-1274, FAX (804) 786-1571, TDD (800) 828-1120, email robert.bailey@vdacs.virginia.gov.

John A. Beers, Program Supervisor, Department of Agriculture and Consumer Services, 102 Governor Street, Richmond, VA 23219, telephone (804) 786-1452, FAX (804) 371-7792, TDD (800) 828-1120, email john.beers@vdacs.virginia.gov.

Colleen Calderwood, DVM, Program Manager, Department of Agriculture and Consumer Services, 102 Governor Street, Richmond, VA 23219, telephone (804) 786-2483, FAX (804) 371-2380, TDD (800) 828-1120, email colleen.calderwood@vdacs.virginia.gov.

Ryan Davis, Program Supervisor, Department of Agriculture and Consumer Services, 102 Governor Street, Richmond, VA 23219, telephone (804) 786-3520, FAX (804) 371-7792, TDD (800) 828-1120, email ryan.davis@vdacs.virginia.gov.

W. Wayne Surles, Program Manager, Department of Agriculture and Consumer Services, 102 Governor Street, Richmond, VA 23219, telephone (804) 371-6559, FAX (804) 786-9149, TDD (800) 828-1120, email wayne.surles@vdacs.virginia.gov.

## STATE CORPORATION COMMISSION

### Bureau of Insurance

Administrative Letter 2007-10

To: All Insurance Consultants Licensed in the Commonwealth of Virginia

Re: Consulting Contracts

The purpose of this administrative letter is to remind licensed insurance consultants of the requirements of Section 38.2-1839 A of the Code of Virginia.

All consulting arrangements must be memorialized in a written contract signed by the consultant and the client, and that contract must include, without limitation, the following:

- The amount of any consulting fee;
- The basis of any consulting fee; and

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- The duration of the employment.

If the consultant may also receive commissions, incentives, bonuses, overrides, or any other form of remuneration either directly or indirectly as a result of his services for selling, soliciting, or negotiating insurance as part of his services in addition to a consulting fee, unless otherwise prohibited, such information shall be disclosed in the contract.

In those instances where the consultant does not sell, solicit, or negotiate insurance as part of his services, the consultant and the client must sign the contract prior to the time the consultant performs any act as a consultant.

In those instances where the consultant does sell, solicit, or negotiate insurance as part of his services, the client and the consultant must sign the contract prior to the purchase of any insurance by that client.

Questions relating to this matter should be directed to: Michael T. Beavers, CPCU, CIC, Supervisor, P&C Agent Investigations, Virginia Bureau of Insurance, Agent Regulation and Administration Division, P.O. Box 1157, Richmond, Virginia 23218, telephone (804) 371-9465.

/s/ Alfred W. Gross  
Commissioner of Insurance

### DEPARTMENT OF ENVIRONMENTAL QUALITY

#### Total Maximum Daily Load - King George County

Purpose of notice: The Virginia Department of Environmental Quality (DEQ), Virginia Department of Health (VDH) and the Virginia Department of Conservation and Recreation announce a total maximum daily load (TMDL) study for fecal coliform bacteria in shellfish propagation waters located in King George County, Virginia.

Technical advisory committee meeting: Wednesday, October 24, 2007, 10 a.m. - Noon, King George County Cooperative Extension Office, 10087 Kings Highway, King George, VA 22485.

Meeting description: This is the first technical advisory committee (TAC) meeting for this project. The purpose of the TAC will be to provide technical input and insight for the project, and to assist with stakeholder and public participation.

Description of study: The impaired segments are located in VDH Growing Area 001A-036 and include portions of Upper Machodoc Creek, and its tributaries, Williams Creek, Deep Creek, and Gambo Creek. These impaired waterbodies are located in King George County, Virginia.

The affected water body segments are identified in Virginia's 1998 303(d) TMDL Priority List and Report as impaired due to exceedances 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.

How to comment: The public comment period on the materials presented at the TAC meeting will extend from October 24, 2007, to November 23, 2007. 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. Please send all comments to the contact listed below.

Contact for additional information: Chester Bigelow, Virginia Department of Environmental Quality, 629 East Main Street, Richmond, VA 23240, telephone (804) 698-4554, or email [cbigelow@deq.virginia.gov](mailto:cbigelow@deq.virginia.gov).

#### Virginia Clean Water Revolving Loan Fund for FY 2008

The Department of Environmental Quality will convene a public meeting to discuss the use of the Virginia Clean Water Revolving Loan Fund for FY 2008. The meeting will be held at the Department of Environmental Quality's Piedmont Regional Office Conference Room, 4949-A Cox Road, Glen Allen, Virginia, on Thursday, November 8, 2007, at 2 p.m.

Section 606(c) of the Water Quality Act of 1987 requires the Department of Environmental Quality (DEQ) to develop an annual plan that identifies the intended use of its revolving loan funds for construction of publicly owned wastewater treatment facilities and other clean water projects, including the development of a project priority list. The Act also requires that a list of projects targeted for financial assistance with those funds be developed each year. The intended use plan for FY 2008 draft list of targeted loan recipients are open to public comment. The public comment and review period will end at the conclusion of the meeting.

Agency Contact: Walter A. Gills, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4133, FAX (804) 698-4032, or email [wagills@deq.virginia.gov](mailto:wagills@deq.virginia.gov).

### DEPARTMENT OF TRANSPORTATION

#### Notice of Comment Period and Public Hearing for Proposed Access Management Regulations

Meeting Scope:

Discussion of regulation promulgated to satisfy the provisions of Chapters 863 and 928 of the 2007 Acts of Assembly concerning access management. A legislative mandate was enacted to promulgate Access Management Regulations and related design standards for entrance/intersection access management, exempt from the Administrative Process Act.

Once finalized, this regulation will necessitate the repeal of the Minimum Standards of Entrances to State Highways (24VAC30-71). The Office of the Attorney General has reviewed the proposed regulations and has certified that VDOT has the legal authority to promulgate the regulations, and that these regulations comply with applicable law.

Subjects addressed in the Access Management Regulations include pertinent definitions; authority to regulate entrances; procedures and rules for obtaining entrance permits; appeal process; general provisions concerning entrances; design parameters for entrances; private entrances; costs responsibilities; tenure of entrances; commercial entrance access management requirements; commercial entrance traffic impact analysis; temporary entrances; and documents incorporated by reference.

Subjects addressed in the design standards for entrance/intersection access management include definitions of pertinent words and terms; access management concepts; functional classifications of state highways; design principles and spacing standards for intersections, entrances, and median openings; sight distance standards; turning lane criteria; and design principles concerning private and commercial entrances. These standards will be included in the Road Design Manual as an appendix.

The regulations and related standards can be accessed at <http://www.virginiadot.org/accessmgt>. A public hearing will be held on October 22, 2007, from 1 p.m. to 3 p.m. at the following location:

Virginia Department of Transportation, Asset Management Division Training Room, Brookfield Corporate Office Park, 6600 West Broad Street, Richmond, VA 23230, Exit 183, I-64 East; Exit 183B, I-64 West

Public comments must be received by 5 p.m. on October 29, 2007. Anyone wishing to submit written comments may do so by mail, email or fax to the contact whose mailing address is provided below. Written comments should include the name and address of the commenter. In order to be considered comments must be received by the above date and time.

Contact Information: Paul Grasewicz, AICP/Access Management Program Administrator, Asset Management Division, Virginia Department of Transportation, 1401 E. Broad Street, Richmond, VA 23219, telephone (804) 662-9721, FAX (804) 662-9405, or email [paul.grasewicz@vdot.virginia.gov](mailto:paul.grasewicz@vdot.virginia.gov).

## STATE WATER CONTROL BOARD

### Proposed Consent Special Order - Harrisonburg-Rockingham Regional Sewer Authority/North River Wastewater Treatment Facility

Purpose of notice: To invite citizens to comment on a proposed consent order for the Harrisonburg-Rockingham

Regional Sewer Authority/North River Wastewater Treatment Facility.

Public comment period: October 15, 2007, through November 15, 2007.

Consent order description: The State Water Control Board proposes to issue a consent order to the Harrisonburg-Rockingham Regional Sewer Authority (HRRSA) to address alleged violations of the State Water Control Law. The location of the facility where the alleged violations occurred is HRRSA's North River Wastewater Treatment Facility in Mt. Crawford, Virginia. The consent order describes a settlement to resolve alleged operational violations that resulted in a fish kill in the North River.

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 close of business on the final day of the public 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: Steven W. Hetrick, Department of Environmental Quality, Valley Regional Office, P.O. Box 3000, 4411 Early Road, Harrisonburg, VA 22801, telephone (540) 574-7833, FAX (540) 574-7878, or email [swhetrick@deq.virginia.gov](mailto:swhetrick@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.

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## General Notices/Errata

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### **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 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 system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.

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**

### **BOARD OF PHARMACY**

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

Publication: 20:23 VA.R. 2601-2608 July 26, 2004.

Correction to Final Regulation:

Page 2606, 18VAC110-20-180, subdivision 5, line 1, after "This," strike "chapter" and insert "regulation."

VA.R. Doc. No. R03-26; Filed October 3, 2007, 12:49 p.m.